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Belgian Contact Point

Annual Policy Report 2010

Policy report regarding asylum and migration

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EMN Annual Policy Report 2010

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 is available on:

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

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EXECUTIVE SUMMARY

This report – Belgian Policy Report on Asylum and Migration 2010 – 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. These national contributions will be clustered and compared in a European synthesis report. The 2010 Policy Report is the 7th Policy analysis report on migration and asylum that was drafted by the Belgian national contact point. With the signature of the European Pact on Immigration and Asylum, the structure of the 2009 report has been modified to highlight developments relevant to the EU Pact on Immigration and Asylum. The national reports are used by the European Commission for the tracking method (or “*méthode de suivi*”) of the Pact; the results of which will be presented to the European Council each year.

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

Migration and asylum issues remained high on the political and media agenda in the whole course of 2010. Beside the BE EU-Presidency, the same issues stood on the forefront of the public’s attention: the determination and further implementation of regularisation criteria; and the crisis of the reception capacity for asylum seekers, in combination with the further increase of asylum applications. In 2010, the authorities registered 19.941 first and multiple asylum applications (files) – an increase of 16% in comparison with 2009. When the accompanying children are taken into account, Belgium registered even 26.560 asylum applicants, ranking in 3rd place in terms of per capita asylum applications rate in Europe. Concerning first asylum applications, an increase of 27.8% in comparison with 2009 was recorded.

Since July 2009, the Prime Minister is in charge of the coordination of the Belgian Migration and Asylum Policy, whereas the operational competences with regard to migration and asylum are spread over 2 federal States Secretaries and 2 supervising federal Ministers.

On 13 June 2010, snap elections for the Federal government took place in Belgium, which brought in Wallonia a ballot success for the political party PS and in Flanders for the N-VA. However, the forming of a new Federal government proved to be laborious and did not yet come to an agreement. So far, the government Leterme II, resigned in consequences of the federal elections on 13 June 2010, is still entrusted with dealing with current affairs. In 2010, the political situation had, amongst others, negative consequences for lawmaking processes concerning migration and asylum. However, in October 2010, the government entrusted with dealing with current affairs was able to take several measures against the ongoing crisis of the reception capacity for asylum seekers.

In the second half of 2010, Belgium took over the Presidency of the European Union. Belgium has put the themes immigration and asylum high on its priority list during its Presidency. Belgium had identified three priorities for its Presidency program in this policy field: Firstly, the development of the second phase of the Common European Asylum System (CEAS) by 2012. Secondly, the development of a common policy on legal migration that is beneficial to the country of origin; the host country as well as the migrant him- or herself, based on the labour markets needs of the Member States. Thirdly, the fight against human trafficking and illegal migration, in particular through the improvement of the external border management. The Belgian Presidency was able to stimulate the debate on these policy fields. Amongst others, in November 2010 a political breakthrough concerning the Long Term Resident Directive could be achieved. The Belgian Presidency finished also the negotiations on a technical level in the Asylum Working Parties for the Qualification Directive and the Dublin regulation.

Complementary to the negotiations within the Council, the Belgian EU Presidency organised several conferences on migration and asylum issues, e.g. a Ministerial Asylum Conference on “Quality and Efficiency in the Asylum Process” on 13-14 September.

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The Presidency was also responsible for the organization and the agenda of the biennial Asia-Europe Meeting (ASEM), which took place in Brussels on 4 and 5 October 2010. During the summit, a workgroup of experts of ASEM-countries, the IOM and the European Council discussed also the subject “detection and selection of migrants”.

Besides the regularisation operation - of which the applications are decided on a case-by-case basis - , that was agreed upon on 19 July 2009 but further implemented in 2010, a further heavily debated and reported issue in 2010 has been the lack of available places in reception centres for asylum seekers. Because of the further increasing in-flows of new asylum seekers and because of the wide range of categories of foreigners who are entitled to a place in reception centres for asylum seekers according to the Belgian Reception Act, not all asylum seekers who had introduced an asylum application could be accommodated in reception centres, and not few of them had to be sheltered in hotels.

The final number of the 2010 migration flows are not known yet. The only available indicators at the time being are the number of issued long term visa which suggest that the figures for the main legal migration categories would have remained either stable or would have slightly increased (e.g. labour migration which had seriously dropped in 2009). However, it is rather to be expected that the regularisation campaign will further boost the foreign population, which was already on remarkable rise the last years.

The progress that was achieved in 2009 with regard to tackling marriages of convenience; introduction of an income condition for family reunification with third-country nationals; reform of the Belgian Code of Nationality that will strengthen the rules to acquire the Belgian nationality and claim naturalisation, was questioned by the fall of the government in June 2010. Due to the fact that the government Leterme II is still entrusted with dealing with current affairs, no political breakthrough concerning this legislation pieces could be achieved.

Further widely discussed and debated issues are, like in the previous years, integration of foreign nationals and return policy. As to integration, while the issue is permanently discussed through media reports and public forums (Islamic veils in schools and public services, etc.), the Belgian institutions (Communities and Regions) in charge of integration of foreigners seem more and more inclined to consider integration policy as an important issue that needs new initiatives and reinforcement of existing measures. As to return policy, the pilot project that started in 2008 has proven to be conclusive. After encouraging first results, the alternative of hosting illegally staying families in private housing units instead of detention centres has been extended to all families, with very few exceptions.

Some asylum and migration key data

	2010	2009	2008	Diff. 2010-09
First and multiple asylum applications	26.560	22.955	16.785	15,7
Issued long-term visa to non-EU citizens*				
Labour (contractor)	3.026	2.633	3.955	14,9
Family reasons	12.675	13.859	13.916	-8,5
Other reasons	8.955	9.070	8.958	-1,3
Forced removals **	3.270	3.443	3.644	-5,0
Voluntary returns (REAB) ***	2.957	2.659	2.669	11,2

* Source: FPS Foreign Affairs

** Dublin-cases included

*** EU-citizens included

1. INTRODUCTION: PURPOSE AND METHODOLOGY FOLLOWED

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

The common study specifications have been adapted to contribute to the factual reporting of the tracking method of the European Pact on Immigration and Asylum. In addition, the study specifications for the 2010 exercise also incorporate relevant elements of the Stockholm Programme and its accompanying Action Plan.

I.1 European Pact on Immigration and Asylum

The European Pact on Immigration and Asylum was adopted by the European Council of 15-16 October 2008. Building on the progress already achieved over 10 years, the Pact is a further stepping-stone towards a comprehensive EU migration policy. The European Council makes five basic commitments, which will continue to be developed and transposed into concrete measures, in particular in the programme to follow on from the The Hague Programme, specifically:

- to organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration;
- to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit;
- to make border controls more effective;
- to construct a Europe of asylum;
- to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development.

When adopting the Pact, the European Council decided to hold an annual debate on immigration and asylum policies. This annual debate will enable the European Council to monitor implementation, by both the European Union and the Member States, of the Pact and of the programme that will follow on from the Hague Programme.

Subsequently the Pact:

- invited the Commission to present a report to the Council each year, based on Member States' contributions and accompanied, as necessary, by proposals for recommendations on the implementation, by both the European Union and the Member States, of this Pact and of the programme that will follow on from the Hague Programme;
- stated that the debate will also enable the European Council to be kept informed of the most significant developments planned by each Member State in conducting its immigration and asylum policy.

I.2 The Stockholm Programme

“The Stockholm Programme – An open and secure Europe serving and protecting the citizens¹,” adopted by the European Council in December 2009, defines the priorities of the European Union in the area of migration and asylum, as well as other Justice and Home Affairs issues for the five-year period 2009 - 2014. Continuing on from the Hague Programme, the Stockholm Programme focuses on priorities such as the sustainability of return programmes, as well as the development of legal migration and integration and the protection of unaccompanied minors entering the EU. This programme, in addition to the European Pact on Immigration and Asylum, is considered to be a guiding tool in the future development of asylum and migration policy within the EU.

¹ Available from: http://ec.europa.eu/home-affairs/doc_centre/docs/stockholm_program_en.pdf.

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The purpose of the “Action Plan Implementing the Stockholm Programme²” is to deliver the priorities and objectives outlined in the Stockholm Programme, both at European and global level, ensuring that citizens benefit from progress made in the area of freedom, security and justice. The Action Plan sets out the EU’s action in the next five years, with specific sections (and groups of actions) on the management of the external borders, visa policy, migration policies, asylum policy and the external dimension of migration and asylum

I.3 Commission's Annual Report

The Commission Communication (COM (2009) 266) on the *méthode de suivi* (or “tracking method”) for monitoring the implementation of the European Pact on Immigration and Asylum details the methodology chosen for this exercise, with the contribution of the EMN Annual Policy Report used as the main source of information for the Commission's detailed report, summarising the most significant developments for each of the commitments included in the Pact.

Information from other sources shall also be used, with, in particular, Member States required to provide an annual contribution consisting of a short “political” report. The Commission published its First Annual Report on Immigration and Asylum, covering the year 2009, on 6th May 2010. The Commission’s Annual Report consisted of two parts:

- a Communication³ highlighting the main developments over the reporting period, at both EU and Member State level, along with recommendations from the Commission;
- a factual report⁴ (Commission Staff Working Paper) summarising the main actions taken, and the most significant developments planned, again at EU and Member State level, for each of the commitments made in the Pact. This report was primarily based on a synthesis of the EMN NCPs contributions.

The Council conclusions on the follow-up of the European Pact on Immigration and Asylum, adopted on 3rd June 2010,⁵ invited the Commission to continue reporting on the progress made, covering both the implementation of the European Pact on Immigration and Asylum and of the relevant sections of the Stockholm Programme, and its accompanying Action Plan.

These conclusions were endorsed by the European Council on 17th June 2010⁶ who also acknowledged the progress made in the implementation of the European Pact on Immigration and Asylum.

I.4 EMN Annual Policy Report 2010

The EMN Annual Policy Report 2010 shall contribute to the report to be prepared by the Commission and presented to the Council in June 2011.

The EMN's report continues to provide an insight into the most significant political and legislative (including EU) developments, as well as public debates, in the area of migration and asylum. In order to meet the requirements of the *méthode de suivi*, the format of the Annual Policy Report has been adapted, to enable reporting on “general” EU and national developments in the Member States in the main body of the report, and specific reporting on the commitments of both the Pact and in the Stockholm Programme in a separate Annex. A Correspondence Table, included in Annex B, structured around the key articles in the Lisbon Treaty concerning Immigration, Border Control and Asylum, provides a detailed overview of the mapping of the Pact’s main and sub-commitments to the relevant Stockholm Programme sections and the relevant Stockholm Programme actions.

² COM (2010) 171, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0171:EN:NOT>.

³ COM(2010) 214, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0214:FIN:EN:PDF>

⁴ SEC (2010)535, available at : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:0535:FIN:EN:PDF>

⁵ 3018th JUSTICE and HOME AFFAIRS Council meeting Luxembourg, 3 June 2010, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114881.pdf

⁶ Available at: http://ec.europa.eu/eu2020/pdf/council_conclusion_17_june_en.pdf

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The EMN Annual Policy Report 2010 covers the period 1st January 2010 to 31st December 2010 and will be the seventh in a series of such reports. Consistent with previous years, the reports follow two main objectives, which now have to be seen in the context of the Pact.

Firstly, the state of implementation of EU legislation and the impact of European policy developments at national level is documented. Secondly, nation-specific significant developments (political, legal, administrative, etc.) in the area of migration and asylum are described. Thirdly, comments on relevant debates are included.

1.1 Methodology

This report was written by the EMN Belgian national contact point. Where no new developments occurred or no significant debate had taken place in 2010 and late 2009, no information was mentioned. This however does not mean that the issue is not being dealt with already existing measures.

In writing this study, use has been made of the following sources.

- Information provided by departments and services of the Immigration Office and of the Office of the Commissioner General for Refugees and Stateless Persons that are dealing with the issues highlighted in the report. Parliamentary documents, declarations of the federal government, press releases of Ministers and State Secretaries.
- Legislation published in the Belgian Official Journal.
- Press releases of NGOs and non-profit organisations assisting asylum seekers or defending the fundamental rights of foreigners.
- Official reports, such as the reports of the federal ombudsman, of the High Council for Employment, etc.
- Academic papers
- Press articles, especially when the information could be cross-checked through other types of sources

1.2 Terms and Definitions

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

SPECIFIC TERMS :

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

2. GENERAL STRUCTURE OF POLITICAL AND LEGAL SYSTEM IN BELGIUM

2.1 General structure of the political system and institutional context

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

The **Federal State** retains powers in several areas, including foreign policy, national defence, justice, finance, social security and the bulk of public health and home affairs. Migration and asylum policies are federal competences. The language-based **Communities** are responsible for culture and issues directly related to individuals and their language, such as aid to people, health and education, integration of foreigners and emancipation of ethno-cultural minorities,⁷ whereas the territory-oriented **Regions** are responsible for ‘territorial’ issues, such as farming, water policy, housing, public works, energy, transport, environment, land planning and town planning, rural development, nature conservation, economy & labour market management, the supervision of the provinces, municipalities and associations of local authorities and the issuance of work permit to foreigners.

Since July 2009, entry, residence, establishment and removal of foreign nationals are the responsibility of the federal State Secretary for Migration and Asylum Policies and of the Director-General of the **Immigration Office** (IO). The latter administration is also in charge of applying the Dublin II Regulation and manages the asylum applicants' residence requirements throughout the asylum procedure. However, 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, as a result of a legal reform in 2006. The federal State Secretary for Migration and Asylum Policies⁸ Melchior Wathelet, CdH) acts under the supervision of the federal Minister of Employment and Equal Opportunities (Minister Joëlle Milquet, CdH). The whole of Migration and Asylum Policies (which include reception of asylum seekers, cf. further) is coordinated by the Prime Minister at the level of the federal government. Since the government resigned in consequences of the federal elections on 13 June 2010, it is entrusted with dealing with current affairs.

