



CHALLENGES AND PRACTICES FOR ESTABLISHING IDENTITY IN THE MIGRATION PROCESS IN BELGIUM

STUDY OF THE BELGIAN CONTACT POINT
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The European Migration Network (EMN) is coordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.

The Belgian NCP is a multi-institutional entity composed of experts from the Immigration Office, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), the Federal Agency for the Reception of Asylum Seekers (Fedasil) and Myria - the Federal Migration Centre. It is coordinated by the Federal Public Service Home Affairs.

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Belgian study and EU comparative study

Belgian report: This is the Belgian contribution to the EMN study on Challenges and practices for establishing applicants' identity in the migration process. Other EMN National Contact Points (NCPs) produced a similar report on this topic for their (Member) State.

Common Template and Synthesis Report: The different national reports were prepared on the basis of a common template with study specifications to ensure, to the extent possible, comparability. On the basis of the national contributions of 25 Member States and Norway, a Synthesis Report was produced by the EMN Service Provider in collaboration with the European Commission and the EMN NCPs. The Synthesis Report gives an overview of the topic in all the (Member) States.

Aim of the study: The overall aim of the study is to offer an overview of the important challenges faced by national authorities in their efforts to reliably establish and verify the identity of third-country nationals within the context of various migration procedures -namely those related to asylum, return and legal migration channels (including both short-stay and long-stay visas and residence permits)- and of national practices to address those challenges.

Scope of the study: The study examines (Member) States approaches to establish the identity of third-country nationals within the migration process in a broad sense, covering both identification and identity verification related tasks. The study addresses identity management issues within the context of the following migration procedures: asylum procedure, (forced) return procedure, legal migration channels (applications for short-stay visas and long-stay visas/residence permits for study, work and family purposes). Identity management issues related to naturalisation procedures are outside the scope of the study.

Available on the website: The Belgian report, the Synthesis report and the links to the reports of the other (Member) States are available on the website: www.emnbelgium.be

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EXECUTIVE SUMMARY

The **first section** is the bulk of this report and provides an overview of the national legal and institutional framework and the challenges in relation to establishing identity in the framework of the international protection procedures, return procedures and legal migration procedures (short stay as well as long stay visa).

Besides a general outline of the challenges for all migration procedures, in **subsection 1.1** also an overview is provided of the countries of (claimed) origin for which establishing identity was considered to be particularly difficult in the framework of the different migration procedures and return procedure.

The report also provides some **statistical data (subsection 1.2)** on the number of identification files processed and positively concluded in the framework of return procedures, as well as on the number of laissez-passers issued. Also some findings on the number of asylum applications rejected on the basis of identity/region of origin fraud are presented. However no statistics are available on the number of asylum applicants for whom the identity was documented. For most legal migration procedures no inclusive statistics are available on the number of cases for whom the visa and/or residence permit was refused due to the fact the identity of the applicant was not being considered sufficiently established.

Subsection 1.3 provides an **overview of the legislative framework** on establishing identity and focuses on the **recent changes** foreseen in the Laws of 21 November 2017 transposing the Asylum Procedures Directive and modifying the Immigration Act on some aspects related to the procedures used to determine identity and on the provision, retention and giving back of documentary evidence and duty to cooperate within the international protection procedure. Besides, also the practice to use social media as a tool to establish the identity and assess the asylum application is enshrined in Law.

In **subsection 1.4** an overview is provided of the institutional framework and competences of each institution involved. In Belgium, the **Immigration Office** is responsible for the registration of the asylum application and collection and comparison of biometrics in European databases such as Eurodac and the Visa Information System (VIS). Also a security screening is performed by the Immigration Office in cooperation with the police and security services. The assessment of the asylum application (including the assessment of the credibility of the declared identity and region of origin) is performed by the **Office of the Commissioner General for Refugees and Stateless Persons (CGRS)**.

The second section provides an overview of the different methods used to establish the identity of third-country nationals (TCN) within the context of various migration procedures. It also clarifies how an identified TCN is defined and what documents are required to establish the identity in the different migration procedures.

Article 1, 14° of the Immigration Act describes the term “**identified foreigner**” as a person in possession of a valid travel document, a valid passport, a valid identity document or a person who belongs to the category for whom the country of origin or the Belgian minister can issue a laissez-passer.⁽¹⁾ Due to the emphasis on a valid travel document, this definition is in particular relevant for legal migration procedures and in the context of return.

In **subsection 2.1** information is also provided on which type of documents are considered as core or supporting documents and to what extent copies of documents are accepted by the relevant authorities in each migration procedure.

Subsection 2.2 provides an overview of the different **methods used to establish the identity in the absence of documentary evidence** of identity in the **asylum and return procedures**. It also describes the results of the matching of information provided by an asylum applicant against identity information available in VIS. Furthermore other recent methods such as social media monitoring are briefly described.

In **subsection 2.3** a schematic overview is provided of the **methods** used to verify the identity of third-country nationals in procedures for short-stay visas and visa for family reasons, study-related reasons or for the purposes of remunerated activities.

Section 3 provides more information on how the different methods are combined to establish the identity of third-country nationals.

In **subsection 3.1** it is described which methods to establish the identity are considered more reliable or decisive and to what extent there needs to be consistency between the results obtained from the various methods used.

Subsection 3.2 answers the question to what extent the outcome of the procedure to establish the identity has an impact on the decision to grant a protection status or to issue a residence permit in the framework of legal migration procedures. There is also information on to what extent an irregularly staying person needs to be identified to be able to implement the return.

Section 4 provides an overview of national and European databases and data management systems and describes which personal data is collected within the framework of the different migration procedures.

1 Immigration Act, Art. 1, 14°

While **subsection 4.1** provides more information on how data is shared between different actors involved, **subsections 4.2 and 4.3** give a brief overview of the different national databases, which personal data of individuals is collected and which national institutions manage the databases or access points to European databases such as VIS, SIS and Eurodac.

In **subsection 4.4** recent developments and planned changes (related to PNR, Entry Exit System, SISII/AFIS, etc.) in relation to the processing of personal data are pointed out.

Section 5 refers to possible privacy concerns on the sharing and collection of personal data raised by NGO's and in parliamentary questions and highlights the role and activities of the Belgian Privacy Commission.

The Belgian Privacy Act is intended to protect citizens against the abuse of their personal data. The rights and obligations of the individual whose data are processed as well as the rights and obligations of the processor have been laid down in this act. The Privacy Act also established the **Privacy Commission**, which is an independent federal body ensuring the protection of privacy when personal data are processed.

The final section 6 contains conclusions and provides reflection on the challenges and practices for establishing identity in the different migration processes and the return procedure.

Overview of the national framework

1.1 Challenges in relation to identity management in the migration process

Main issues, challenges and difficulties in Belgium

a) Identification challenges in the framework of the procedure for international protection

Establishing the identity in the framework of the procedure for international protection comes along with many challenges. Asylum applicants sometimes claim to be **unable to produce their official travel and identity** documents. However, this does not necessarily mean that identity fraud is involved. Asylum applicants are sometimes advised by their network not to provide these documents. This, among other reasons, hampers the identification process in the event of a forced return in case the application is rejected. Furthermore, for a number of applicants, it is simply **not possible to produce an identity document**, because for example they never have had an official identity document. For example, this applies to applicants from Somalia, where since decennia, no official population register or authority is in place to issue internationally recognised identity documents.

While not all asylum applicants provide an identity document, it is still **not possible to verify or to authenticate all the documents submitted** by asylum applicants. In fact only a small fraction of the documents produced in the framework of an international protection procedure are authenticated, in particular in recent years when a significant increase in the number of asylum applications took place. In recent years, the CGRS was in particular confronted with a substantial number of forged or falsified documents from Iraq. But, for other countries of origin, false and unreliable documents also prove to be a challenge. Besides, for several countries of origin, the authenticity of a **document is extremely difficult or impossible to verify (see below)**. The authorities of some countries of origin issue identity documents merely on the basis of the asylum applicant or statements of a third person and **original documents can often be obtained against payment**. Therefore no identity document, even an original one, has absolute probative value. During the assessment of the application for international protection, the documents are always taken into consideration along with the statements of the applicant and the situation in the country of origin.

b) Identification challenges in the framework of preparing forced return

Applicants for international protection whose application is rejected and **irregularly staying migrants tend to be rather uncooperative** when it comes to establishing their identity in view of a forced return. This translates itself into withholding or destroying identity documents, making false statements regarding the nationality and/or the identity or using several identities.