Since 2007, 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 against decisions of the Immigration Office (e.g. decisions on visas, residence permits, etc.).

Fedasil, an agency under the supervision of the federal State Secretary for Social Integration, is the institution in charge of the reception of asylum seekers in Belgium. The federal State Secretary of Social Integration acts under the supervision of the federal Minister of Health, Food Chain Safety and Environment.

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

⁷ 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).

⁸ In Belgium, ‘State Secretary’ is the title given to deputy ministers.

2.2 General structure of the legal system

The most relevant law regarding migration and asylum issues in Belgium is the **Law of 15 December 1980** on entry, stay, settlement and removal of foreign nationals⁹ (further ‘Aliens Act’) which has been modified many times since its adoption. The latest major modifications took place in 2006, by the Law of 15 July 2006 and the Law of 25 April 2007. The Law of 15 December 1980 also governs the asylum procedure and the competencies of the asylum institutions. The **Royal Decree of 8 October 1981** pertaining to entry, stay, settlement and removal of foreign nationals implements the Law of 15 December 1980. It has recently been modified by the Royal Decree of 27 April 2007. In addition, many directives or internal regulations have been adopted by the administration for the implementation and the interpretation of the Aliens Act and of the Royal Decree of 1981. Other implementing decrees and circular letters organize other matters related to migration law, such as transporters’ sanctions, unaccompanied minors, victims of human trafficking, etc. Foreigners’ access to work is regulated by the **Law of 30 April 1999** and its implementation decree of 9 June 1999. Belgium is also a signatory party to the 1951 Geneva *Convention* relating to the Status of *Refugees* and the 1967 Additional Protocol, as well as to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the 1954 Convention Relating to the Status of Stateless Persons and the United Nations Children’s Rights Convention.

The **Aliens Litigation Council**¹⁰ (ALC) is an administrative court responsible for individuals-related decisions made in application of the 1980 Aliens Act (administrative decisions related to the stay of foreigners and asylum-seekers). **In the field of asylum**, the ALC is the competent instance to confirm or reform the decisions of the CGRS. Lodging an appeal with the ALC will suspend the execution of the contested decision. That is why the asylum seeker cannot be removed before the Aliens Litigation Council has ruled over his/her case. **In non-asylum issues**, the ALC has more limited competences as it can only annul decisions of the Immigration Office (order to leave the territory, decisions of detention, refusal of family reunification, etc.) because of violation of the rules of procedure. The **Council of State**¹¹ (CoS) can intervene in the last resort (cassation) against decisions of the ALC. Appeals before the Council of State have no suspensive effect. The law provides the Council of State with a screening procedure (leave to appeal) to stop dilatory annulment appeals aimed only at extending procedural time limits. In case the foreigner/asylum-seeker is administratively detained, an appeal can be lodged with the **Tribunal of First Instance** and with the **Court of Appeal**, so that the judicial instance can order the immediate release of the detained foreign national, if needed. The **Court of Cassation** (*Hof van Cassatie/Cour de Cassation*) and the **Constitutional Court** are frequently called to rule in cases related to foreign nationals, e.g. cases of breach of the constitutional principle of equality of treatment.

⁹ A consolidated version of the [Law of 1980](#) and the [Royal Decree of 1981](#) are accessible on the website of the Immigration Office: <https://dofi.ibz.be>

¹⁰ Raad voor Vreemdelingenbetwisting/ Conseil du Contentieux des Etrangers, www.rvv-ccce.be

¹¹ Website: <http://www.raadvst-consetat.be/>

3. GENERAL DEVELOPMENTS RELEVANT TO ASYLUM AND MIGRATION

3.1 General political developments

On 13 June 2010, snap elections for the Federal government took place in Belgium. In the Dutch-speaking constituencies, the Flemish nationalist party N-VA (*New Flemish Alliance*) received 27.8% of the votes for the first chamber of the Federal Parliament ('The Chamber') and 31.69% of the votes for the second chamber ('The Senate') and replaced therefore the Christian Democrats (CD&V) as most popular political party. The N-VA was followed at the ballots by the CD&V (17.3%, respectively 16.15%) and the SP-A (14.6%; respectively 15.31%). The N-VA won 27 seats of the Chamber (out of 150) and 14 seats of the Senate (out of 71).

In the French-speaking constituencies, the Socialist party PS recaptured their position as strongest political force in Wallonia and Brussels, which it lost in the elections of 2007 for the first time to the French-speaking liberals, the MR. The PS received 37.6% of the votes for the Chamber and 35.72% of the votes for the Senate, leading to 26 seats in the Chamber (out of 150) and to 7 seats in the Senate (out of 71). The PS was followed by the MR (22.2%, respectively 24.32% of the votes) and the '*Humanist Democratic Centre*' (CDH) (14.6%, respectively 13.46%).

The forming of a new Federal government proved to be laborious and did not yet come to an agreement. So far, the government Leterme II, resigned in consequences of the federal elections on 13 June 2010, is still entrusted with dealing with current affairs.

3.2 Main policy and/or legislative debates

In 2010, the ongoing so called 'crisis of the reception capacity for asylum seekers' dominated the public debate about the policy field of asylum and migration. In comparison with 2009 and 2008, the lack of capacity in the national reception network even grew, partly due to an anew significant increase of asylum applications in 2010: while the number of asylum applications grew from 17.186 applications (files) in 2009 to 19.941 applications in 2010, the capacity of the regular reception network¹² developed from 17.168 places in 2009 to 18.990 places in 2010. Additionally, *Fedasil* created in 2010 a total of 1.105 reception places in emergency shelters. More concretely, in 2010 a total of 29.936 persons requested from *Fedasil* a place in a reception structure, while the capacity of the regular network plus emergency shelters, reception in hotels and in specialised centres for unaccompanied minors reached only 21.492 places.¹³

But besides the growing request for reception places, several factors, with which the authorized governmental institution *Fedasil* struggled already in the previous years remained problematic also in 2010: again a high number of multiple asylum claims, difficulties to find affordable housing for recognized refugees and regularised asylum seekers and vulnerable residents who are not asylum seekers but have since the Royal Decree of 24 June 2004 and the Law of 12 January 2007¹⁴ the legal right to be accommodated in reception centres for asylum seekers. Although also unaccompanied minors who do not claim asylum belong to this group, the numeric most prominent group in this aspect are children of irregular migrants without any means of subsistence. According to the law, the

¹² The reception network is coordinated by the Federal agency *Fedasil* and consists out of collective and individual structures. The collective structures are provided mainly by *Fedasil* itself, the Red Cross and the socialist health insurances. The individual structures are mainly provided by public centre for social welfare (OCMW/CPAS) and the NGO-partner CIRE and Flemish Refugee Action.

¹³ Processing day: 31 December 2010, Source: *Fedasil*

¹⁴ The Royal Decree of 24 June 2004 stipulated the rights of irregular migrants with children but without means of subsistence of material support. This support is granted only 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. Art.60 of the Law of 12 January 2007

children have together with their families the right of being sheltered in the reception network. However, the percentage of this particular group is decreasing and in October 2010 it reached only 1.6% of the inhabitants of the regular reception network.¹⁵ More prominent was the group of rejected asylum seekers, who had the right to stay in reception centres for an interim period (5.9% of all inhabitants). At the same time, about 75% of the inhabitants of the regular network were asylum seekers in procedure.¹⁶ However, in 2010, *Fedasil* was not able to provide a total of 6.284 eligible persons with any form of reception. Additionally, 2.684 asylum seekers were registered with the code 'no show'. This group of asylum seekers consists out of person who decide out of own will not to ask for a place in reception centre. But since the law amendment of 2009¹⁷ also persons who applied for the third (or more) time for asylum receive the code 'no show'.¹⁸ Finally, in December 2010 about 1.200 asylum seekers were sheltered in hotels.

To counter the crisis, the CGRS engaged additional protection officers to accelerate the proceeding of asylum applications. In December 2010, *Fedasil* was anew able to provide shelter for all applicants. The "reception crisis" took wide media attention. The coverage included reportings from a tent-camp of asylum seekers, established in Summer 2010 in front of the Immigration Office, the sheltering of about 30 asylum seekers and other migrants in the entrance hall of the North Station in Brussels, reportages about the life conditions of asylum seekers and frequent media-interviews with the directors of the Immigration Office and CGRS. Particular high media interest found the repeated conviction of *Fedasil* to high penalty payments to eligible persons, to whom the agency could not provide any form of sheltering in the reception network.¹⁹

The second heavily debated issue in 2010 was the regularisation of irregular migrants, ongoing since 2006-2007. As outlined in the Policy Report 2009, the Belgian authorities issued instructions in July 2009 to regularise irregular migrants for economical and humanitarian reasons. Applications on the grounds of the instructions could be lodged between 15 September and 15 December 2009. In 2010 about 24.000 migrants were regularized. The public debate about the regularisation of irregular migrants was dominated by the question of the social and economical costs of the campaign.²⁰ The issue was frequently brought in connection with a third heated debate, the discussion about the reasons and consequences of the rising number of asylum applications. Several politicians and media commentators criticized that the regularisation of irregular migrants would have had a stimulatory effect on potential asylum seekers. The rise of asylum applications was also brought in connection with the introduction of the visa free travel in the Schengen area for citizens of Macedonia, Montenegro and Serbia. Indeed the number of asylum applications from Macedonia and Serbia increased sharply in the spring and again in autumn of 2010. In this context, the visits of Prime Minister Leterme and State Secretary Wathélet to several Balkan countries to discourage potential new asylum seekers from these countries found wide media attention.

¹⁵ Since May 2009, the number is decreasing because *Fedasil* increasingly refuses to shelter this particular group with the justification of lack of capacity. In a number of cases, *Fedasil* was therefore convicted to penalty payments. See also footnote 20;

¹⁶ *Fedasil*, Procedurestand van de opgevangen personen in het gehele opvangnetwerk (31 October 2010), <http://www.fedasil.be/home/attachment/i/20676>.

¹⁷ [Wet van 30 december 2009 houdende diverse bepalingen](#) (Frz/Nl).

¹⁸ Information provided by *Fedasil* on the occasion of the 'contact meeting', organised by the NGO BCHV on 11 May 2010; see: [Minutes of the contact meeting](#), p. 12; According to *Fedasil*, this concerned in April 2010 alone 110 persons, applying the third or more time for asylum. No annual data accessible.

¹⁹ Between November 2009 to December 2010, a total of 82 asylum seekers and other illegible persons received penalty payments of 339.500 € (mostly 500€ for eachday without sheltering). In the end of 2010 420 similar cases were pending with a court. Source: Parliamentary questions of several MP's to the authorized State Secretary, Philippe Courard, Commission de la santé publique, de l'environnement et du renouveau de la société, 1 December 2010.

²⁰ Regularised migrants are entitled to welfare benefits from the moment they obtain a legal residence permit.

Belgian Presidency of the European Union

Belgium has put the themes immigration and asylum high on its priority list during its Presidency of the European Union. Belgium had identified three priorities for its program for the Presidency in this policy field: Firstly, the development of the second phase of the Common European Asylum System (CEAS) by 2012. Secondly, the development of a common policy on legal migration that is beneficial to the country of origin; the host country as well as the migrant him- or herself, based on the labour markets needs of the Member States. Thirdly, the fight against trafficking in human beings and illegal immigration, in particular through the improvement of the external border management.

The Belgian Presidency took several steps to facilitate and stimulate the debate on these main priorities. On the occasion of the informal JHA Council on 15-16 July 2010, the Belgian presidency launched the discussion on how to reach a Common European Asylum System by 2012. The focus was on the legislative instruments currently under negotiation. The Belgian Presidency decided to focus on those legislative instruments where considerable progress could be made and an agreement in the short term was realistic, more precisely the Qualification Directive, the Dublin regulation, the extension of the scope of the Long Term Resident Directive to beneficiaries of international protection and the EURODAC Regulation.

With the regard to the Long Term Resident Directive, the Belgian Presidency achieved in November 2010 a political breakthrough. The political agreement is based on the European compromise-proposal, made in 2008 by the French Presidency.

The Belgian Presidency finished the negotiations on a technical level in the Asylum Working Parties for the Qualification Directive and the Dublin regulation and hoped to reach an agreement on a Council Position, so that the trilogue with the European Parliament could start. On 11 October 2010 the Commission presented a new proposal for EURODAC, without access to EURODAC by law enforcement bodies. Concerning the two other legislative instruments, the Asylum Procedures Directive and the Receptions Conditions Directive, the Commission announced that they would present an amended proposal during the Hungarian Presidency.

Complementary to the negotiations within the Council, the Belgian EU Presidency organised a Ministerial Asylum Conference on “Quality and Efficiency in the Asylum Process” on 13-14 September. The main objective of the Conference was to determine good practices that can contribute to making the asylum processes in EU Member States more efficient while respecting quality standards. The Presidency invited not only Member States and EU institutions, but also UNHCR-officials and civil society stakeholders. A number of conclusions that constitute a step forward could be drawn: firstly, the European Parliament indicated that it was ready to follow the strategy of the Belgian Presidency to prioritize four legislative instruments. Also, many Member States expressed their will to enhance the practical cooperation between Member States. In this field much is expected of the European Asylum Support Office. The majority of Member States also expressed their clear desire for further legislative harmonisation with clear standards and definitions.

The Presidency was also responsible for the organization and the agenda of the biennial Asia-Europe Meeting (ASEM), which took place in Brussels on 4 and 5 October 2010. During the summit, a workgroup of experts of ASEM-countries, the IOM and the European Council discussed also the subject “detection and selection of migrants”, more specifically the selection process of students and labour migrants and the detection of unaccompanied minors and irregular migrants.

3.3 Broader developments in asylum and migration

The urgency of the ongoing ‘crisis of the reception capacity of asylum seekers’, which dominated largely the public discourse about migration and asylum, called for structural policy measures. In March 2010, the Federal government decided to tackle the crisis in the reception of asylum seekers with extra financial means and provided therefore 40 million Euro. The government declared to create

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with this means about 3.000 additional beds in reception centres. The extra budgeted was also intended to be used for ending the housing of asylum seekers in hotels.

Till the end of 2010, the capacity of the reception network increased actually by a total of 1.722 structural places.²¹ If additional places in emergency reception centres, centres for unaccompanied minors and accommodation of asylum seekers in hotels are also counted, the increase of capacity reached a total of 2.800 units.²² On 22 October 2010, the government entrusted with dealing with current affairs cleared an additional extra budget, which was used mainly to create additional (emergency) places for asylum seeker and to recruit additional protection officers for the CGRS.

With regard to the anew rise of asylum applications in 2010, key politicians pleading for counter measures. In March 2010, Vice Prime Minister Guy Vanhengel declared in the media that Belgium would have reached his capacity limit concerning asylum applications. In the same statement the Minister asked for a better cooperation between the Immigration Office and *Fedasil* concerning the implementation of the return policy. On 17 September 2010, the Immigration Office and *Fedasil* signed a collaboration agreement concerning the assistance for families of irregular migrants. The agreement should lead to the elaboration of an assistance project aiming on legalising the residence of the concerned persons or assistance in their voluntary return. In the case that the assistance project failed in individual cases, forced return measures are planned.

The State Secretary Melchior Wathelet declared in March 2010 in the media that he intends to cease the possibility for EU-nationals to apply for asylum. Belgium is the only MS which accepts such asylum applications. Due to the fall of the Federal government in June 2010, the notice was not yet implemented in policy.

3.4 Institutional developments

In April 2010, the General Director of *Fedasil*, and her deputy, resigned from their positions. The position of General Director of *Fedasil* is still (15 March 2011) vacant.

²¹ CEOOR, Annual Report Migration 2010, accessible starting from 28 April 2011 at: <http://www.diversiteit.be/?action=onderdeel&onderdeel=216&titel=Publicaties>

²² Source: *Fedasil*; http://www.fedasil.be/home/nieuws_detail/i/20799/

4. LEGAL IMMIGRATION AND INTEGRATION

4.1. Economic migration

4.1.1 Specific context

“Belgium’s modest labour migration regime consists mainly of demand-driven case-by-case granting of temporary work permits. (...) Given the fact that Belgium has a significant labour reserve of both unemployed Belgians and unemployed immigrants, there is little enthusiasm to go beyond modest demand-driven labour migration.”²³

From 2008 on the service “Economic Migration” is operational within the Immigration Office. This service, with the task to facilitate procedures for foreigners whose project is economically interesting and avoids that foreign workers are hampered by administrative slow down, continued its activities during 2010.

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

4.1.2 Developments within the national perspective

In 2010 no significant developments occurred in the field of labour migration. During the year, 3.026 long-term VISA D for labour migration were issued. This is around 15% more than in 2009 (2.633) but still lower than before the global economical crisis of 2008-2010 (2008: 3.955). The bulk of them are issued – just like in previous years – to nationals from India (more than 40%).

4.1.3 Developments from the EU perspective

The transposition of Directive 2009/50/EC of May 25th, 2009 establishing the conditions of entrance and residence of highly qualified third-country nationals is under way. Giving the fact that different Federal authorities and the entities are concerned in this issue several technical meetings are organized. It is still necessary to determine certain aspects for which a political decision is needed

²³ Satisfying Labour Demand through Migration in Belgium, Study of the Belgian Contact Point of the European Migration Network, August 2010, p. 7, accessible at the websites: <http://emn.intrasoft-intl.com/html/index.html>, and www.emnbelgium.be

4.2 Family Reunification

4.2.1 Specific context

According to the national law, a third-country national who wants to let his/her spouse, legal partner or children come to Belgium for family formation or reunion, has to prove that he/she has ‘sufficient’ and adequate housing to accommodate the family members²⁴ and that he/she has a health insurance covering the risks of the family members in Belgium. The condition of ‘sufficient’ housing is defined by the Royal Decree of 8 October 1981, which links the definition on the standards set by the different local Housing Codes. Before the decision of the Council of State of 26 February 2010 (see 4.2.2), it was sufficient for the applicant to present an attestation of the concerning municipality that his/her housing was conform to the elementary security-, health- and quality-conditions described by the local Housing Codes. The national law stipulates the existence of a ‘stable relationship’ as additional requirement for family reunification. The burden of proof of a ‘stable relationship’ is defined by the Royal Decree of 17 May 2007. In its decision of 26 February 2010, the Council of State defeated this definition.

4.2.2 Developments within the national perspective

On 26 February 2010, the Council of State defeated in two decisions certain admissibility criteria of family reunifications procedures, defined by the [Royal Decree of 27 April 2007](#).²⁵ In its first decision, the Council defeated Art. 9 of the Royal Decree, which linked the admissibility criterion of ‘sufficient housing’ to provisions set up by the regional Housing Codes. The Court stated that the dismissal of family reunification applications due to insufficient housing in the sense of a regional Housing Code inflicts more rigorous preconditions than these regional codes initially intended. Because the intention of the lawmaker was de facto misconceived by the concerning Art. 9, it was abolished by the court. Until the lawmaker reacted with the [Royal Decree of 26 August 2010](#) applicants were not any more obliged to present any proof of ‘sufficient’ housing. Since the Royal Decree came into force on 8 October 2010, the proof of ‘sufficient’ housing is again an essential criterion for family reunification. The Royal Decree requires the conformity of the housing of the applicant with the elementary security-, health- and quality conditions described by the Civil Law pertaining rental housing²⁶ and not as before stipulated by the local Housing Codes. The required proof of ‘sufficient’ housing is set by Art. 26/3 of the Royal Decree of 26 August 2010.

In its second decision, the Council of State defeated Art. 11 of the Royal Decree of 27 April 2007, which defined the admissibility criterion of ‘stable relationship’. Art. 11 stipulates applicants for family reunification have to proof a relation of at least two years, demonstrated by regular contacts by telephone, mail or post and by at least three personal encounters during this period. According to the court, this clause conflicts with the “Aliens Law” which demands a relationship of one year only. The court defeated also the additional instruction of Art. 11, imposing the applicant to sign a formal obligation to warrant all possible costs his/her partner caused for residence, health care and return. According to the court, it is not possible to link the criterion of stable relationship with material preconditions by the means of a Royal Decree. The lawmaker answered the demands of the Council of State by the [Royal Decree of 5 July 2010](#). According to the decree, the ‘stable character’ of a relationship can be demonstrated in three different ways. Firstly, by proof of legal or permanent

²⁴ Art. 10 en 10bis of the Law of 15 December 1980. This condition is not applicable to family reunifications between Belgian citizens and other EU-citizens.

²⁵ See: [Judgment of the Council of State, 26 February 2010](#) (RvS, 26.02.2010, Nr. 201374 and Nr. 201375),, <http://193.191.217.10/reflex/index.reflex?docid=115865&lang=nl>;
<http://www.kruispuntmi.be/uploadedfiles/Vreemdelingenrecht/Rechtsspraak/Rechtspraak/RvS%20201.374.pdf>

²⁶ Art. 2 of the Law of 20 February 1991, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1991022033

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cohabitation in Belgium or abroad of at least one year. Secondly, by proof of acquaintanceship of at least one year, of regular contact and by proof of at least three personal encounters of a minimum of 45 days during this year. Finally, the existence of a common child is seen as proof of the 'stable character' of a relationship.

In October 2009, on initiative of the political party Open VLD (Flemish Liberal Democrats), the Federal government agreed to implement a new draft bill to tighten the current terms for family reunification and to improve the fight against marriages of convenience. According to the draft bill, a partner or husband/wife has to demonstrate an own independent source of income, sufficient to support his family member, who he/she intend to reunite with. The application for family reunification should be furthermore linked with certain preconditions concerning the integration of the applicants. With respect to the fight against marriages of convenience, Open VLD pleads for a central databank, collecting information concerning attempted marriages of conveniences and marriages of conveniences already revealed as such. According to the draft bill, authorized civil servants of local register offices have the duty to consult the databank before declaring a marriage legally.

The Federal parliamentary elections on 13 June 2010 brought the legislative procedure to an end.²⁷ However, a cross party agreement for a new draft is progressing. The concerning draft bill, based on the Directive on Family Reunification and proposed by the political party CD&V,²⁸ establishes several preconditions of family reunification: an applicant should have sufficient means on regular basis and sufficient housing. Furthermore, it is proposed that all newcomers should follow an integration programme.

In 2010 12.675 long-term visa for the purpose of family reunification were issued, which is a decrease of about 10% compared to 2009.

The Immigration Office is working on a new website with an improved accessibility concerning information about legal migration to Belgium. The website will be implemented in 2011.

In 2010, the Commissioner General for Refugees and Stateless Persons published together with the Immigration Office an easy readable information brochure in different languages with key information about the asylum and migration procedures in Belgium.

4.2.3 Developments from the EU perspective

No new developments occurred.

²⁷ According to constitutional tradition, all adopted but not ratified laws are reversed by new elections. The newly elected parliament may bring in again already adopted law drafts. Nevertheless, in that case a new debate and voting are obliged.

²⁸ Draft bill proposal CD&V, published on 16 November 2010, bilingual (French/Dutch) download accessible at the website of the First Chamber of the Belgian Parliament: <http://www.dekamer.be/FLWB/PDF/53/0570/53K0570001.pdf>

4.3 Other legal migration

4.3.1 Specific context

Circular Letter pertaining to Long Term Resident status

In recent years, a series of laws and royal decrees fully transpose the Council Directive 2003/109/CE on the status of third-country nationals who are Long Term Residents.²⁹ In order to assist municipalities to apply these legal provisions, the Minister of Home Affairs issued a Circular Letter pertaining to the status of Long Term Resident (LTR), on 14 July 2009.³⁰ The evaluation process of the circular letter is under way.³¹ As to access of LTR to the Belgian labour market, they can obtain a work permit B for the so-called bottleneck occupations through a simplified procedure (same provisions as for Bulgarian and Romanian nationals) from 01.01.2009. After one year employment in Belgium, LTR are authorised to be employed in any occupation, without restrictions. When transition measures applying to the access of Bulgarian and Romanian nationals to the Belgian labour market will be lifted (at the latest 31.12.2011), no restrictions will apply anymore to the access of LTR to the Belgian labour market upon their first entry in Belgium.³²

Legal stay for the purpose of studies

Directive 2004/114/CE gives the possibility to a third-country national studying in one MS (in the sense of the Directive) to go to another MS to pursue his/her studies, under certain conditions. This means that a third-country student with a residence permit in one MS should be able to apply for a residence permit in Belgium in order to pursue part of his/her studies or to complement his/her studies by a related programme. In order to transpose these provisions in Belgian law, a proposition of bill modifying the Aliens Act has been discussed with the Community authorities responsible for higher education in Belgium. The proposition is currently being redrafted following the recommendations of this technical workgroup.³³

4.3.2 Developments within the national perspective

DG Development (Ministry of Foreign Affairs) developed plans to finance a circular migration project with Senegal, concerning the mobility of highly-skilled Senegalese candidate-migrants. It is the first in his kind in Belgium and the intention is to kick-off in 2011.

²⁹ Law of 25.04.2007, modifying the law of 15.12.1980; Royal Decree of 22.07.2008 modifying the royal decree of 08.10.1981; royal decree implementing certain provisions of the law of 15.12.1980; royal decree of 23.12.2008 modifying the royal decree of 09.06.1999 implementing the law of 30.04.2008 pertaining to the employment of migrant workers. Cf. Annex: Transposition of EU legislation

³⁰ Omzendbrief van 14 Juli 2009 betreffende de status van langdurig ingezetene B.S.11/08/2009 http://www.dofi.fgov.be/fr/reglementering/belgische/overige/omzendbrieven/2009/11082009_f.pdf / Circulaire du 14 juillet 2009 relative au statut de résident de longue durée (M.B. 11/08/2009) http://www.dofi.fgov.be/fr/reglementering/belgische/overige/omzendbrieven/2009/11082009_f.pdf

³¹ See: Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

³² http://www.werk.be/wg/werknemers_buitenlandse_nationaliteit/bijzondere_categorieen_arbeidskaart-b/langdurig_ingezetenen.htm?SMSESSION=NO

³³ See: Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

4.3.3 Developments from the EU perspective

No new developments occurred.