Another main difficulty as regards the identification in the framework of a return procedure is a **lack of cooperation from several countries of origin** (see below). This lack of cooperation of the consular posts of the countries of origin can be manifest), but for many countries of origin, the cooperation is substandard, translating into late replies to identification requests, demand for many details regarding the identity or background information and reluctance to issue a laissez-passer. Many countries of origin tend to be far less cooperative and more demanding regarding the proof to establish the identity when it concerns a forced return compared to a voluntary return.

Apart from that, a number of **identification files are complex** due to the fact the person is not officially registered in his country of origin. For many Sub-Saharan African countries for example, the birth registration is very low, in particular in rural areas.⁽²⁾ Belgium experiences problems with countries which do not have national registers or databases that can be used for comparison. Other countries have national registers and databases, but they are of poor quality.

In the case that national registers and databases are available, **technical obstacles** can arise, such as limited possibilities to link data stored in different databases and limited possibilities to exchange biometric data with many countries of origin. In most cases specific Memoranda of Understanding (MOU) have to be signed to make a digital transfer of fingerprints to the country of origin with the aim to identify a person in the framework of return possible.

Obviously the introduction of the **Visa Information System (VIS)** is a big step forward for what concerns the monitoring of immigration of third country nationals towards the EU. The database clearly has potential to be an extremely useful tool to establish the identity in migration, asylum and return procedures. However, making use of the VIS within the framework of forced return has also proved to be challenging for the Member States,⁽³⁾ including for the Belgian Immigration Office. There are some practical and judicial difficulties in this regard such as the fact that third countries are only obliged to accept a hit in the VIS to establish the identity, if this is regulated in a specific readmission agreement. Many embassies of third countries do not accept a VIS-hit as sufficient to establish the identity and require a copy of the passport before issuing a laissez-passer. The Belgian embassies and consulates store a copy of the passport in the database, but it is more difficult if the visa was issued by another EU Member State, that will not necessarily

2 Brownen Mandy, Practical realities of national identification systems in Africa: When is an undocumented person stateless? EMN Norway's National Conference, Oslo, 1 June 2016.

3 A recent report of the European Commission stressed that, while the VIS is instrumental in assisting in the identification and return of illegal immigrants, its use in the return procedure has so far been rather limited and that recent trends indicate an increased need to use this instrument which provides a proof of identity necessary in a return procedure. The report further suggests how the VIS could possibly play a much more significant role for return purposes.

have stored a copy of the passport.⁽⁴⁾ As a consequence, in 2016, only a limited number of persons (no statistical information available) could be identified in the framework of a return procedure through a hit in the VIS.

Finally it is also worth mentioning that there are **legal limitations** such as the maximum period a person can be held in detention during the identification process. This can prevent the return to be carried out, in particular if the identification or the issuance of the laissez-passer drags on.

c) Identification challenges in the framework of legal migration

Visa C

In **most cases there is no issue to establish the identity** of people applying for a short stay visa since the applicant who applies for a visa C has to submit a valid international travel document.⁽⁵⁾

However, some **passports are not recognized by Belgium**. It concerns for instance the Somalian passports and some service passports and special passports for a number of countries as listed on the website of the European Commission.⁽⁶⁾

The Belgian visa policy aims to find a good balance between promoting economic relations and being customer-oriented towards bona fide travellers on the one hand, and on the other hand, to provide sufficient safeguards to refrain exclude persons who have malicious intentions, are a danger to public order or national security or attempt to make improper use of their visas (for example overstayers). **Finding this balance** is a challenge for the consular posts. Besides, the extent to which safeguards are foreseen can differ from one country to another, depending on the risk of abuse, the risk of irregular migration and security risks, making it difficult to issue common guidelines covering all possible situations.⁽⁷⁾

The staff working in the diplomatic posts are closely monitoring the validity of travel documents submitted. They are in charge of the registration of biometric data (fingerprinting) in the framework of an application for a visa C, and for a systematic check in the VIS, SIS and the EU Visa ban list, via the database "VISANET". However, it is **not possible to perform an extensive verification** of each submitted travel document or to systematically transfer the travel documents to specialized services for authentication. If it concerns **visa fraud** (e.g. a false visa sticker), diplomatic posts are not able to record this. Besides, consular services do not carry out identity checks or checks on the travel document of persons who are exempt from visas. The identity and documents of TCNs who are visa exempted are verified by the border guards (which is also the case for visa holders).

4 the VIS Regulation doesn't oblige the storage of scanned pages of the passports in the VIS nor it is provided by the VIS Regulation that information can be exchanged among the Member States (see also EMN Ad-Hoc Query on VIS in return matters (part 1: copies of documents, access to VIS and fingerprints), launched on April 6, 2017.

5 The travel document must be valid for at least three months after the intended date of departure from the territory of the EU Member States, the travel document must contain at least two blank pages and it must be issued in the previous ten years.

6 <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/index>

7 Source: Ministry of Foreign Affairs.

Visa D

Applications for a national visa (VISA D/long stay) have to be lodged from abroad at the diplomatic posts. In principle all third country nationals who apply for residence for over three months have to apply for a visa.⁽⁸⁾ In many cases the consulates have to consult the Immigration Office before a visa can be issued.

For most cases establishing the identity in the framework of a legal migration procedure for long stay purposes is not problematic, since the applicant has to submit a valid travel document (passport). However, for some countries of origin, establishing the identity can be challenging, in particular in the **family reunification procedure in those cases where there are no valid identity documents available** or in cases where the birth certificate or marriage certificate to prove the family ties is not available or unreliable.⁽⁹⁾

A check in the SIS and the VIS is performed when applying for a national visa. Another check in the SIS is done at the border when entering the Belgian territory. However, currently there is no EU legal framework to store fingerprints in the VIS in the framework of an application for a visa D. Also at national level **fingerprints in the framework of an application for a visa D are currently (with the exception of students coming from Africa) not collected (but there are plans to do so).**

d) Identification challenges in non-EU harmonised procedures

In Belgium **Article 9ter** of the Immigration Act constitutes the legal provision for the granting of a residence permit on medical grounds and **Article 9bis** allows an exception to the rule for a third-country national to apply for an authorisation to stay on the Belgian territory from abroad and is often referred to as humanitarian regularisation.

The submission of an identity document is a condition of admissibility in the context of an application on humanitarian or medical grounds. In the context of an application on medical grounds, the applicant can also demonstrate his identity on the basis of various documentary evidence that together demonstrate the identity. The **appreciation of this documentary evidence** and assessment whether or not the identity is indeed established can be challenging. As regards the procedure on medical grounds, it is important that the nationality of the person concerned is established in order to determine whether or not the person concerned can receive appropriate medical treatment in his country of origin. If this is the case, the application can be rejected on this ground.

For what concerns the procedure to apply for a permit on humanitarian grounds (Article 9bis of the Immigration Act), the rules regarding the documentary evidence are stricter and the applicant must submit an identity document as such. In this regard, only an internationally recognized

8 There are exceptions, such as the possibility to apply for the residence permit at the municipality when the person is already staying legally in Belgium.

9 Source: Immigration Office, Direction Long Stay

passport or equivalent travel document or national ID card can be accepted. However, it is not required that these documents are still valid.

Nevertheless, within the framework of both procedures (9bis and 9ter), asylum applicants whose application has not been definitively rejected are **not obliged to comply with this condition to submit an ID-document**. In this situation, where there is no requirement to submit an identity document, establishing the identity can be more challenging.

In the context of both procedures (9bis and 9ter), it is important to check whether the person concerned could pose a threat to public order or national security, therefore, before issuing a residence permit on medical or humanitarian grounds, the personal data is checked in SIS II and the data is transferred to the police for a verification in the police database. For a number of nationalities, the information is also transferred to intelligence services. One of the challenges in connection with a procedure 9bis/9ter lies in the fact that in **principle no fingerprints are taken**. Therefore, checking in the respective databases is based on name and other identity data which, of course, is more time consuming and less conclusive compared to a comparison of fingerprints. Because of the lack of fingerprints, it can also not be excluded that the applicant has submitted an application for a residence permit on humanitarian or medical grounds under a different identity in comparison to the identity used in other procedures (such as the asylum procedure). Furthermore, also **falsified documents** are submitted in the framework of an application on medical or humanitarian grounds, however, there are no statistical data available to outline the extent of the problem.⁽¹⁰⁾

(Section 1 – Q1a of the EMN Questionnaire)

Evolution in number of cases and recent trends

With regard to **international protection**, there has been a very **strong increase in asylum applicants** from Syria, Iraq and Afghanistan in recent years.

In 2015, 44,760 asylum applications were lodged in Belgium. This is about the double of the number of asylum applications in 2014 (22,710). The number of asylum applications was particularly high during the second half of 2015. The number of applications peaked in September with 6,830 applicants. The top 3 of countries of origin for 2015 were **Syria (10,415), Iraq (9,470) and Afghanistan (8,310)** and in 2015 these 3 countries of origin represented 63% of all the asylum claims in Belgium. The sudden and very high increase in the number of applications during the second half of 2015 was obviously a big challenge in the asylum field, put a high pressure on the national asylum system, and increased the challenges regarding the identification of asylum applicants (see below for the specific challenges for the most important countries of origin). In 2016, 18,325 asylum applications were lodged in Belgium. This is a huge decrease compared to 2015. The decrease in Belgium is mainly due to a sharp drop in the number of Afghan, Syrian and

¹⁰ Source service for humanitarian/medical regularisation of the Immigration Office (9bis/9ter).

Iraqi asylum applicants. However, Afghanistan (2,765 applicants), Syria (2,390) and Iraq (1,180) were still the top 3 countries of origin for asylum applications in Belgium in 2016, followed by Guinea (925) and Somalia (845).

The decrease in the number of asylum applicants of 2016 didn't imply that the challenges regarding the identification of asylum applicants and assessment of their claims disappeared. All the asylum applications lodged in the second half of 2015 could not be processed within 3 to 6 months. By mid-April 2016, the backlog peaked and 18,375 cases were pending at the CGRS.

In 2015 and 2016 there was also a significant increase in the number of relocations and persons who came to Belgium in the framework of resettlement compared to previous years. Also for these cases, a security screening has to be performed and establishing the identity can be quite challenging.

A more in-depth analysis of the main motive for applications rejected in 2016, demonstrated that the number of rejections based on identity or nationality fraud is relatively limited. Most asylum applications rejected were due to the vagueness or lack of credibility of the asylum motives invoked. However, this does not mean that the challenges for what concerns establishing the identity in the framework of the asylum procedure are negligible.

The increase in positive decisions on asylum applications led to a **substantial increase in the number of family reunification requests with beneficiaries of international protection, especially for Syria, Iraq, Afghanistan and Somalia.**⁽¹¹⁾ In particular for family reunification with recognized refugees, establishing the identity (and the family ties) is more challenging, this due to **a more often lack of official travel documents.** For identification in other migration procedures, such as students or labour migration, there were no important shifts or major new challenges regarding establishing the identity.

For what concerns the **procedure for medical and humanitarian regularization**, the volume of cases (and as a consequence also the number of cases with challenges regarding establishing the identity) has declined radically in recent years.

Establishing the identity in the **context of return** continues to be very challenging, but the most important obstacles are not new (lack of cooperation from the person concerned and also a lack of cooperation from the side of some countries of origin).

For evident reasons it is difficult to say something about the evolution of irregularly staying persons. However the numbers of persons apprehended or found to be illegally present on the Belgian territory, as made available by Eurostat, indicate an increase in the numbers of irregularly staying persons in 2016.

11 Myria, Federal Migration Centre, Annual Report 2016, p. 119.

Third country nationals found to be illegally present on the Belgian territory (top 10 – source Eurostat)

CITIZEN/TIME	2011	2012	2013	2014	2015	2016
Total	13.550	15.085	15.075	15.540	16.275	19.320
Morocco	2.385	2.895	2.970	3.125	2.900	3.105
Algeria	2.725	2.855	2.400	2.095	1.720	2.090
Iraq	420	275	215	205	1.045	1.720
Iran	370	375	245	250	575	1.685
Syria	100	265	365	710	1.175	1.490
Afghanistan	360	485	470	305	690	840
Eritrea	75	60	110	405	200	645
Tunisia	750	700	600	605	540	590
Albania	380	600	705	740	965	585
India	385	385	350	375	335	575

There is obviously an increase in the number of persons in irregular stay coming from Iraq, Iran, Syria and Afghanistan in recent years. It should be noted that it is likely that these numbers include persons who are not actually nationals from these countries of origin, but merely declare to be. People from Syria for example are in principle entitled to international protection and a residence permit on this ground. These statistics can also refer to an increased effort of authorities to apprehend people in irregular stay and do not necessarily reflect an evolution in the numbers of persons in irregular stay on the Belgian territory.⁽¹²⁾

However, it is important to emphasize that even more than the increased volume of cases where no credible documentation is available within the different procedures, there is a **changed security context** that brings along additional challenges. Within the current context it is extremely important to detect and identify persons who pose a threat to national and public security as quickly as possible. This applies to all migration procedures, and in particular for migration from countries of origin where terrorist and extremist groups are active.

Another development in recent years has been the increased collection and storage of personal data, **including biometric data**, such as the collection of biomaterial data in the framework of visa applications for short stay through the VIS. However the incorporation and adequate use of biometrics for establishing the identity is a long-term process and there is obviously room for further improvement. The control of personal data in the Schengen Information System (SIS) for example is currently still alphanumeric, increasing the chance of false hits. Furthermore, the development, maintenance and management of the national databases and applications to be connected to the EU managed data systems such as Eurodac, SIS and VIS, require **substantial resources**. Also the development of applications that allow data sharing between different databases managed by different organisations can come along **with technical difficulties and/or privacy issues**. With regard to the **interoperability of databases** containing personal data, major

¹² For example, the repeated arrest of the same (self-declared) Iranians around the seaports.

challenges remain, in particular at national level. The development of additional databases with personal data (EES, PNR) as foreseen in the near future will probably come along with additional challenges in this respect (see also section 5).

(Section 1 – Q2a and Q2b of the EMN Questionnaire)

Countries of (claimed) origin for which establishing identity was considered to be particularly difficult

a) In the framework of the procedure for international protection

As already mentioned, many asylum applications have been lodged by asylum applicants from Syria, Iraq, Afghanistan, Somalia and Guinea. These are also the countries of origin for which most decisions were taken in the past few years. These **five countries are all countries of origin** where there are **challenges regarding identification and verification and/or availability of reliable identity documents**.

Please take note that the asylum application and the decision do not necessarily take place in the same year. The data on asylum applications and asylum decisions do not include persons granted a status in the framework of resettlement (data source: Eurostat, data rounded up to a unit of 5).

In the database of the CGRS, the identity documents filed by asylum applicants are systematically encoded by the “Document Service” (responsible for delivering documents to recognized refugees). Since 2016 there is accurate encoding of identity documents in the database of the CGRS in a way that allows the extraction and analysis of data, but this is only the case for asylum applicants who were granted refugee status. For a total of more than 12,000 people (including relocated and resettled refugees) to whom refugee status was granted in 2016, there were 19,611 documents (11,854 original ID-documents and 7,757 copies) submitted containing information on the identity. As most of the refugee statuses were issued to Syrians and Iraqis in 2016, it is no surprise that it concerns to a large extent Syrian documents (9,743) and Iraqi documents (5,918) submitted by persons who obtained a refugee status in 2016.