4.4 Integration

4.4.1 Specific context

In the 1980s, the competences for all aspects of integration in Belgium were assigned to the three communities, the French, the German and the Flemish community. In the bilingual Brussels-Capital Region, the competences for integration of the Flemish community were handed over to the Flemish Community Commission and of the French community to the French Community Commission, both created in 1989. In the **Flemish Community** and the **Flemish Region**, integration policy has taken form in the actual Integration Act. The Flemish government is accountable for the design, implementation and evaluation of integration policies. The Flemish policies are designed to achieve ‘*full-fledged social participation of newcomers*’. Integration is defined as ‘an interactive process in which the government proposes a specific programme to foreigners, a programme that on the one hand enables the foreigners to internalise the new social surroundings and on the other contributes to an acceptance of the foreigners as full citizens by society, with the aim of attaining full-fledged social participation of these persons’. In the **French Community** and the **Walloon Region**, the French Community has designed its authority on integration policy to the French Community Commission in Brussels and to the Walloon Region. In Wallonia, the Decree of 4 July 1996 and its amendment, the Decree of 30 April 2009³⁴, set the legal frame for the integration policy but transferred a central element of the policy, the development of social cohesion plans, to the French Community (Art. 1, 6°). The law mandates in its Article 5 the implementation of the integration policy to seven regional integration centres, subsidised by the Walloon government. The integration centres, federated in the FéCRI-network, are providing support in cultural, social and economical participation. The Decree of 30 April 2009 reformulated and enlarged the missions of the regional integration centres. Additionally, the integration centres are instructed to find synergies with the local Social Cohesion Plans.

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

With regard to integration of asylum seekers and irregular migrants with children in reception centres, language courses are organised in some federal reception centres, whereas non-profit organisations and adult education institutions can enrol asylum seekers and sometimes irregular migrants to their courses, including language or literacy courses. Schooling is mandatory for all children under 18. Classes with adapted curriculum and teaching methods, called the “bridging classes” (French Community) or the “reception classes” (Flemish Community), are organised for children of newly arrived migrants and asylum seekers. Those children are later integrated in regular classes, when their language and learning skills allow them to keep the pace of the class. In reception centres for asylum seekers, all residents can take part in activities that encourage integration and knowledge of the host country. These activities can range from cooking classes with neighbours, to visits of the federal Parliament. Since 2001, *Fedasil* provides a special budget for financing the programme “neighbourhood initiatives” in federal reception centres. In 2010 about 240 different activities in centres of *Fedasil* took place. *Fedasil* offers also guided tours to reception centres.. On the occasion of the World Refugee Day 2010, *Fedasil* organised in collaboration with UNHCR, the Red Cross, the

³⁴ Décret wallon du 30 avril 2009 modifiant le décret du 4 juillet 1996 relatif à l’intégration des personnes étrangères ou d’origine étrangère (M.B. 22 May 2009, p. 38456), available at: <http://wallex.wallonie.be/index.php?doc=14418&rev=14995-8406>

Office of the CGRS and other partner organisations a football tournament on which most of the receptions centres in Belgium took part.

4.4.2 Developments within the national perspective

In **Wallonia** and the **Brussels-Capital Region** (French Community) the process for the elaboration of an integration trajectory is ongoing, whereas the Flemish Community of the Brussels-Capital Region maintains a voluntary integration trajectory, carried out by BON, the Brussels reception office for newcomers, providing language and social orientation courses. The work continued concerning the establishing an integration trajectory in Wallonia, as stipulated in the Decree of 30 April 2009. In 2010, especially efforts were made with regard to the process of implementation of the diversity and integration policy on communal level (mainstreaming-process).

In March 2010, the Minister for Equal Opportunities of the **French Community**, Mrs. Fadila Laanan, launched an action plan for diversity in the audiovisual media. In the framework of the plan, on 3 December 2010, the 'High Council of Audiovisual Media in the French Community' (CSA) published its first 'Overview on Good Practices on Equal Opportunities and Diversity in the Audiovisual Media of the French Community'.³⁵

In **Flanders**, the 'Integration Decree' of 22 April 2009³⁶ changed the policy on minorities (Decree of 28 April 1998) into a policy of integration. The Flemish government underlined with this decree its vision of a living together in diversity, which the decree describes as concern of all Flemish people without regard of their origin. According to the decree, the different integration centres and services dealing with integration will be coordinated by the Flemish centre of expertise on migration and integration (*since January 2011: "Kruispunt Migratie-Integratie"*). The Flemish Minority Forum (*Minderhedenforum*) will continue to support the empowerment and advocacy of minority organisations. At local level the integration policy will be steered and coordinated by local authorities. The decree also foresees in a structural funding of social interpretation and translation services. The Minister in charge, Geert Bourgeois (NV-A), published in 2010 a new policy document,³⁷ concretising his memorandum on integration, published in 2009. The document offers an overview about the most important policy measures for 2010 and 2011. The Flemish government is working on a new Integration Act, planned to be presented to the Flemish parliament in 2011. The new act intends to amend the Law of 2003 with new key policy elements: 1) The policy makers envisage the start of the integration process of newcomers already in their countries of origin. For this purpose, a pilot project will start in 2011. 2) The enlargement of the assignment of the integration services concerning the stimulation of social participation. 3) The introduction of a certification of integration ("*inburgering*") scheduled already for 2011. In this context, the introduction of an integration exam will change the policy regarding integration courses from the obligation of participation to an obligation to attain certain results. 4) The declaration of children between 2.5 and 5 years of age as new target group of integration programs and the development of such programs.

In 2010, the implementing of the 'Integration Decree' is progressing and the government works on the accompanying implementing order of the decree while preparatory work activities were initiated to install the 'Integration Commission', which will replace the 'Interdepartmental Commission for

³⁵ Download (in French only):

http://www.csa.be/system/document/nom/1415/CSA_panorama_diversite_2010.pdf

³⁶ Decreet van 30 april 2009 tot wijziging van het decreet van 28 april 1998 inzake het Vlaamse beleid ten aanzien van etnisch-culturele minderheden, available at:

<http://reflex.raadvst-consetat.be/refLex/index.reflex?docid=113529&lang=fr>

³⁷ Flemish Parliament Paper, piece 732 (2010-2011), No. 1, 25.10.2010: Beleidsbrief Inburgering en Integratie 2010-2011, ingediend door de heer Geert Bourgeois,

http://www.inburgering.be/inburgering/sites/www.inburgering.be.inburgering/files/Beleidsbrief_inburgering_Integratie_2010-11.pdf (available in Dutch only).

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Ethno-Cultural Minorities' (ICEM). On 29 November 2010, the Flemish government organized the first 'States-General on Integration' in the city of Louvain as a forum of politics, academics and civil society to formulate recommendations for the Flemish integration policy in a 'Green Book Integration'.

In Flanders, the *Minority Forum* is acting as umbrella organisation for migrant organisations. In 2011, the Flemish government will transform, recognize and finance the organisation as a 'participation organization'. The Flemish government intends to improve with this step the dialogue between the civil society and policy makers. Furthermore, the present *Minority Forum* will act as official advisor of the *Commission for Integration Policy*.

On federal level; the so-called 'Round Tables on Interculturalism' (*Assises de l'Interculturalité / Rondetafels van de Interculturaliteit*) were implemented in 2008 by the coalition agreement of the Federal government and carried out in 2009 and the first months of 2010. On 10 November 2010, the 'Round Tables' published their final conclusions, presenting 68 recommendations to recognize and manage the growing diversity of the society.

In 2010, two major civil society representatives³⁸ implemented a structural mutual exchange of information with the Belgian NCP on Integration. In the same time a working group was set up to guaranty the continuous information exchange between the Belgian NCP on Integration and the Cabinets and the administration in charge for integration policy on Federal and regional level.

4.4.3 Developments from the EU perspective

The *European Fund for the Integration of Third-Country Nationals* was launched in Belgium in 2007 and is coordinated by the Federal Public Service Social Integration. The multi-annual program for Belgium was finalised by the end of 2008. It includes a federal part, a Flemish part and a French-speaking part. Types of projects supported include language courses, courses on the host society and other forms of assistance to newly arrived third-country nationals.³⁹

Belgian Presidency of the Council of the European Union 2010

In the framework of the Belgian Presidency of the Council of the European Union, the authorized authorities of the Regions and Communities launched different initiatives and organized several conferences. Amongst others, the Belgian Presidency Expert Conference on European Integration Modules took place in Brussels on 15 and 16 December 2010. The Stockholm Programme states that the Council "*also invites the Commission to support Member States' efforts (...) towards the identification of joint practices and European modules to support the integration process, including essential elements such as introductory courses (...)*".⁴⁰ In reference to this requirement of the Stockholm Programme, the conference provided a first input to the EU process for the development and use of European modules to support the integration process, as called for by the European Council.⁴¹ Furthermore, it reflected on the shared understanding of the used terminology and put a

³⁸ Minority Forum (*Minderhedenforum*) and the Regional Integration Centres of Wallonia (*Centre Régionaux d'Intégration Wallonie*)

³⁹ More information on the ongoing projects available at:

http://www.mi-is.be/be_nl/04/Europees%20Integratiefonds/index.html;

<http://www.vlewa.eu/nieuws/european-fund-integration-third-country-nationals-2007-2013-deadline-3-maart-2010>;

<http://193.190.97.191/FEI/>

⁴⁰ Council of Europe, The Stockholm Programme, chapter 6.1.5, Integration; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF>

⁴¹ European Commission, Justice and Home Affairs Council, 12-13 June 2007; http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/94682.pdf

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focus on the clarification of the modules concept starting from practical experiences in different Member States. The Integration Modules should become established but flexible points of reference for policy makers and practitioners.

On 29 September 2010, the Belgian National Contact Point of the EMN organized under the auspices of the Belgian Presidency of the Council of the European Union the EMN annual conference. The conference with the title 'Long term follow-up of migrant trajectories' brought together more than 150 national and international experts, officials and representatives from the European Commission. The participants discussed the different approaches towards the collection and analysis of longitudinal data on the legal, social and economic situation of immigrants. The conference addressed challenges on the way to improve the availability of longitudinal data, which are seen by key stakeholders as essential tool for an effective assessment of the long term impact of migration.

On 8-9 November 2010 the Walloon region organized under the auspices of the Belgian Presidency an EU seminar on different strategies on integration policy.⁴² The seminar presented different national policies on integration in France, the UK, Sweden, Greece and Belgium. The event acted also as part of the comparison process with local actors for the report on new approaches to integration by the European Committee on Migration of the Council of Europe (CDMG). Also an emphasis on the local approach of integration policy placed the European Conference on Integration, organized by the Flemish government on 25-26 November 2010 in Ghent. The conference brought together about 150 experts, policy makers and practitioners, who focused on the added value of a regional and local approach towards integration. The participants shared best practices on integration policy from different member states and from the Canadian province Québec.

In 2010, the King Baudouin Foundation was designated as the Belgian content coordinator for the European Website on Integration. The Foundation provides support the regional actors on uploading relevant information and promotes the European website.

4.5 Citizenship and Naturalisation

4.5.1 Specific context

In the government's declaration pertaining to its general policy orientation of 13 October 2009, a reform of the conditions for acquiring the Belgian nationality was announced, as well as modified conditions for applying for naturalisation. However, the federal elections of 13 June 2010 brought the proposed draft bill to a temporal end. After different proposals, made by the 'Parliamentarian Commission for Naturalisation', on 18 January 2011 a parliamentary majority was found for the proposal of the political party N-VA, which foresees a tightening of the preconditions for naturalisation. Among other conditions, the draft-bill demands from applicants evidences of integration. Convictions for criminal acts, fraud and also for serious traffic violations should lead to a rejection of the applications. However, the legislating process is not yet accomplished.

At the moment there are three legal ways for third-country nationals to receive the Belgian citizenship: 1) Via the naturalisation procedure, executed by the 'Parliamentarian Commission for Naturalisation'. The precondition for lodging an application is a legal stay in the country for at least 3 years. The Parliamentarian Commission may add further conditions like proof of integration, etc. The procedure is not a subjective right but a measure of favour which therefore exclude the possibility of appeal. There is no legal processing time for the application set but the average processing time is 2-3 years. About 50% of the applications were answered positively by the Commission.

⁴² EU seminar: Integrated policies, local integration plans: what strategies should be developed?, Namur 8-9 November 2010, <http://www.eutrio.be/integrated-policies-local-integration-plans-what-strategies-should-be-developed>

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

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

4.5.2 Developments within the national perspective

In 2010 a total of 3.958 persons of foreign origin received the Belgian citizenship via naturalisation, in comparison with 4.408 in 2009 and 7.760 in 2008. Because the naturalisation procedure takes, according to the Service Naturalisation of the Belgian Parliament, 2-3 years of time, these cases concerned applications lodged in 2007-2008. In 2010 a total of 13.437 new applications of naturalizations were lodged. The “top-3” countries of origin of new applications for naturalisation in 2010 were Morocco (2.466 applications), DR Congo (960 applications) and Turkey (844 applications).

4.5.3 Developments from the EU perspective

No relevant developments occurred during 2010.

5 ILLEGAL IMMIGRATION AND RETURN

5.1 Illegal Immigration

5.1.1 Specific context

The Belgian authorities tried to prevent irregular immigration by launching information- and awareness rising campaigns in several countries of origin: in Armenia, Kosovo, Brazil, Serbia, FYROM, India and the Democratic Republic of Congo. The campaigns put emphasis on the lawful procedures of migration to Belgium (notably via a booklet) and information about possible dangers caused by irregular migration. Missions concerning the prevention of illegal migration were carried out by the Immigration Office to Mongolia, Vietnam, Morocco and Afghanistan. In March 2010, the Prime Minister Yves Leterme and State Secretary Melchior Wathelet carried out together with officials of the Immigration Office a mission to Macedonia and Serbia to sensitize the local population about the non-existing prospect of success for asylum applications from these countries in Belgium. The mission was carried out in reaction to dramatically rising numbers of asylum applications by citizens of these 2 Balkan states. Although the influx of asylum seekers from the Balkans declined in the months following after this mission, it began to rise once more significantly during the summer months. Therefore, in the end of October 2010, State Secretary Wathelet carried out a second mission to FYROM and Serbia.