The documents submitted are mainly national identity cards and passports or copies of these documents. For young children, it often concerns birth certificates.

SYRIA

Syrian nationals applied for asylum in 2016: 2,390 (2015: 10,415)
(First instance) decisions taken in 2016 for Syria: 6,870

- Refugee status granted: 4,970
- Subsidiary protection status granted: 1,625
- Asylum applications rejected: 275

First of all, it should be noted that a very large number of asylum applications were submitted by Syrian asylum applicants over the last 2 years and that the Syrian applicants provided many identity documents. Among the Syrian refugees who were granted refugee status in 2016, no less than 9,743 documents were submitted containing identity data. Unlike most other nationalities, relatively many original travel passports were submitted by persons who were granted refugee status (2,628 passports). A possible explanation for the high number of documents is the high probability of a positive decision when the Syrian nationality can be demonstrated as well as the impossibility of return (a passport submitted in the framework of the asylum procedure will not be used in the context of a return procedure to Syria). The very high number of documents made it impossible for the CGRS to submit all these documents for authentication to the Central Squad against Forgery (CDBV/OCFR) of the Federal Police. In 2016, 107 Syrian documents were sent to this specialized police service for authentication. Although few falsifications were identified by this unit of the federal police (8 documents) in the framework of the asylum procedure, protection officers of the CGRS indicate that there are indications that false documents or fraudulently obtained Syrian ID-documents are quite regularly submitted in the context of an asylum procedure. This is also supported by articles in the international press.⁽¹³⁾

For this reason and as is the case for all nationalities, documents submitted are always assessed by the CGRS in the light of the statements made. A person with an original Syrian passport but with very little knowledge about Syria will not be granted a protection status. However, it should be noted that the CGRS applied the benefit of doubt to a large extent to Syrian applicants, thus one can not exclude that individuals who made use of a false Syrian identity or nationality have been granted a protection status.

IRAQ

Iraqi nationals applied for asylum in 2016: 1,180 (2015: 9,470)
(First instance) decisions taken in 2016 for Iraq: 5,600

- Refugee status granted: 2,735
- Subsidiary protection status granted: 555
- Asylum applications rejected: 2,310

As for Syria, there were many asylum applications for Iraq in 2016, and especially in 2015, with

¹³ <http://www.express.co.uk/news/world/604394/Alarm-Syria-sells-10000-passports-few-questions-asked> and <http://blogs.reuters.com/great-debate/2015/09/16/amid-documentation-crisis-syrians-turn-to-forgeries/>

many identity documents being submitted. For the Iraqi refugees who were granted refugee status in 2016, 5,918 documents were submitted containing identity data. The most frequently submitted documents were a national identity card (1.402 documents) or a copy thereof (863). Compared to Syria, significantly less original passports were submitted (484 original passports). Besides, the passports are also often submitted after the refugee status has been granted, for example, to change the way of writing of the name on the refugee certificate and civil status documents.⁽¹⁴⁾

For several years now, Iraq has been one of the most important nationalities for submitting forged documents. This was also the case in 2016: of the 292 requests to the federal police, 153 concerned an Iraqi document. Of these 153 documents, 44 documents were found to be false or forged. According to staff members of the CGRS, it concerns in many cases Iraqi nationals who use false identity documents to declare to come from another (more unsafe) province than the one they really originate from, this with the objective to be granted subsidiary protection.

AFGHANISTAN

Afghan nationals applied for asylum in 2016: 2,765 (2015: 8,310)
(First instance) decisions taken in 2016 for Afghanistan: 2,455

- Refugee status granted: 655
- Subsidiary protection status granted: 830
- Asylum applications rejected: 975

In 2015, there were many asylum applications lodged by Afghans, and also in 2016, Afghanistan, together with Syria, was the main country of origin for asylum seekers in Belgium. The security situation in Afghanistan is characterized by strong regional differences. As a consequence a subsidiary protection can be granted based on the general security situation for a number of provinces, while for other provinces the asylum applicant has to prove a personal risk of persecution to be granted a protection status. Consequently, the challenge for Afghanistan is to determine the region for which the assessment has to take place, based on a check using COI information. The fact that many Afghans have often stayed in other countries for some time (Pakistan, Iran, etc.) before applying for asylum in Belgium makes this assessment even more difficult. In addition, corruption in Afghanistan is widespread, in particular with regard to the issuing of documents.⁽¹⁵⁾ Also, many Afghan ID-documents (taskara) are issued solely on statements of the applicant without a possibility to verify these in a sound population register. As a consequence, the Afghan taskara has limited probative value in the framework of an asylum procedure to establish the nationality, region of origin and identity. It can only be checked whether the statements made by the person concerned correspond to the content of the taskara.

¹⁴ Source: Document Service CGRS

¹⁵ http://www.unodc.org/documents/frontpage/Corruption_in_Afghanistan_FINAL.pdf

Also typical for Afghanistan, is the frequency of age fraud. In 2016, 1,296 age assessments were performed by the guardianship service and the outcome was that 902 of them appeared to be adults (taking into account the standard deviation). Most of them concern self-declared unaccompanied minors from Afghanistan.⁽¹⁶⁾

SOMALIA

Somalian nationals applied for asylum in 2016: 845 (2015: 2,090)
(First instance) decisions taken in 2016 for Somalia: 1,425

- Refugee status granted: 765
- Subsidiary protection status granted: 210
- Asylum applications rejected: 450

There are fundamental differences between the security situations in the rural areas of Central and Southern Somalia on the one hand, and the situation in Mogadishu, Somaliland and Puntland on the other. The CGRS assesses the situation in Mogadishu, Puntland and Somaliland not of such a nature that every Somali person should be granted a protection status in accordance with Article 15c of the Asylum Qualification Directive merely because of the general security situation. As a consequence it is important to identify from which region the applicant is originating and in some cases this is quite challenging.

The lack of a central government and lack of a population register is obviously a major problem for what concerns identity documents submitted by Somali asylum applicants. The COI of the CGRS refers to the US Department of Foreign Affairs, which states that although the United States formally recognized the new government of Somalia on January 17, 2013, there continues to be no recognized competent civil authority to issue identity documents and civil register acts. The Dutch Ministry of Foreign Affairs wrote in its March 2016 official statement that this is still the case.⁽¹⁷⁾ Nevertheless, in December 2013, the National ID Card Processing Center was opened in Mogadishu, which also provides birth certificates. The US Department adds that since the start of the civil war in 1990, most archives were destroyed and that the few archives that have not been destroyed are now in the hands of individuals or for some other reason not retrievable.⁽¹⁸⁾

Besides the lack of a population register and robust central governance, the documents that are being issued are often merely based on oral statements, can be falsified⁽¹⁹⁾ or obtained via widespread corruption.

16 Source: Guardianship Service

17 <https://www.rijksoverheid.nl/documenten/ambtsberichten/2016/03/31/somalie-2016-03-31>

18 <https://travel.state.gov/content/visas/en/fees/reciprocity-by-country/SO.html#docs>

19 <http://goobjoog.com/english/police-nab-forgery-suspects-seize-hundreds-of-fake-documents-in-mogadishu/>

GUINEA

Guinean nationals applied for asylum in 2016: 925 (2015:955)
(First instance) decisions taken in 2016 for Guinea: 725

- Refugee status granted: 285
- Subsidiary protection status granted: 0
- Asylum applications rejected: 440

Also for Guinea the problem is that corruption is wide-spread and original documents (with a false content) can be obtained against payment.⁽²⁰⁾ A recent inquiry by Guinean Radio Television (RTG), posted on Youtube on 3 January 2017, carried out with hidden camera, highlights the dysfunctions of public services for what concerns the issuance of legal documents: birth certificate, certificate of residence, identity card, driving license and certificate of visit to the hospital.⁽²¹⁾

b) For implementing return

The nationalities listed below are countries of origin for which identification in the framework of implementing (forced) return is considered to be particularly challenging and where the number of persons to be returned is substantial. These are the most important countries of origin in terms of numbers and challenges but there are many other countries where identification in the context of forced return tends to be quite problematic.

In general, the identification in the framework of implementing return is challenging for most African and Asian countries, while the identification procedures for irregularly persons coming from the Balkans are in principle less challenging due to wider availability of (identity) documents and due to better cooperation with the countries of origin. For example, for the Albanese authorities, it is in principle sufficient to establish the nationality.

For each of the countries listed below the number of orders to leave the territory, the number of nationals found to be illegally present on the Belgian territory, and the number of persons returned (rejected asylum applicants and others) following an order to leave is provided. Please take note that the total number of returns also includes the voluntary returns for which there is often no issue for what concerns the identification. One can also be reluctant to calculate a so called "return rate (returns/number of orders to leave the territory) because a single person might be issued multiple orders to leave the territory. Besides, the return decision (the so called order to leave the territory) and the implementation of the return do not necessary take place in the same year. It should also be kept in mind that the number of third country nationals returned also can include (a limited number) of persons returned to other EU Member States and people returned to other third countries. (source: Eurostat database, numbers rounded up to a unit of 5).

20 Algemeen Ambtsbericht Guinee, Directie consulaire zaken en Migratiebeleid en Vreemdelingenzaken, afdeling Migratie en Asiel, 06/2014.

21 <https://www.youtube.com/watch?v=fuhCgf5SAzQ>

MOROCCO

Moroccan nationals ordered to leave the territory in 2016: 4,915
Moroccan nationals found to be illegally present in 2016: 3,105
Moroccan nationals returned in 2016 following a return decision: 495
Moroccan nationals who left the country in 2016 by forced return: 390

In 2016 Morocco was the top country for what concerns the number of nationals ordered to leave the territory as well as for what concerns third country nationals apprehended and found to be illegally present on the Belgian territory. Although the number of Moroccan nationals who could be identified and returned is substantial, the identification and return of irregularly staying Moroccans continues to be challenging due to the large numbers of persons concerned. In Belgium there are three Moroccan consulates (Antwerp, Brussels and Liège) and the degree of cooperation in the context of return procedures between the Immigration Office and the different consulates differs significantly from one consulate to another.⁽²²⁾ Besides, the identification through fingerprints cannot be performed by the consular posts in Belgium but has to be done by the authorities in Morocco. An agreement on digital transmission of these fingerprints has been reached but is not yet possible for the time being due to some operational obstacles.

IRAQ

Iraqi nationals ordered to leave the territory in 2016: 3,445
Iraqi nationals found to be illegally present in 2016: 1,720
Iraqi nationals returned in 2016 following a return decision: 1,090
Iraqi nationals who left the country in 2016 by forced return: 15

Since March 2012 the Iraqi authorities made a call to no longer carry out forced return as long as the security situation in Iraq has not improved. Therefore the Iraqi authorities are reluctant to cooperate in identification procedures of their nationals in the framework of forced return and a forced return to Iraq is in principle not possible, in particular if no valid travel document is available. However, if Iraqi citizens wish to return voluntarily, and they have no valid travel document, a *laissez passer* is issued by the Iraqi authorities. This policy is reflected in the large discrepancy between the number of voluntary and forced returns towards Iraq. In 2016, more than 1,000 Iraqi nationals returned to Iraq on a voluntary basis, while only a limited number of people could be returned in the framework of a forced return.

In exceptional situations and after bilateral negotiations, the Iraqi government can agree with the forced return of an Iraqi citizen and deliver a *laissez passer*. This was the case, for example, when a person posing a threat to public security was returned to Baghdad in January 2017.⁽²³⁾

The situation for Northern Iraq is similar. The Kurdish Regional Government is cooperative for

²² Source: Identification Cell Immigration Office

²³ <https://theotuurt.wordpress.com/2017/01/22/irak/>

what concerns voluntary return and in exceptional cases, for the identification and forced return of Iraqi Kurds with a criminal record.

The Belgian government is making an effort to maintain relations with the Iraqi government and embassy and to agree on specific cases for return, especially when it concerns a person which poses a danger to public order in Belgium. In recent years, various diplomatic missions to Iraq and Northern Iraq were organized by representatives of the highest political level and top government officials with the aim to improve the identification and return of irregularly staying Iraqi nationals. These diplomatic missions have helped to facilitate the identification process. The Iraqi embassy became very cooperative and is now willing to identify on the basis of copies of a wide range of documents (ID-card, passport, election card, etc.).

IRAN

Iranian nationals ordered to leave the territory in 2016: 1,095
Iranian nationals found to be illegally present in 2016: 1,685
Iranian nationals returned in 2016 following a return decision: 65
Iranian nationals who left the country in 2016 by forced return: 5

Though the number of Iranian nationals ordered to leave the territory and the number of Iranian nationals found to be illegally present in 2016 is substantial, there are basically no forced returns carried out to Iran due to a refusal to cooperate from the side of the Iranian government. The limited number of Iranian nationals who could be returned were in the possession of a valid travel document.

ALGERIA

Algerian nationals ordered to leave the territory in 2016: 2,100
Algerian nationals found to be illegally present in 2016: 2,090
Algerian nationals returned in 2016 following a return decision: 105
Algerian nationals who left the country in 2016 by forced return: 60

The identification of persons from the Maghreb in the framework of forced return is challenging, especially as regards persons from Algeria. The numbers indicate that there is a high discrepancy between the number of persons ordered to leave the territory and persons found to be illegally present on the one hand and the number of persons who could be returned to Algeria on the other hand. It happens that people from other Maghreb countries declare to be Algerian citizens in order to hamper the identification process and the return procedure.

Also for Algeria, identification is time consuming and the verification of fingerprints has to occur in the capital. The Algerian embassy is extremely prudent to cooperate with the forced return of persons who have family in Belgium or who have been living in Belgium for a long time. This

can lead to additional delays in the identification process. ⁽²⁴⁾

GUINEA

Guinean nationals ordered to leave the territory in 2016: 680
Guinean nationals found to be illegally present in 2016: 200
Guinean nationals returned in 2016 following a return decision: 85
Guinean nationals who left the country in 2016 by forced return: 55

The files for identification, the documents containing proof of the nationality and photos are handed over to the Guinean consul. Furthermore a meeting with staff of the embassy takes place regarding the submitted files with the objective to reach an agreement to issue the laissez-passer. In general all official identity documents issued by the Guinean authorities or the embassy are accepted to establish the identity. However, the identification procedure often drags on without an obvious reason and often it requires multiple telephone contacts, displacements and unnecessary meetings before arriving at a concrete decision on the issuance of a laissez-passer. ⁽²⁵⁾

AFGHANISTAN

Afghan nationals ordered to leave the territory in 2016: 1,410
Afghan nationals found to be illegally present in 2016: 840
Afghan nationals returned in 2016 following a return decision: 295
Afghan nationals who left the country in 2016 by forced return: 125

Although identification in the framework of return procedures for Afghans continues to be challenging, significant progress was made for Afghanistan since the end of 2016 when the EU framework "Joint Way Forward" for return towards Afghanistan was installed. The Identification Cell of the Immigration Office sends an email to the Afghan embassy with a request for identification and the request to issue a laissez-passer. The Afghan authorities have 14 days to reply to the email in case there are identity documents available (copy of the passport of the ID-card (taskara). In case there are no identity documents available, the Afghan embassy in Belgium is asked to reply within 28 days on the request for identification. In case there is no reply or confirmation within these deadlines, a person may be returned with a EU laissez-passer (in case there is no doubt regarding the Afghan nationality). Furthermore the practice to invite the persons from the Afghan embassy to perform the identification interview at the premises of the Immigration Office (instead of bringing the persons to the Afghan embassy for identification) had a positive impact on the identification process. ⁽²⁶⁾

(Section 1 – Q3 of the EMN Questionnaire)