Irregular migrants: families with children of minor age

In 2008, the federal government decided to not sheltering any more families of undocumented migrants with children of minor age in detention facilities with the aim of forced return. Therefore specialized housing-units were provided to shelter the concerning persons in awaiting their departure. The families are attended by specialized return coaches. The legal base for this measure forms the [Royal Decree of 14 May 2009](#). In October 2009, the State Secretary, charged with migration and asylum policy, decided to shelter in these housing-units also families with children which were refused entry to the kingdom. The project is partly financed by the European program on solidarity and management of migration flows.

Regularization of irregular migrants

As reported in the Policy Report 2009, the State Secretary for Migration and Asylum Policies issued in July 2009 instructions to the Immigration Office, concerning the regularization of irregular migrants in Belgium. The State Secretary added the criterion “sustainable local anchoring” to the already existing criteria. Following legal action of the political party *Vlaams Belang*, the Council of State annulled the regularization instructions in a decision, pronounced on 9 December 2009.⁴³ According to the Court, the concerning measures could not be implemented by a ministerial instruction to the administration but only by the act of parliament.⁴⁴ However, regularization of irregular migrants on individual base on grounds of a Ministerial decision remains legal. Therefore, the authorized State Secretary declared in the aftermath of the court’s decision that he would follow the guidelines for regularization as agreed by the Federal government due to its discretionary power as stipulated in the Aliens Act. Applications for the regularization of undocumented migrants could be lodged between 15 September and 15 December 2009 and for these applications the instructions of the State Secretary remained de facto in force.

The service Humanitarian Regularizations of the Immigration Office regularized between 2005 and 2010 a total of 44.685 files or irregular migrants, corresponding to 80.570 persons.⁴⁵

⁴³ Council of State, (RvS ,arrest n° 198.769 van 09.12.2009)

⁴⁴ For more details see EMN-Belgium, Policy Report 2009, p. 40

⁴⁵ Source: Immigration Office, accessible at: <https://dofi.ibz.be/fr/statistieken/SRH10.pdf>

5.1.2 Developments within the national perspective

In 2010, the Belgian authorities intercepted 14.884 irregular migrants. 76% (11.359 persons) of this group received an order to leave the territory (BVG), 9% (1.300 persons) were immediately returned and 15% (2.225 persons) were transferred to a closed detention facility. There are no data available yet how many persons of the last group were actually returned. However, in 2010 Belgium removed a total of 2.400 third country nationals from the territory, (so AVR excluded). The last data signifies a slight increase of about 5% in comparison to 2009.

In autumn 2010, the Immigration Office carried out together with the Federal police a large scale joint action against illegal migration and smuggling of human beings. The action took place in the framework of 'Operation Hermes' (see further).

Regularisation of irregular migrants

As mentioned before, although the Council of State annulled the State Secretary's instructions concerning the regularisation of undocumented migrants, the criteria as stipulated in the instructions remained de facto in force. Therefore it is not possible to differ between requests of regularisation, based on grounds of the instructions and those which were based on other, already existing grounds. However, the data for 2010 indicating a firm rise of the number of applications in comparison with 2009 and 2008: in 2008 a total of 19.371 applications were lodged, in 2009 26.232 and in 2010 36.848. The sharp increase in 2010 is most likely connected with the implementation of the State Secretary's instructions: the concerning applications were lodged via the communes, which carried out the control of residence and just later on transferred the applications to the Immigration Office charged with their registering and processing. The majority of the applications lodged between 15 September and 15 December 2009 were therefore registered and processed only in 2010. In extreme cases, like the city of Antwerp, applications were transferred from the city authorities to the Immigration Office not before September 2010. In the first three months of 2010, the Immigration Office registered about 50% of all applications for the whole year, a fact that indicate their connection with the State Secretary's instructions. The Immigration Office and the State Secretary regularized in 2010 a total of 24.199 persons. These figures represent a sharp increase in comparison with 2009, when 7.194 applications or 14.830 persons were regularized.⁴⁶

Irregular migrants: families with children of minor age

In 2010, 66 families of irregular migrants with children of minor age were sheltered in specialized housing-units. In 7 cases, the families were transferred due to illegal stay in the country and in 5 cases in the framework of Dublin-II return-procedures. 54 families were transferred to the housing-units in the framework of border control procedures at the national airport in Brussels.

The Immigration Office published a new information leaflet addressing irregular migrants. The brochure informs about the rights of irregular migrants in Belgium and indicates specialized organizations which provide assistance in tracing of lost family members, in defending social rights, in providing access to health care and consular assistance or assist in voluntary return.

5.1.3 Developments from the EU perspective

In 2010, the Immigration Office organized several seminars and workshops concerning the identification of irregular migrants, deliverance of travel documents and modalities of return.

On initiative of the Belgian Presidency of the Council of the European Union, the Belgian Federal Police organized a joint operation in a large number of Member States, named 'Operation Hermes'. The project is aimed to establish a mapping of routes of illegal immigration and the smuggling of

⁴⁶ Source: Immigration Office, accessible at: <https://dofi.ibz.be/fr/statistieken/SRH10.pdf>

human beings within the Schengen area and to strengthen the collaboration with non-Schengen member states. The project is designed in two phases: During the first phase of the operation, almost completed in 2010, Member States, Europol and Frontex were asked to provide certain statistics. The data will be processed by specialists of both the Federal Police and the Immigration Office with the aim to provide an overview of the flows of illegal immigration.

the second phase of the project, beginning with October 2010, a number of large-scale coordinated actions are simultaneously organised in Belgium and 22 other EU member states, in order to test the data by practical experience. Operation Hermes is not limited to the mapping of illegal immigration flows. Another important goal of the project is to actively promote and valorise the European police networks Tispol (traffic police forces), Aquapol (maritime and river police forces) and Railpol (railway police forces). These three networks will coordinate the necessary control operations to improve their efficiency.

Operation Hermes is the first project of its kind and will be continued by the Hungarian Presidency of the Council.

5.2 Return Migration

5.2.1 Specific context

Assisted Voluntary Return (AVR) – policy

The legal basis for AVR is Art. 54 of the so-called ‘Reception Act’ of 2007 (Law of 12 January 2007). However, the provision has still to be implemented through a Royal Decree. This has not been done in the course of 2010, due to the lack of governmental backing. In consequence, AVR-policy in Belgium is still based only on a very general legal framework. The Law of 2007 and article 62 of the founding law of *Fedasil* (Law of 19 July 1991) assigned this federal authority as coordinating agency for implementing AVR-programs. The political responsibility for developing policies concerning such programs belongs to the State Secretary for Social Integration, Mr. Philippe Courard. The means for AVR-programs (appr. 6.000.000 EUR) are allocated to the annual *Fedasil* budget.

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

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

5.2.2 Developments within the national perspective

Concerning the elaboration of reintegration assistance, existing REAB and reintegration programs were merged with earlier pilot projects into a structural, three layer AVR-scheme. The first layer is the REAB-program, for which rejected asylum seekers and undocumented migrants can apply. The program, existing since 1984 and implemented by IOM, includes covering for the travel costs, logistical support and a basis reinstallation grant of 250 EUR. The second layer is the reintegration program, complementary to REAB and designed for the same target group. The program, existing since 2006 and implemented by IOM and Caritas, offers financial assistance of 700 EUR per person (+500 EUR for vulnerable persons. In 2010, a third layer was implemented. It is a reintegration assistance designed for establishing micro-enterprises and the support of especially vulnerable groups of returnees. The assistance is complementary to the before mentioned programs. The assistance amounts to 1.500 EUR per person. This third layer has been implemented with the support of the European Return Fund

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With regard to the REAB-program, a total of 2.957 persons used this form of assistance for returning to their countries of origin. In comparison with 2009, the number of REAB-users increased by 10%.

In 2010, the authorities increased their efforts to inform potential returnees. In this context, IOM organized one general information session on AVR with embassies and consulates of countries of return as target group. Furthermore, the Immigration Office, informed about 200 representatives of about 150 embassies and consulates in 7 information sessions about the Belgium migration policy, including AVR-programs. Additionally, in 2010 a pilot scheme was implemented in the cities of Gent, Liège and Brussels with the aim to integrate AVR in the framework of the general social policy towards migrants in bigger cities.

5.2.3 Developments from the EU perspective

In 2010, Belgium coordinated a joint project with 4 other MS Germany, France, the Netherlands and Sweden. The project envisages the elaboration of the common methodology to evaluate return projects, implemented in the framework of the European Return Fund. The project has the further object to generate synergy effects between its participants and intend to develop in the near future common return project. The project is open to other MS.

The Benelux-countries elaborated together a readmission agreement with Kazakhstan, which will be signed in 2011. In the case of a second readmission agreement between the Benelux and Kosovo a Memorandum of Understanding is signed but not yet the agreement.

In 2010, Belgium organized two joint return flights: with participation of Bulgaria with Nigeria as destination and one under participation of Ireland, England and the Netherlands (participated as observer only) with DR Congo as destination. In 2010, Belgium participated at two joint flights, organized by the Netherlands with Nigeria as destination.

5.3 Actions against human trafficking

5.3.1 Specific context

Belgium has since more than 15 years experience with a multidisciplinary approach by specialised authorities in combating trafficking in human beings. The Law of 10 August 2005 stipulates a distinction between the crimes of human trafficking and the smuggling of people and defines abuse and types of exploitation. The law introduced also several categories of aggravating circumstances. Furthermore, the recognition as victim of human trafficking is legally possible before a judgement is pronounced and even at the moment a criminal investigation starts. However, the willingness of the victim to cooperate with the authorities is a precondition for granting the status. The victims are sheltered in specialised care centres. Specialised legal assistance⁴⁷ is both granted to EU citizens and to third-country nationals under three preconditions: willingness to cooperate with the judiciary, acceptance of guidance by a specialised centre for victims of human trafficking and the willingness to suspend contacts with alleged offenders.

In July 2008, the Federal government drafted the National Action Plan against Trafficking in Human Beings 2008-2011 and defined policy goals in 5 different thematic areas: 1) legal realm; 2) prevention; 3) victim-assistance; 4) investigation and prosecution and 5) data collection. The plan aims amongst others to the development of a national, coordinated strategy on combating the criminal phenomenon and to improve interdisciplinary data collection and information exchange.

⁴⁷ Cost-free legal assistance is in any case granted.

The Belgian government has not yet officially appointed a National Rapporteur on Human Trafficking. However the Centre for Equal Opportunities and Opposition to Racism (CEOOR) fulfils de facto this role. Since 1996, the CEOOR publishes independent annual reports on trafficking in and smuggling of human beings.⁴⁸ Complimentary, the Federal government presents a biennial report to the parliament on the enforcement of measures to combat human trafficking in Belgium. These reports are drafted by the Department of Criminal Policy, which has an autonomous status within the Ministry of Justice.

5.3.2 Developments within the national perspective

On 5 January 2010, the workgroup ‘Human Trafficking’ of the Belgian Senate (2nd chamber of the Federal Parliament) met for its constitutive meeting. The workgroup organised seven hearings of key stakeholders with regard to human trafficking in Belgium: the unit ‘Human Trafficking’ of the CEOOR, specialised law-enforcement- judiciary- and prosecution- services, the Ministry of Justice, experts of the Social Inspection-services and the Immigration Office and specialized centres for victims of human trafficking. On 4 May 2010, the final report of the parliamentary workgroup was published. The CEOOR advised during the hearing of the workgroup⁴⁹ and again in its ‘Annual Report on Trafficking in and Smuggling of Human Beings’ amongst others the amelioration of the legal status of victims.⁵⁰ The question of the legal status of victims is also part of the assessment of the impact of the multidisciplinary Circular of 26 September 2008, which is expected to be finished in the first half year of 2011. As part as the assessments mixed focus groups took place and will be continued in February 2011.

Concerning the improvement of data collection, in 2010 an adapted nomenclature was rendered operational in order to maintain data on trafficking in human beings in criminal records.

The Flemish public broadcaster VRT, aired on 1 August 2010 at his television channel ‘Canvas’ a coverage about human trafficking and sexual exploitation in the Brussels’ prostitution milieu. The coverage, showing the activities of Bulgarian mafia-structures, dominating the red light quarter in Brussels North and the mechanisms of exploitation, found wide media attention in Belgium and in the Netherlands.

The CEOORs’ annual report on human trafficking listed and described several court cases of human trafficking, which took place in 2009 and in the first half year of 2010.

5.3.3 Developments from the EU perspective

The Belgian Presidency of the Council of the European Union organized on 18 – 19 October 2010 the conference ‘Towards a multidisciplinary approach to prevention of trafficking in human beings, prosecution of traffickers and protection of victims’ (=Fourth EU Anti-Trafficking Day). The findings of the conference were published by the Council on 27 January 2011.⁵¹ The conference, organized by

⁴⁸ CEOOR, Jaarverslag Mensenhandel/Mensensmokkal 2009. In een schijn van wettelijkheid (October 2010), http://www.cnr.be/?action=publicatie_detail&id=124&thema=2&select_page=216; The publication will be soon available in English.