24 Source: Identification Cell Immigration Office

25 Source: Identification Cell Immigration Office

26 Source: Identification Cell Immigration Office

1.2 Statistical analysis

a) International protection

In 2016, in 6,576 cases (7,757 persons when taking the accompanying children into account) a negative first instance decision was taken by the CGRS. It concerns rejections in the standard (non-accelerated) procedure.⁽²⁷⁾

Table 1.1: Decisions of the CGRS in 2016

Decisions of the CGRS in 2016	Cases	Persons
Decision to take the application into consideration (intermediate decision for subsequent asylum applications)	1,149	1,533
Recognition of refugee status	9,603	12,197
Granting of subsidiary protection	2,486	3,281
Refusal to take the application into consideration (subsequent asylum application)	2,032	2,445
Refusal to take the application into consideration (EU, Safe country, Refugee in another EU MS)	252	351
Refusal of refugee status and refusal of subsidiary protection status (including exclusion)	6,576	7,757
Protection status revoked or withdrawn	109	114
Total number of decisions	22,207	27,678

For 5,526 cases of those 6,576 rejections a key motive of the decision was encoded in the CGRS database. The bulk of these refusals were taken due to a lack of credibility of the asylum motives (3,445 cases). It concerns decisions where the main motive for rejecting the asylum application lies in the fact that the statements of the applicant (on the material facts) were assessed as not coherent, vague, unlikely or not convincing (see table 1.2 below).

Only in 40 cases “identity fraud” as such was encoded in the CGRS database as the main reason for rejecting the asylum application. Further analysis illustrates it concerned 11 Congolese cases, 6 from Somalia and 5 cases from Guinea. However, there were also 161 cases where the claimed nationality was not assessed credible. Further analysis reveals it concerned 54 Afghan cases and 52 Somali cases. Furthermore, there were 174 cases in which the region of origin was not credible (75 Afghanistan and 68 Somalia). It is also worth mentioning that there were 217 additional cases in which the statements regarding recent region of origin could not be considered as credible (89 Afghanistan, 55 Iraq, 32 Somalia). In 257 cases the statements of the applicant were not in accordance with Country of Origin Information (COI) or with the documentary evidence (including ID documents) submitted by the applicant. Nationality fraud or a lack of credibility regarding the region of origin, is most common for countries of origin where the security situation greatly differs from region to region, and where the region of origin can be sufficient in order to be eligible for the subsidiary protection status.

27 Source: CGRS, asylum statistics, general overview 2016

It is important to be aware that these findings are merely of an indicative nature due to the fact that the most important key motive for rejecting the asylum application is an assessment by the case-worker (protection officer) and that the reliability of the data depends on the accuracy of the registration and encoding of the information provided by the asylum applicants.

It is also important to emphasize that the protection officer can only indicate one motive as the main ground for refusal, and that it is possible that also in cases where another key motive for the rejection was chosen, there might be elements of identity/nationality/region of origin fraud. Besides the protection officer has a limited number of tools to verify the declared identity. Therefore, if the asylum application can be rejected on other grounds (e.g. lack of credibility of the asylum motives), it is possible that no thorough investigation was performed on the identity of the person concerned or authenticity of the identity documents submitted.

Table 1.2: Key-motive for rejecting refugee status and rejecting subsidiary protection

Key motive for rejecting refugee status and rejecting subsidiary protection (2016)	Cases
Lack of credibility - Not coherent, vague, unlikely, not convincing (on the material facts)	3,445
Unfounded (protection available, no actual fear, asylum motives not serious enough, etc.)	544
Lack of credibility, fraud - contradictory to country of origin information or conflicting with documents submitted	257
Lack of credibility, fraud - statements about recent stay in the region of origin not credible	217
No link with the criteria of the Geneva Convention	207
Follow-up decision ⁽²⁸⁾	181
Lack of credibility, fraud - region of origin not credible	174
Lack of credibility, fraud - nationality fraud	161
No pertinent new elements in the framework of subsequent application ⁽²⁹⁾ (application not rejected in the accelerated procedure for subsequent applications)	80
(International) protection in a third country	62
Lack of credibility, fraud - Retaining essential information	57
Exclusion (1D, 1F, danger to society, etc.)	49
Lack of credibility, fraud - identity fraud	40
Lack of credibility, fraud - membership not credible	28
Lack of credibility, fraud - Religion not credible	17
Lack of credibility, fraud - Ethical origin not credible	6
No key motive registered in the CGRS database	1,050
Total number of refusal of refugee status and refusal of subsidiary protection status (including exclusion)	6,576

28 It concerns decisions for applicants who based their asylum claim on the asylum claim of another person (in most cases the partner).

29 It concerns subsequent asylum applications who were not rejected in the accelerated procedure for subsequent asylum applications.

b) forced return of persons in irregular stay

When analysing the statistical data on identification in the framework of return, it is important to be aware that the figures are not year specific, i.e. a person may have been identified during one particular year, while the laissez-passer was issued in the next year. Nevertheless it is clear that the number of positively concluded identification files over the years is significantly lower than the number of identification files launched by the identification cells of the Immigration Office.

Furthermore also the number of laissez-passers issued by the embassy of the country of origin is lower compared to the number of identification files positively concluded. A successful identification does not necessarily imply that the country of origin will issue a laissez-passer. It is also possible that the persons had to be released from the detention facility for example due to the fact the maximum length for detention had been reached, health reasons, court order, etc.). It is also possible that there is no valid travel document available when the identification procedure is launched but that a valid travel document is submitted in the course of the identification process; in this case it is no longer required that a laissez-passer is issued by the embassy.(30)

The number for "Identification" refers to the number of Identification files processed and concluded by the Identification Cell (CID) of the Immigration Office. It concerns people for whom a return decision was issued and find themselves in a situation of irregular stay on the Belgian territory. During the identification procedure they are being held in a closed centre.

"Pre-identification" refers to persons for whom an identification was launched before a return decision was issued. It concerns identification performed by the SEFOR (Sensitization, Follow-up and Return) bureau,(31) and the detainee Identification Cell (DID) which is responsible for the identification of non-nationals in prison. It concerns also persons who are being held in the so called Open Return Places or Open Return Centres.

30 Source: Immigration Office

31 <http://www.sefor.be/en/vragen/>

Table 1.3: identification files processed, positively concluded and number of laissez-passers obtained

	2014		2015		2016	
	Pre Identification	Identification	Pre-identification	Identification	Pre-identification	Identification
Identification files processed	1,440	1,845	1,047	1,867	856	1,421
Identification files positively concluded	624	981	388	1,361	400	868
Number of Laissez-passers obtained	879		950		971	

(Section 1 – Q4 of the EMN Questionnaire)

1.3 Relevant legislative developments

Identification in the framework of international protection

The **Law of 21 November 2017, adopted in the Parliament on November 9, 2017** transposing the Asylum Procedures Directive and modifying the Immigration Act provides a number of changes related to the procedures used to determine identity within the **procedure for international protection**:

Regarding the submission and return of identity and travel documents and duty to cooperate

- Article 48/6 of the current Immigration Act states that the asylum applicant must submit all the elements in support of his asylum application as soon as possible. The new Article 48/6 §1 of the Immigration Act clarifies “all the elements” and now **explicitly refers to the provision of all documents with regard to identity, nationality, age, background, places of residence and travel route**. The adapted Immigration Act also provides that the national and international documents establishing the applicant’s identity or nationality are **retained during the asylum procedure and regulates the return** of the documents (Article 48/6 §2).
- In the framework of the **duty to cooperate** the applicant has to submit the original documents as soon as possible. If there are good reasons to assume the asylum applicant withholds information, documents or other elements necessary to the assessment of the asylum application, he/she can be invited to submit these

elements without delay, whatever the information carrier is. The refusal of the applicant to submit these elements without satisfactory justification can be an indication of the refusal to comply with the duty to cooperate.

- The new Article 57/8/1 of the Immigration Act prescribes the obligation for persons to whom a **refugee status is granted** to hand over their **valid passport to the CGRS**.

Regarding the making, registering and lodging of the asylum application

Article 50 of the modified Immigration Act introduces the concept of making, registering and lodging an asylum application as described under Article 6 of the Asylum Procedures Directive into national legislation. This could also be considered as the enshrinement in law of the so called “pre-registration” practice that was installed since March 2016. This implies that fingerprints and a photo are taken, the identification process is launched and a security screening is done before the application is formally lodged (see Q19).

Regarding the use of electronic information (for example public information on social media)

Article 57/7 of the modified Immigration Act adds the possibility for the CGRS, in the framework of the assessment of the asylum application, to consult all kinds of information that has electronically been sent or received and is publicly accessible. Making use of public information available on social media, such as Facebook, in the framework of the assessment of the asylum application and for what concerns the establishment of the identity, was already possible. But the legislative change will make it possible to ask the applicant access to private information on social media. However, before this will be possible a Royal Decree needs to be published specifying the modalities.

Regarding the collection of biometric information

Previously article 51/3 of the Immigration Act only referred to the possibility of collecting fingerprints in the framework of an asylum application. The altered Article 51/3 of the Immigration Act refers to “biometric data” instead of “fingerprints” and defines biometric data as the collection of fingerprints and facial images. It further defines “facial image” as a digital image of the face with a resolution and a quality that are sufficient to enable automated biometric comparison.

Identification in the framework of return

The most significant legislative provision regarding the identification in the framework of a return procedure is Article 1, 14° of the Immigration Act. This Article describes the term “identified third country national” as a person in possession of a valid travel document, a valid passport, a valid identity document or a person for whom the country of origin or the Belgian minister can issue a laissez-passer. This definition in the Belgian Immigration Act clearly illustrates that the

identification in the framework of a return procedure (and in the framework of legal migration procedures) is subject to the availability of a valid travel document (passport or laissez-passer).

The **Law of 21 November 2017** transposing the Asylum Procedures Directive and modifying the Immigration Act provides a few changes related to the procedures used to determine identity within the **return procedure**:

- If the **asylum application is rejected, the original identity documents are transferred to the Immigration Office** which can give it back to the applicant, but also can make use of these documents in the framework of a return procedure (Article 48/6 §2).
- The new law also modifies article 30bis the Immigration Act for what concerns the collection of **biometric data of persons ordered to leave the territory**. Article 30bis of the Immigration Act also specifies that the biometric data may be used for establishing and/or checking the identity of a non-national. Previously this Article 30bis **defined biometric data** as fingerprints and photographic material. In accordance with the new Article 51/3 of the same Act, for asylum applicants, the new article 30bis replaces “photographic material” by “facial images” and defines this “facial image” as a digital image of the face with a resolution and a quality that are sufficient to enable automated biometric comparison.

These amendments are based on the **transposition of the asylum procedures directive (APD) into national legislation, but also reflect political priorities**. One of the absolute priorities of the Secretary of State for Asylum Policy and Migration is the combat against fraud and abuse in asylum and migration procedures⁽³²⁾, including identity fraud.

As regards the amendment to transfer the original identity documents to the Immigration Office in case the asylum application is rejected, this appears to have a basis in the Belgian Coalition Agreement of 9 October 2014, stipulating that all Belgian authorities should provide all documents to the Minister or his authorized representative that can be useful for establishing the identity of a third country national.⁽³³⁾ The Coalition Agreement also refers to digitalization and alignment of digital systems.⁽³⁴⁾

Identification in the framework Legal migration procedures

The general provisions regarding establishment of identity, in particular for what concerns the documents that have to be submitted to enter the territory and the procedures to be followed when the required entry documents cannot be submitted, are regulated by the **Belgian**

32 Belgian House of Representatives, General Policy Note on Asylum and Migration, 3 November 2015, DOC 54 1428/019, p. 3.

33 Federal Coalition Agreement, 9 October 2014, p. 106.

34 Federal Coalition Agreement, 9 October 2014, p. 103.

Immigration Act⁽³⁵⁾ and the **Royal Decree**⁽³⁶⁾ on the entry, stay, settlement and removal of foreign nationals.

Chapter 2 of the Immigration Act deals with access to the territory and **short stay**. Article 2 of the Immigration Act states that the foreign national must be in possession of valid documents. For a person who is not visa exempted, this means a **valid passport or equivalent travel document with a visa valid** for Belgium issued by a Belgian diplomatic or consular representative or by a diplomatic or consular representative of another state which binds Belgium.

Chapter 3 of the Immigration Act deals with **long stay** (longer than 3 months). Article 9 of the Immigration Act stipulates that - except for deviations as determined by an international treaty, law or royal decree - the permission to stay must be requested by the third country national from abroad at the Belgian Diplomatic or consular post which is competent for his place of residence.⁽³⁷⁾

The documentary evidence required from the applicant to confirm the identity is a valid passport or equivalent travel document. For what concerns family reunification, also the family relationship needs to be established. To prove the **family relationship** established in Belgium or abroad, civil status records or judgments are required . If they are not established in Belgium, these documents must be recognized according to the rules of private international law. If necessary, they must be legalised, marked with an apostil and translated, which is regulated by the Belgian Consular Code.⁽³⁸⁾ The Immigration Act also specifies that if the applicant faces difficulties in providing the evidence required by law in order to prove the family relationship, the Minister has the discretionary power to decide to resort to “other valid forms of proof” than the official (reliable) documentation. And if there is no other valid form of proof, the Immigration Office may proceed with an interview with the applicant or any other inquiry deemed necessary.⁽³⁹⁾ In this case, a **complementary analysis, such as DNA testing** can be proposed. The Immigration Act also specifies that family members of beneficiaries of international protection whose parental or family ties precede their arrival on the territory, benefit from a more flexible regime regarding the documents that have to be submitted to establish the family ties and the absence of documents cannot be the only reason of refusal of family reunification for this category.⁽⁴⁰⁾

In Belgium, Article 9ter of the Immigration Act constitutes the legal provision for the granting of a residence **permit on medical grounds**. **Article 9bis** allows an exception to the rule that a foreign national must apply for an authorisation to stay on the Belgian territory from abroad and is often referred to as **humanitarian regularisation**. The submission of an identity document is a

35 Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals (also referred to as Immigration Act).

36 Royal Decree of 8 October 1981 on entry, stay, settlement and removal of foreign nationals.

37 Immigration Act, Art. 9.

38 Belgian Consular Code, Article 33 and Art. 34.

39 Immigration Act, Art. 12bis, §6.

40 Immigration Act, Art. 11, § 1^{er}, al. 2 and Art. 12 bis, § 5.

condition of admissibility in the context of an application on humanitarian or medical grounds. In the context of an application on medical grounds (Article 9ter of the Immigration Act), the law prescribes⁽⁴¹⁾ that the person concerned can demonstrate his identity by means of an identity document or a document containing the identity data issued by a competent authority and not drawn up on the basis of mere statements by the person concerned. However, the applicant can also demonstrate his identity on the basis of various documentary evidence that together demonstrate the identity. For what concerns the procedure to apply for a permit on humanitarian grounds (Article 9bis of the Immigration Act), the rules regarding the documentary evidence are stricter and the applicant must submit an identity document as such. In this regard, only an internationally recognized passport or equivalent travel document or national ID card can be accepted. However, it is not required that these documents are still valid. Nevertheless, within the framework of both procedures, asylum applicants whose application has not been definitively rejected or where the appeal term has not expired, are not obliged to comply with this condition to submit an ID-document.

Article 30bis §2 of the Immigration Act specifies for which categories of third country nationals **biometric data** can be collected. One of the categories for whom the Immigration Act authorises the collection of biometric data, are non-nationals who applied for a visa. Until the end of 2016 there was an exception in the Immigration Act for the collection of biometric data of applicants applying for family reunification, but this exception has been removed. So according to the current legislation biometric data can be collected for all TCN's who apply for a visa (short stay or long stay visa) regardless of the migration purpose. However in practice, until now, biometric data is only collected in the framework of an application for short stay visa (in accordance with obligation of the Visa Code)⁽⁴²⁾ and for student visa in a number of situations. At European level there are **recommended best practices** for checking whether a travel document is false, counterfeit or forged.⁽⁴³⁾

More concrete provisions regarding procedures on establishing the identity and identity documents to be submitted in the framework of legal migration procedures are in the vade mecum short and long stay of the Immigration Office and other internal guidelines. These **internal documents** serve as guidance for consular staff and staff of the Immigration Office.