⁴⁹ Belgische Senaat/Sénat de Belgique, Mensenhandel/Traite des êtres humains, Verslag/Rapport, 4 May 2010, p. 16

⁵⁰ CEOOR, Jaarverslag Mensenhandel/Mensensmokkal 2009. In een shijn van wettelijkheid (October 2010), p. 6, http://www.cnr.be/?action=publicatie_detail&id=124&thema=2&select_page=216. For more information on the topic of the legal status of victims see P. Le Cocq and C. Meulders, ‘Le statut des victimes de la traite des êtres humains’, in Ch.-E. Clesse et al., *Traite des êtres humains-Mensenhandel-Mensensmokkal*, Dossiers de la revue de droit pénal et de criminologie, Brussels, La Chartre, 2010, pp.77-80.

⁵¹ [Council of Europe \(27 January 2011\), Presidency Conclusions from the Conference “Towards a multidisciplinary approach to prevention of trafficking in human beings, prosecution of traffickers and protection of victims” \(Brussels, 18-19 October 2010\).](#)

the Presidency in cooperation with the Centre of European and International Policy Action (CEIPA) and hosted by the European Commission, took stock of the goals set by the Stockholm Programme and the Action Oriented Paper (AOP EU Council of 2009),⁵² more specifically the four “P” principles⁵³ formulated with regard to the internal and external dimensions of trafficking in human beings. The conference intended to highlight these goals and deduce from it concrete measures. The conclusion paper of the conference set out the findings of the event in four main chapters (according to the “P” principal) and in 32 thematic bullet points.⁵⁴ With regard to the European cooperation in combating human trafficking, emphasized in the conclusions of the conference, Belgium cooperates already closely with the countries of the Euregio, for example in the framework of the *NeBeDeAgPol* (Netherlands, Belgium Germany, Agence de police) network. Belgium cooperated in 2010 also regularly and successfully in Joint Investigation Teams (JIT), particular in the JIT Paris, Brussels and Liège.

The impact on the national legislation of the proposed EU Directive on Trafficking in human beings, adopted by the European Parliament on 14 December 2010,⁵⁵ cannot yet be estimated. The national legislation answers already on key elements of the proposed directive.

On 26/27 May 2010, the IOM organized its 2nd Awareness Raising Workshop for Brazilian and Belgian authorities, which responded on the significant increase of Brazilian migrants in Belgium who became victims of human trafficking for the purpose of labour exploitation.

⁵² http://ec.europa.eu/anti-trafficking/download.action;jsessionid=1GCQNp1SplrN6SgzBhMRNfLPCHWZvQ0HJ1jDd2yk8yGvGpYmQHgc!1740586656?nodeId=f437ee86-d319-4f80-a64b-e940cf08ecf6&fileName=Action+Oriented+Paper+on+actions+against+trafficking_en.pdf&fileType=pdf

⁵³ Prevention, Prosecution, Protection, Partnership

⁵⁴ Council of Europe (27 January 2011), Presidency Conclusions, p. 10-21

⁵⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0471+0+DOC+XML+V0//EN#BKMD-33>

6. BORDER CONTROL

6.1 Control and surveillance at external borders

6.1.1 Specific context

The 'External Border Fund' enabled Belgium to realize different projects, corresponding to its priorities in the framework of the Annual Program 2010. Actions were launched corresponding to priority 1 (*Support for the further gradual establishment of the common integrated border management system as regards the check on person at and the surveillance of the external borders*), priority 3 of (*Support of the issuing of visas and the tackling of illegal immigration*), priority 4 (Support for the establishment of IT systems required for implementation of the Community legal instruments in the field of external borders and visas) and finally corresponding to priority 5 (*Support for effective and efficient application of relevant Community legal instruments in the field of external borders and visa*).

6.1.2 Developments within the national perspective

The Immigration Office organized in the end of 2010 a two-day conference in Brussels, designed for airlines. The conference "Developing preventative strategies towards undocumented persons", aimed on information and awareness-rising about (false) ID's, border control, repatriation and about unaccompanied minors.

6.1.3 Developments from the EU perspective

In 2009, the commission SCH/EVAL carried out an evaluation of the border crossing points of the BENELUX. In consequence of the evaluation report, Belgium has undertaken in 2010 steps to improve the risk assessment between the different border crossing points for air-, sea- and land travel. To do so, the concerning authorities organize regular visits to the border crossing points to control and, if necessary, to directly correct current practices of border control.

In the framework of the evaluation procedures set out in SCH/Com-ex (98) 26, Belgium decided to amend its law in compliance with Council Directive 2001/51/EC, supplementing the provision of Article 26 of the Convention implementing the Schengen Agreement, The fines will be increased for carriers transporting foreign nationals which fail to meet their control obligations. The punishment will be adapted proportionally with the aim to improve the effort of carriers to prevent the entrance of persons, using inadequate or falsified documents.

6.2 Cooperation with respect to border control

6.2.1 Specific context

See below.

6.2.2 Developments within the national perspective

Belgium adapted its used software to be compatible with the VIS. This is already the case at 80% of the currently used software. In the framework of a pilot project, the software will be used at two Belgian border crossing points. Data transfer via the VIS is projected to be completed within 2011. The Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning VIS is directly applicable and does not require amendments of the national law. (Actions are taken corresponding with priority 4, AP 2010 of the ‘External Border Fund’).

6.2.3 Developments from the EU perspective

In its effort to support the gradual introduction of biometric visa op European level, several Belgian consulates have already begun to take biometric data. Geographically, Belgium follows the European guidelines concerning the gradual deployment of the system: The consulates in Northern Africa were equipped at first with the technical means (in 2009) followed by the consulates in the Middle-East and the Gulf region (first half of 2010) and consulates in several Sub-Saharan countries (second half of 2010).

In April 2010, Belgium established in collaboration with Sweden and in accordance with Art. 41.2 of the Visa Code 810/2009 a Common Application Centre – the so called “maison Schengen” – in Kinshasa.

Cooperation with FRONTEX

Belgium participated in the framework of the Frontex mission to Greece with the deployment of 11 Border Guards (experts of First Line Border Checks, Document Experts, Interviewers, Operators of technical equipment, dog handler). The deployment took place from 04 November till 31 December 2010 and included a total of 225 working-day units. In order to be able to respond possible further requests of support by Frontex, Belgium holds a tactical reserve of 20 additional experts in readiness. In addition, Belgium signed a contract with Frontex to support the agency with a fully equipped helicopter in the case of need. Furthermore, the Immigration Office supports the Greek authorities by seconding an expert.

Belgium participated in several Frontex ‘Joint Operations’ (JO), most notably in:

JO Minerva, Indalo, Poseidon Sea (Sea Border Operations);

JO Neptune, Jupiter, Poseidon Land (Land Border Operations);

JO Hammer, Hydra, Agelaus, Focal Points (Air Border Operations);

7. ASYLUM

7.1. International Protection

7.1.1 Specific context

In 2009 and again in 2010 the number of asylum applications was on the rise, contributing to the reception crisis. The saturation of the reception centres for asylum seekers that started in 2008, continued throughout 2010. At a certain moment there were no more places available, new arrivals had to be offered a hotel room or to spend the night outside.⁵⁶ In 2010, *Fedasil* was not able to provide a total of 6.284 eligible persons with any form of reception. In 2009 and 2010, *Fedasil* was sentenced in 82 cases to pay penalty payments for neglecting the legal right to shelter asylum seekers and other eligible persons.

7.1.2 Developments within the national perspective

Increase of asylum applications

The number of asylum applications in Belgium is on the rise compared to previous years. In 2008 almost 16.000 persons (about 12.252 cases) were registered as an asylum applicant. In 2009 there were more than 22.000 asylum applicants (17.186 cases). For 2010 there were 26.560 asylum applicants in Belgium (19.941 cases). When taking into account the total population of the country this means that Belgium is dealing with the 3rd most of asylum applications in the EU-27 (after Cyprus and Sweden).

Reception crisis

The high number of asylum applications is putting the reception structures further under pressure, aggravating the reception crisis of 2009. The reception crisis got a lot of media attention in 2010 and was often the subject of public debate. There are different opinions about the most important reasons for this reception crisis; and as a consequence different solutions are suggested. Some are stating that there is a structural problem of under-capacity, as there are not enough places for all the persons entitled to reception under the Reception Act of 2007. They suggest the creation of more reception places and therefore to raise the budget allocated to the reception of asylum seekers. At the same time there is argued in favour of the assignment of asylum seekers to local OCMW/CPAS (this on grounds of a well-balanced distribution-scheme). Others are suggesting that the creation of more reception places is not a structural solution and that the assignment of asylum seekers to local OCMW/CPAS and thus replacing material aid in reception centres by financial aid shall merely work as an extra pull factor. This will on the long term put the social welfare state under pressure. There is also the argument that something has to be done against the rising number of asylum applications while others are pointing at the fact that there are not only asylum seekers in the reception centres; but also people in other procedures and children with their parents who are in an illegal residence.

⁵⁶ In May 2009, the occupation rate of the reception centres was close to 103% (16 500 people for 16 441 beds). In April 30, 2009 *Fedasil* accommodated for the first time 12 asylum seekers in hotels instead of in reception centres. In December 2010 about 1.200 asylum seekers were accommodated in hotels. The access to an adequate support by social assistants or health care is not completely warranted in the case of accommodation in hotels. The authorities were also forced to shelter unaccompanied minors in hotels due to a lack of reception capacity in the specialised centres for this specific vulnerable group.

Different measures to counter the reception- and asylum crisis have been combined in 2010:

- Adjustments to the reception law.

On 12 January 2010, the amendment of the so called 'Reception Law' (Law of 12 January 2007), came into force.⁵⁷ The amendment changed the right of reception and/or material aid for certain categories of asylum seekers and other foreigners: 1) *Fedasil* may exclude asylum seekers, who applied for asylum the third or further times (with the exception of people in medical treatment). 2) Art. 161, 3° specifies the end terms of material aid for asylum seekers and certain other categories of foreigners: if an asylum claim is henceforth concluded with a negative decision of the appeal instance (CCE/RvV: Aliens Litigation Council) or the Court of Cassation, the material aid is ending after a term of five days after the issue date of the decision. There is an exception for asylum seekers who did not receive yet an order to leave the territory or, if such an order was already issued, the time limit to leave the territory is not yet reached. In the latter case, the material aid will end at the moment the time limit to leave the territory expires. 3) Art.7, which defines the prolongation of material aid for asylum seekers, is replaced by more specific instructions. According to these instructions, certain groups of asylum seekers may receive further material aid although their claim of asylum was rejected by the authorized authorities and the appeal instances.⁵⁸ 4) Art. 11 was amended (§4) and allows in exceptional circumstances to assign asylum seekers to a local Public Centre for Social Welfare (OCMW/CPAS) for inscription. The OCMW/CPAS will be then in charge of material aid for the concerning asylum seeker.

- Increase in budget for the asylum instances

The Federal government decided in March 2010 to clear a 40 Mio € extra budget to counter the reception crisis of asylum seekers. The government Leterme II, entrusted with dealing with current affairs, cleared in October 2010 a second extra budget for achieving the same goal. While the first extra budget was mostly invested in creating additional reception places and to finance the reception of asylum seekers in hotels, the second extra budget was mainly invested in creating additional (emergency) reception places and to recruit new protection officers for the CGRS. Till the end of the year a total of 36 additional protection officers could be employed.⁵⁹

- Increase in efficiency

In 2010, the CGRS implemented a special program to enhance its efficiency in examine asylum applications. Decisions were pronounced in an accelerated way concerning applications from several countries of origin, especially from Serbia, Macedonia and Armenia. The effect of the additional employed protection officers of CGRS was also already felt in the end of 2010 concerning the increase of decisions: in the last 4 months of 2010, the CGRS pronounced 46% more decision in comparison with the same period in 2009.

⁵⁷ Amendment of the Law of 12 January 2007, Art. 160-169, accessible at: <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/2009/12/31/115232.pdf>

⁵⁸ These exceptions are applicable for: 1) Persons, whose family member(s) or somebody who execute parental authority or is the guardian of the person in question; 2) Persons, who applied for a postponement of the execution of the order to leave the territory with the motivation to be enabled to finish a school year; 3) Persons, who are not able to leave the territory due to pregnancy (defined as: from the 7th month of pregnancy on to the 2nd month after giving birth at latest); 4) Persons, who applied for a postponement of the execution of the order to leave the territory with the motivation to be unable to return to their country of origin; 5) Person, who applied for a residence permit on grounds of Art. 9bis of the Residence Law, motivated by the parenthood of a Belgian child; 6) Persons, who signed a contract of voluntary return receive material aid till their depart; 7) Persons, who are not able to leave the reception infrastructure because of medical reasons;

⁵⁹ See: Minutes of the Contact Meeting of BCHV/CBAR, 12 Octobre 2010, point 20, <http://www.cbar-bchv.be/Contactvergaderingen/2010/PVcontactoktober2010.pdf>; See: Parliamentary question, 26 January 2011, Chambre des représentants de Belgique, Compte Rendu Intégral, Commission de l'Intérieur, des Affaires générales et de la Fonction publique, <http://www.dekamer.be/doc/CCRI/pdf/53/ic107.pdf>

Additionally, the CGRS and the Immigration Office elaborated coordinated actions concerning awareness rising campaigns in certain countries of origin,⁶⁰ the acceleration of procedures in the case of parallel applications for asylum and regularisation of stay and the return of rejected asylum seekers.

- Trying to counter the high asylum influx:

There could be given different explanations to explain this trend but it is hard to indicate what the exact reason is for this rise, what the impact is of a specific measure in Belgium or to what extent the situation in the country of origin is determining the number of asylum applications from a certain country of origin. Some are pointing at the ongoing armed conflicts and the bad human rights situation in some parts of the world. It seems however clear that the fact that since the end of 2009 citizens of the Former Republic of Macedonia (FYROM), Montenegro and Serbia are allowed to travel to Schengen countries without visa also has had an impact on the number of asylum applications from these countries in 2010. Mainly from the FYROM, but also from Serbia a sharp increase of asylum applications was registered. In March 2010 the Prime Minister Yves Leterme and the competent State Secretary Melchior Wathelet carried out a mission to Macedonia and Serbia to inform the population in these countries of origin about the incorrect overall picture that one could successfully apply for asylum after leaving the country for economical reasons. In the end of October 2010 a second mission was carried out to Macedonia and Serbia to discourage citizens from these countries to come to Belgium with the intention to apply for asylum.

However, the ongoing conflicts in Asia and Africa or the Schengen visa facilitation for some Balkan states are not specific for Belgium and can not be the only explanation for the stronger increase of asylum applications in Belgium compared to other EU-countries.

Other national developments:

Asylum seekers in procedure entitled to a work permit C after 6 months.

In 2009 the federal government approved a proposition of the Royal Decree⁶¹ regulating the access of asylum seekers to the Belgian labour market. This came into force since 12/01/2010 and is transposing article 11 of the Directive 2003/9/EC⁶² pertaining to employment of asylum seekers who have not yet received a first instance decision on their claim after a long period of time. Asylum seekers who have applied for asylum after 31.05.2007 and who have not received a negative decision in their asylum case 6 months after lodging their asylum application, will be entitled to apply for a work permit C.

Belgium supports asylum procedure in Burundi.

The United Nations High Commissioner for Refugees (UNHCR) transferred the competence for processing asylum applications in Burundi to the Burundi authorities. A new asylum law was adopted in November 2008 and a new institution, the *Office National de Protection des Réfugiés et Apatrides* (ONPRA) was created. On 26 March 2010 a protocol agreement was signed between the Belgian and Burundi authorities, stipulating that experts from the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) will train and support their colleagues of the Burundi *Office national de Protection des Réfugiés et Apatrides* (ONPRA) in the reinforcement of the asylum procedure in Burundi in 2010.

⁶⁰ Most notably: Serbia, Macedonia and Armenia

⁶¹ It modifies article 17 of the Royal Decree of 09.06.1999 implementing the Law of 30.04.1999 pertaining to the employment of foreign workers.

⁶² Directive européenne 2003/9 du Conseil du 27 janvier 2003 sur les normes minimales pour l'accueil des demandeurs d'asile dans les Etats membres

7.1.3 Developments from the EU perspective

A. Belgian Presidency of the EU

The asylum theme was one of the priorities of the Belgian Presidency of the European Union in the second half of 2010. The Belgian government has fully endorsed the objective put forward by the Stockholm Program 2012 to reach a Common European Asylum based on high protection standards. Therefore, it had developed a strategy in order to make progress with various legislative proposals in the field of asylum. The Belgian Presidency has always put asylum on top of the European agenda, both in formal and informal panels (JHA Councils, SCIFA, Council working groups).

At the informal JHA council of 15-16 July 2010, a consensus was reached to quickly make progress with the negotiations on the Eurodac and Dublin Regulations, the Long-Term Residence Directive and the Qualification Directive, and it was decided that both the Reception Directive and Asylum Procedures Directive needed further reflection. In addition, a Ministerial Asylum Conference on "Quality and Efficiency in the Asylum Process" was organized on 13-14 September, with a clear focus on practical cooperation and solidarity. The good practices identified by Member States and civil society organizations added the necessary fuel to the legislative discussions. The conference also offered the opportunity to indicate the fields on which the European Asylum Support Office should mainly focus.

The Belgian Presidency has been able to promote the negotiations in the intended fields: in some matters, the technical discussions were rounded off and negotiations with the European Parliament were started; other matters could be clarified, as a result of which the Commission could be convinced to adapt its proposals. The Belgian government addressed repeatedly the dimension of solidarity between European member states, for example during the aforementioned ministerial conference. The State Secretary charged with Asylum and Migration went personally to Malta, Cyprus and Greece in order to gain first hand information about the situation in these member states.

Belgium remains convinced that, in order to attain a Common European Asylum System, besides legislative initiatives, practical cooperation needs to be further invested in, and the European Asylum Support Office (EASO) should play an important part in that. The CGRS, as the Belgian asylum authority, can rely on a long-time experience with projects involving practical cooperation and thereby is able to support the further development of the EASO. From 2010 onwards, various modules of the European Asylum Curriculum (EAC) were implemented and are now part of the basic training provided to the staff members. Moreover, the CGRS continued to invest in projects involving information on countries of origin (COI) and this expertise was shared through the European Country of Sponsorship. The development of the Common COI Portal, in which Belgium acts as a pioneer, offers many possibilities for collecting COI but it also has to take into account the challenges regarding a uniform assessment of this information.

B. Belgian involvement in projects of practical cooperation

Cooperation with Poland

There has been an exchange programme with Polish asylum case workers. In September some 10 caseworkers from Poland came to Belgium to learn about the asylum decision making process and to attend interviews with the goal to improve the quality of the asylum procedure in Poland. There was specifically focused on asylum applications from the Russian Federation; this is an important country of origin of asylum seekers for Poland as well as for Belgium.

Temporary Desk on Iraq (TDI)

The TDI is a GDISC Project established for 18 months, from May 2009 to October 2010. The Desk was hosted by the Belgian Asylum and Immigration Office in Brussels (IO and CGRS). TDI partner States are Belgium, Germany, the Netherlands and the United Kingdom. In close cooperation with interested Member States, the European Commission, IOM, UNHCR and States in the region, the

TDI's remit was to determine how asylum and immigration services can improve their practical cooperation on protection, resettlement and return with regard to the Iraqi caseload and develop generic tools and mechanisms for dealing with other caseloads. The TDI is a good example of practical cooperation in the EU on protection, resettlement and return with regard to the Iraqi caseload. After October 2010 the TDI has prolonged its activities for a period of 6 months, now focusing on Afghanistan, Somalia and Russia.

C. Other developments from the EU perspective

Belgium condemned by the ECHR

On 19 January 2010 Belgium was condemned by the European Court of Human Rights in Strasbourg for the detention of four children and their mother in the closed detention facility known as "Transit Centre 127bis". In 2006, the family fled from Chechnya to Poland and further to Belgium, where they sought protection in the form of asylum. Poland was designated responsible to examine the concerning asylum application under the criteria of the Dublin-II regulation. Poland agreed to take charge of the application and the Belgian authorities issued an order to leave the country. In order to serve the decision, the family was summoned and placed in December 2006 in the closed transit centre near to Brussels airport. The ECHR ruled that the detention of the children in the closed detention facility constituted a violation of Article 3 European Convention on Human Rights and awarded the family 17.000 EUR compensation for damages.⁶³ Belgium introduced in 2008 *housing-units* for families with children as alternative for detention in the case of an order to leave the country. However, the detention of families with children is not yet excluded by law.

Further transposition of the Qualification Directive into national law

The Law of 28 April 2010 transposes Article 4 §4 of the Council Directive 2004/83/EC into national law (new article 57/7 bis Aliens act). This article is stipulating that once it is proven that an applicant has already been subject to persecution in the past; there is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm?. Also Article 4 §5 (new article 57/7 ter Aliens act) of the "Qualification Directive" was transposed into national law indicating the conditions for the applicability of the "benefit of the doubt" principle.

⁶³ (ECHR 19/01/2010, Nr. 41442/07 Muskhadzhiyeva and others vs Belgium)

8. Unaccompanied Minors (and other vulnerable groups)

8.1 Specific context

The theme unaccompanied minors was set on the agenda of the Belgian EU Presidency. Belgium committed consultations with the Swedish and Spanish Presidencies in order to organise initiatives for finding common standards on age determination, family tracing and return to the country of origin.

8.2 Developments within the national perspective

In its efforts to strengthen the collaboration of the different policy levels dealing with the assistance and reception of unaccompanied minors (see also ‘Task Force UM’), several meetings of the different cabinets and administrations were organised in 2010.⁶⁴ During these meetings central themes for the assistance of unaccompanied minors (UM’s) were discussed: 1) the identification of UM’s; 2) definition of responsibility for reception during the whole period of reception; 3) creation of reception facilities; 4) activating ERF-projects as tools;

Orientation Centres for unaccompanied minors

During 2009 the two specialised reception centres for unaccompanied minors (Neder-Over-Hembeek and Steenokkerzeel) have experienced a lack of available reception places and have been unable to address the number of demands. Unaccompanied minors have been put on a waiting list. In 2010 there have been created an extra 128 places for unaccompanied minors in federal reception structures.

Families with children in administrative detention centres

Intercepted irregular families with children are sent to family housing units, pending their return, instead of closed centres. At the end of 2010 there were 13 houses (3 houses in Zulte, 5 flats in Tubize and 5 houses in Sint-Gillis-Waas). These private homes are especially equipped for families.

New action plan to combat domestic violence

In November 2010, at the initiative of the Minister for Equal Opportunities, Joëlle Milquet, a new action plan (NAP) 2010-2014 to combat domestic violence was approved at a ministerial conference.⁶⁵ The new NAP 2010-2014 explicitly includes three other forms of domestic violence relevant in the field of migration and asylum: forced marriage, violence related to honour and female genital mutilation (in addition to "domestic violence" that were the subject of previous NAP’s). Given the fact that migrants (especially women) are very well represented among the victims of such violence, this action plan explicitly associates the Immigration office, the Office of the Commissioner General for Refugees and Stateless persons and *Fedasil* (Reception of asylum seekers) to the plan.

8.3 Developments from the EU perspective

Task force unaccompanied minors

Belgium established a task force on unaccompanied minors in 2009, which examined possible actions with the aim of risk -minimizing for this group of migrants, most notably the risk of being the victim of smuggling and human trafficking. In June 2010 the task force, which was led by Ilse Derluyn (Centre for Children in vulnerable situations, University of Ghent) published its final report, which addressed to the Minister in charge several recommendations concerning the detection, identification

⁶⁴ For the federal level: ‘Service Guardianship’ Immigration Office, *Fedasil*; For the Community level: ‘Youth Welfare’ and ‘*Inburgering*’ (Flemish Community) and ‘Youth and Youth Assistance’ (French Community);

⁶⁵ <http://milquet.belgium.be/files/101123-PAN%20FR.pdf>

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and protection of UM's.⁶⁶ The task force also elaborated a “cartography” to facilitate the cooperation between different entitled authorities. All Federal and Community actors that have a specific role or mission regarding unaccompanied minors are mapped. This mapping facilitates exchange of information. The emphasis is on the manner in which the prevention, detection, identification and monitoring of unaccompanied minors in (potential) situations of abuse - with special attention to child trafficking and smuggling – is now happening and how this can be improved.

Next to this cartography the work of the Task Force has also resulted in a series of recommendations covering the entire travel route of a minor travelling alone with the focus on maximum prevention with regard to potential victimization of unaccompanied minors; as well as possible to achieve.

Seminar unaccompanied minors

On 9 and 10 December 2010 there has been the seminar “*Unaccompanied minors: children crossing the external borders of the EU in search of protection*” in Brussels in the framework of the Belgium EU presidency. The Seminar served as an ideal platform to exchange best practices on detection, identification and protection of unaccompanied minors. The seminar was also setting the grounds for a EU project through which countries can cross-evaluate each other's working methods in the area of protection of unaccompanied minors.

⁶⁶ Eindrapport van de Task Force alleenreizende minderjarigen, aangeboden aan de Staatssecretaris voor Migratie- en Asielbeleid ter attentie van de leden van de Belgische Regering, June 2010, accessible at: <http://www.lesfamilles.be/documents/TaskForceNL.pdf>

9. GLOBAL APPROACH TO MIGRATION

9.1 External cooperation / global approach to migration

9.1.1 Specific context

Belgium recognizes that the phenomenon of migration and asylum has to be seen in global perspectives. Therefore, Belgium continued in 2010 its efforts to develop migration and development-programs in collaboration with different countries of origin. In this context, Belgium formulated several main policy goals for its projects. The concerning projects should 1) contribute to the reflections about the causes of migration from the countries of origin, 2) develop reintegration tools after voluntary return, including the support of the economical reintegration of the returnees, 3) contribute to the fight against irregular migration by ameliorate the economical situation in countries of origin, 4) reinforce the local authorities in charge of the management of migration flows, 5) organise in cooperation with other MS information and awareness rising campaigns with particular focus on voluntary groups amongst potential migrants.

9.1.2 Developments within the national perspective

In accordance with the policy goals as described above, Belgium continued in 2010 its support for the IOM-program 'Migration for Development in Africa' (MIDA). Belgium concentrates its efforts to the transfer of knowledge and other resources of the Diaspora of Rwanda, Burundi and DR Congo to their country of origin. In 2010 Belgium supported the start up of a pilot project for circular migration of highly educated university graduates from Senegal. For more information about the project see chapter 4.3.2.

9.1.3 Developments from the EU perspective

The FPS Foreign Affairs supported in 2010 the work of High Level Working Group on Asylum and Migration (HLWG) of the Council of the European Union. Under the auspices of the Belgian Presidency, an EU migration mission to Ukraine was carried out from 20-23 September 2010. The mission took place in the framework of the implementation of the EU Global Approach to Migration. The EU delegation was jointly led by Mr. Francisco Bataller from the European Commission and Mr. Frank Felix, representing the Belgian Presidency.⁶⁷

A large-scale Twinning Project between the Belgian and Bulgarian migration directorates has been finalized in 2010. The Immigration Office assisted the Bulgarian Immigration Services during several years in the following fields: the implementation of the admission and procedures Directive, return practices and interception practices. From June 2009 on, a civil servant of the Immigration Office had been posted in Sofia as "Resident Twinning Advisor." Other IO personnel performed short missions in Bulgaria (organisation of seminars, help for interceptions and special flights, drafting internal instructions, training, and so on). Through this project, the IO contributed to the reinforcement of immigration services in new MS of the EU, and more particularly, in MS with external borders.

Belgium continued in 2010 its efforts to support the Mobility Partnership with Georgia. In the framework of the preparation process of the readmission agreement with Georgia, the Immigration Office implemented together with the equivalent authorities of the Netherlands, Czech Republic and Poland a project which envisage an active support of the Georgian Ministry of Foreign Affairs and the

⁶⁷ Conclusions of the mission are accessible at:

http://ec.europa.eu/delegations/ukraine/press_corner/all_news/news/2010/2010_09_29_1_en.htm

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Georgian National Registration Office. The readmission agreement was signed during the Belgian Presidency on 22 November 2010. Experts of the IO and of *Fedasil* take part in a plan to support an integrated approach to reintegration processes of Georgian returnees. The project is coordinated by the immigration services of the Czech Republic.

10. IMPLEMENTATION OF EU LEGISLATION

10.1 Transposition of EU legislation 2010

Belgium has put the themes immigration and asylum high on its priority list during its Presidency of the European Union. In this context, the Presidency brought into focus the legislative instruments currently under negotiation. For more details about the achieved results please consult chapter 3.2 *Belgium Presidency*.

Implementation of EU legislation into Belgian law

Transposition of Directive 2005/85/EC

This directive is completely transposed. The Belgian Constitution was modified on 22.12.2008, i.a. to incorporate some important rights of the child.⁶⁸ Minor revisions of the Aliens Act have been introduced⁶⁹ in order to 1) prolong the time limit for the lodging of an appeal following a negative decision in an asylum claim in first instance (30 days, instead of 15 days); 2) cancel certain technical motives for refusal; 3) adapt legislative provisions on fast-track processing of certain asylum claims. The two Royal Decrees pertaining to the organisation of the IO and the CGRS were adapted on 18 August 2010 to transpose Directive 2005/85/EC.⁷⁰

Transposition of Directive 2008/115/EC

This directive is partially transposed in the Belgian legislation. In 2009, a set of two Royal Decrees pertaining to the organisation of detention centres for irregular migrants was passed.⁷¹ One Royal Decree regulates the specific detention regime and work procedures applicable to the INAD-centres. The second Royal Decree modifies the regulations applied in detention centers for irregular migrants, so that fundamental rights of detainees are better guaranteed and certain confinements of individual freedom are better regulated. In addition, a legal basis⁷² was given to the private housing units created by the IO to accommodate irregular families with children, pending their return. The measure is meant as an alternative to detention of families with children in closed centers. The full transposition of the Directive was required by 24 December 2010. At the moment of writing, no draft bill was submitted to the parliament.

Directive 2009/50/EC and Directive 2009/52/EC

Both Directives are not yet transposed in national law. Their transposition process is progressing.

A thorough list of pieces of Belgian legislation transposing EU Directives in the field of asylum and migration is presented in annex. The list provides a better overview as it is not limited to 2010.

⁶⁸ Révision de la Constitution du 22 décembre 2008 (MB du 29/12/2008).

⁶⁹ Loi du 22 décembre 2008 portant des dispositions diverses (I). TITRE 5. — Asile et immigration. CHAPITRE UNIQUE. — Modifications de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers – Articles 17 et 18 (MB du 27/12/2008).

⁷⁰ 1) Arrêté royal du 18 août 2010 concernant la fixation de certains éléments de la procédure à suivre par le service de l'Office des Etrangers qui est chargé de l'examen de demandes d'asile; 2) Arrêté royal du 18 août 2010 modifiant l'arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux réfugiés et aux apatrides ainsi que son fonctionnement;

⁷¹ Arrêté royal du 8 juin 2009 modifiant l'arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'office des Etrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, §1^{er}, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 25/06/2009).

⁷² Arrêté royal du 14 mai 2009 fixant le régime et les règles de fonctionnement applicables aux lieux d'hébergement au sens de l'article 74/8, §2, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 27/05/2009).

10.2 Experiences, debates in the (non-) implementation of EU legislation

The Federal Equality Body CEOOR, organised on 26 November 2010 an expert colloquium to discuss challenges and opportunities of the implementation process of EU directive 2008/115/EC. Central themes of the discussion were ‘risk of absconding’, the situation of TCN who cannot yet be removed, voluntary return towards forced return, entry bans and control of removal. The CEOOR sees the implementation of the Directive as chance to elaborate an effective and global return policy in Belgium. Concerning the ban of entry as stipulated by the Directive in point 14, the CEOOR recommended applying this tool in extraordinary cases only.⁷³

⁷³ More recommendations of CEOOR concerning the implementation of 2008/115/EC are available in the ‘Annual Report Migration 2010’. The annual report will be published on 28 April 2011 and will be accessible in French and in Dutch at:

<http://www.diversiteit.be/?action=onderdeel&onderdeel=216&titel=Publicaties>

Annex – Transposition of EU legislation (Migration and Asylum)

- Directive 2001/40/CE (on the mutual recognition of decisions on the expulsion of third country nationals): Fully transposed

Loi du 18 février 2003 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 11/04/2003) ;

Loi du 18 février 2003 modifiant l'article 71 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/04/2003) ;

Loi du 1^{er} septembre 2004 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 12/10/2004) ;

Loi du 1^{er} septembre 2004 modifiant l'article 71 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 12/10/2004) ;

- Directive 2001/51/EC (Supplementing the Provisions of Article 26 of the Convention Implementing the Schengen Agreement of 14 June 1985): Fully transposed

Loi du 18 février 2003 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 11/04/2003) ;

Loi du 18 février 2003 modifiant l'article 71 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/04/2003) ;

Loi du 22 décembre 2004 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 18/01/2005)

- Directive 2001/55/EC (on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof): Fully transposed

Loi du 18 février 2003 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 11/04/2003) ;

Loi du 18 février 2003 modifiant l'article 71 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/04/2003)

Arrêté royal du 3 mai 2003 fixant la date d'entrée en vigueur des articles 1^{er} à 19 de la loi du 18 février 2003 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 03/05/2003) ;

Arrêté royal du 3 mai 2003 fixant la date d'entrée en vigueur des articles 1^{er} et 2 de la loi du 18 février 2003 modifiant l'article 71 de la loi du 15/12/1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 03/05/2003) ;

Arrêté royal du 15 juillet 2004 modifiant l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers en ce qui concerne l'octroi du permis de travail C aux bénéficiaires d'une protection temporaire (MB du 23/08/2004) ;

Loi-programme (I) du 24 décembre 2002 (Titre XIII, chapitre 6) (MB du 31/12/2002) ;

AR du 22 décembre 2003 portant exécution du Titre XIII, chapitre 6 de la loi-programme du 24 décembre 2002 (MB du 29/01/2004)

Loi-programme du 27 décembre 2004 (Titre IX : Justice, Section II) (MB du 31/12/2004)

- Directive 2002/90/CE (defining the facilitation of unauthorised entry, transit and residence): Fully transposed

Loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil (MB du 02/09/2005)

- Directive 2003/9/EC (laying down minimum standards for the reception of asylum seekers): Fully transposed

Loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (MB du 07/05/2007) ;

+ réglementation belge relative aux centres fermés dans la loi du 15/12/1980, l'AR du 08/10/1981 et l'AR du 02/08/2002 i.a.

- Directive 2003/86/EC (on the right to family reunification): Fully transposed

Loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 06/10/2006) ;

- Directive 2003/109/EC (concerning the status of third-country nationals who are long-term residents): Fully transposed

Loi du 25 avril 2007 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/05/2007) ;

Arrêté royal du 7 mai 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 (MB du 13/05/2008) ;

Arrêté royal du 7 mai 2008 modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 13/05/2008) ;

Arrêté royal du 23 décembre 2008 modifiant, en ce qui concerne les résidents de longue durée, l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers (MB du 29/12/2009)

- Directive 2003/110/EC (on assistance in cases of transit for the purposes of removal by air): Fully transposed

Loi du 15 décembre 2008 relative à l'assistance au transit dans le cadre des mesures d'éloignement par voie aérienne (MB du 23/01/2009)

- Directive 2004/38/EC (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States): Fully transposed

Loi du 25 avril 2007 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/05/2007) ;

Loi du 4 mai 2007 modifiant les articles 39/20, 39/79 et 39/81 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/05/2007) ;

Arrêté royal du 7 mai 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 (MB du 13/05/2008) ;

Arrêté royal du 7 mai 2008 modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 13/05/2008) ;

- Directive 2004/81/EC (on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities): Fully transposed

Loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 06/10/2006) – articles 64 à 68

- Directive 2004/82/EC (on the obligation of carriers to communicate passenger data): Fully transposed

Loi du 15 mai 2006 portant diverses dispositions en matière de transport (MB du 08/06/2006) ;

Arrêté royal du 11 décembre 2006 concernant l'obligation pour les transporteurs aériens de communiquer les données relatives aux passagers (MB du 22/12/2006)

- Directive 2004/83/EC (on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted): Fully transposed

Loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 06/10/2006) ;

Loi du 15 septembre 2006 réformant le Conseil d'Etat et créant un Conseil du Contentieux des étrangers (MB du 06/10/2006) ;

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Arrêté royal du 3 octobre 2006 fixant la date d'entrée en vigueur de l'article 77 de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et à l'article 235, §1^{er}, alinéa 2 de la loi du 15 septembre 2006 réformant le Conseil d'Etat et créant un Conseil du Contentieux des étrangers (MB du 06/10/2006) ;

Circulaire du 5 octobre 2006 relative au statut de protection subsidiaire (MB du 11/10/2006) ;

Arrêté royal du 31 janvier 2007 modifiant l'article 17 de l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers (MB du 13/02/2007) ;

Loi-programme (I) du 24 décembre 2002 (Titre XIII, chapitre 6) (MB du 31/12/2002) ;

AR du 22 décembre 2003 portant exécution du Titre XIII, chapitre 6 de la loi-programme du 24 décembre 2002 (MB du 29/01/2004)

Loi-programme du 27 décembre 2004 (Titre IX : Justice, Section II) (MB du 31/12/2004)

- Directive 2004/114/EC (on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service): Fully transposed

Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (articles 58 à 61) ;

Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (article 99 à 103/3)

- Directive 2005/71/EC (on a specific procedure for admitting third-country nationals for the purposes of scientific research): Fully transposed

Loi du 21 avril 2007 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 26/04/2007) ;

Arrêté royal du 31 mai 2007 fixant la date d'entrée en vigueur de la loi du 21 avril 2007 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, et de la loi du 4 mai 2007 modifiant les articles 39/20, 39/79 et 39/81 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 01/06/2007) ;

Arrêté royal du 8 juin 2007 contenant les conditions d'agrément des organismes de recherche qui souhaitent conclure, dans le cadre de projets de recherche, des conventions d'accueil avec des chercheurs de pays hors Union européenne, et fixant les conditions auxquelles de telles conventions peuvent être conclues (MB du 08/06/2007) ;

Arrêté royal du 12 septembre 2007 modifiant, en ce qui concerne les chercheurs et les cadres, l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 sur l'occupation des travailleurs étrangers (MB du 28/09/2007)

- Directive 2005/85/EC (on minimum standards on procedures in Member States for granting and withdrawing refugee status): Fully transposed

Arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux Réfugiés et aux Apatrides ainsi que son fonctionnement (MB du 27/01/2004) ;

Arrêté royal du 11 juillet 2003 fixant certains éléments de la procédure à suivre par le service de l'Office des étrangers chargé de l'examen des demandes d'asile sur la base de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 27/01/2004) ;

Loi du 22 décembre 2008 portant des dispositions diverses (I). TITRE 5. — Asile et immigration. CHAPITRE UNIQUE. — Modifications de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers – Articles 17 et 18 (MB du 27/12/2008) ;

Loi du 25 avril 2007 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/05/2007) ;

Arrêté royal du 27 avril 2007 modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 21/05/2007) ;

Révision de la Constitution du 22 décembre 2008 (MB du 29/12/2008) ;

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Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (version coordonnée) ;

Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (version coordonnée)

Arrêté royal du 18 août 2010 concernant la fixation de certains éléments de la procédure à suivre par le service de l'Office des Etrangers qui est chargé de l'examen de demandes d'asile;

Arrêté royal du 18 août 2010 modifiant l'arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux réfugiés et aux apatrides ainsi que son fonctionnement;

- Directive 2008/115/EC (on common standards and procedures in Member States for returning illegally staying third-country nationals): **Partly transposed**

Arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des Etrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, §1^{er}, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 12/09/2002) ;

Arrêté royal du 8 juin 2009 modifiant l'arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'office des Etrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, §1^{er}, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 25/06/2009) ;

Arrêté royal du 14 mai 2009 fixant le régime et les règles de fonctionnement applicables aux lieux d'hébergement au sens de l'article 74/8, §2, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 27/05/2009) ;

Loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (MB du 07/05/2007) - articles 37 à 42 ;

Loi-programme (I) du 24 décembre 2002 (Titre XIII, chapitre 6) (MB du 31/12/2002)

- Directive 2009/50/EC (on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment): **Not yet transposed**

- Directive 2009/52/EC (providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals): **Not yet transposed**