(Section 1 – Q5 and Q6 of the EMN Questionnaire)

41 Immigration Act, Art. 9ter (2).

42 The Visa Code establishes the procedures and conditions for issuing visas for short stays in and transit through the Schengen States and applies to nationals of third countries that need a visa when crossing the external border of the Union, based on Regulation (EC) No 539/2001. National authorities have to verify the admissibility of the application by checking the identity of the visa holder and the authenticity and reliability of the documents submitted. After performing this task, they must create an application file in the VIS, following the procedures set out in the VIS Regulation.

43 See 7.4 of the Handbook for the processing of visa applications and the modification of issued visas https://ec.europa.eu/home-affairs/sites/homeaffairs/files/policies/borders/docs/c_2010_1620_en.pdf

1.4 Institutional framework and procedures

Identification in the framework of the asylum procedure

In Belgium, the **Immigration Office is responsible for the registration of asylum applications. The Immigration Office takes a photo of the asylum applicants and the PRINTRAK Cell fingerprints all asylum applicants aged 14 years or over. The fingerprints are compared with the fingerprints stored in national (PRINTRAK) and international databases (EURODAC, VIS).**⁽⁴⁴⁾ During this stage of registration, the Immigration Office records the identity information of the applicants, such as name, date of birth and nationality. The asylum applicants are also supposed to hand over identity documents at this stage.

In Belgium, asylum applications are assessed on their merits, i.e. whether or not the applicant in question does indeed qualify for international protection, by the **Office of the Commissioner General for Refugees and Stateless Persons (CGRS)**. Within the framework of the procedure pending before the CGRS, the asylum applicant is also asked to produce his identity documents. If the asylum applicant is unable to provide any original, authentic identification document (passport or identity card), the CGRS asks the applicant to explain this lack of documentation and to produce other documents (birth certificate, marriage certificate, driving licence, copies of identity documents, etc.) that can contribute to the establishment of the identity.

Relocation

Currently relocation takes place from Italy and Greece to other Member States, including Belgium. In Greece and Italy all applicants of 14 years of age and older are fingerprinted and the fingerprints are stored in Eurodac. In case an applicant refuses to cooperate under this procedure, he is not eligible for relocation. Before the transfer takes place, the eligible files for relocation are transferred to the Belgian Dublin Unit via Dublinnet. The information available in the file is screened by the Office of the Commissioner General for Refugees and Stateless Persons on security issues. Besides, a security screening is also performed by the Federal Police, and the Security Service (State Security) through the transfer of name lists. In case there is no security issue, the approved files are transferred to the competent asylum/relocation unit in Greece or Italy in order to arrange the transfer. Upon arrival, the relocated asylum applicants follows the same asylum procedure (including for what concerns registration and establishing the identity) as regular asylum applicants.

Identification in the framework of return

Identification within the framework of the return of rejected asylum applicants falls within the competence of the **Immigration Office**, more specifically, of the **identification cells (CID and**

44 The Eurodac database is not used to establish a person's identity as such but to check which Member State has the responsibility to examine the asylum application (Dublin Convention). In the case of a positive hit in Eurodac, the Member State(s) in question will be called upon to take charge of or take back the applicant. In its/their reply, the Member State(s) will specify the identities the person in question has used in its/their own country.

DID⁽⁴⁵⁾ and the **SEFOR Bureau**.

Rejected asylum applicants and other irregularly staying persons who received a return decision (so called order to leave the territory) may be apprehended and detained with a view to be forcibly returned to their country of origin. In this case, the Immigration Office is responsible for identification. The Identification Cell (CID) is tasked to identify the irregularly staying person if he/she is not in possession of a valid travel document. In this situation, the embassy or the consulate of a person's country of origin validates the identification and issues travel documents (*laissez-passer*).

To keep the detention period in a detention centre to a minimum, the Immigration Offices can start the identification procedure before any detention measures is taken and even before a return decision is issued, this is the so called "pre-identification". These pre-identification files are selected in consultation with the **SEFOR Bureau**.

The **Detainee Identification Cell (DID)** is charged with the task of identifying the non-nationals in prisons, with a view to returning them to their country of origin. The DID also works in collaboration with SEFOR in this respect.

Also the **local authorities** (cities and municipalities) and the local police contribute to the identification of persons in the framework of return. When a return decision is issued, the local authority asks the third-country national (TCN) to present himself before the local authority. The local authority notifies the TCN of the return decision, explains the decision and its implications, informs him/her of the possibilities of appeal and the possibilities of voluntary return. Furthermore, the municipality has to fill out and transfer an identification-form about the person concerned to the **SEFOR Bureau**. In case the TCN does not present himself at the local authority at a set date, a control of the residence of the TCN has to be carried out in order to determine why the TCN did not come. When the deadline on the order to leave the territory has expired, the local authority (police) has to verify if the TCN has effectively left his place of residence. A report on this residence check has to be sent to the **SEFOR Bureau**. If, following this residence check, the TCN is still present at his place of residence, his forced return can be organized. The **SEFOR Bureau** can instruct the police to intercept the TCN and to notify the TCN of the decision to detain him in view of his return. Following the notification of the decision, the police can bring the TCN to a closed centre for detention or to an assigned housing.

Authentication of identity documents

In Belgium, there is **no central competence centre as such for identification or identity verification** in the framework of the different migration and return procedures. However **the Central Squad against Forgery (CDBV-D/OCFR-D)**⁽⁴⁶⁾ of the Federal Police provides advisory services and other forms of support to officials responsible for establishing the identity in the

45 Identification Cell (CID) – Detainee Identification Cell (DID).

46 Office Central pour la Répression des Faux Documents or OCFR-D/Centrale Dienst voor de Bestrijding van de Valse Documenten or CDBV-D

different migration and return procedures. They provide this **support in particular for what concerns the authentication/verification of identity documents.**⁽⁴⁷⁾

This Central Squad against Forgery of the Federal police is responsible for registering the information on genuine and false documents in databases such as iFADO. This unit also provides information and training to frontline officers of the municipalities and represent the Belgian authorities at the Working Party on Frontiers and False Documents (FAUXDOC)⁽⁴⁸⁾ of the European Council.

Documents forwarded to this police unit for authentication purposes may come from many different institutions and stakeholders such as:

- Units of the local police across the country
- The municipalities (Single Points of Contact for Identity Fraud)
- The Immigration Office
- the Office of the Commissioner General for Refugees and Stateless Persons (CGRS)
- Liaison Officers of the Federal Police stationed abroad
- The Federal Public Service Foreign Affairs (unit C4 and C2).
- The Public Prosecutor's Office
- Interpol

Besides, all travel documents are checked at the external borders by the border guards. In case of doubt regarding the genuineness of a travel document, the authenticity of the identity card or passport (in particular in the framework of border controls) is authenticated by the **Fake and Forged Travel Documents Unit** (Documents de voyage faux et falsifiés or DFF/Valse en Vervalste Reisdocumenten or VVR) of the Federal Police at Brussels Airport or the specialised units at the other border posts. This Unit authenticates in particular documents submitted in the framework of border procedures, but exceptionally also documents intercepted on the territory can be send to this unit.

Documents can be authenticated and officially labelled as false documents by these two specialised units of the federal police mentioned above, but there are several other actors who can verify identity documents. Documents submitted in the framework of a visa-application are checked at the diplomatic posts. For what concerns persons who are on the Belgium territory, first line verification of identity documents can be performed by the municipality and the local police. Besides, also several units of the Immigration Office can perform a (front line) verification of documents.

47 The authenticity or validity of original identity or travel documents within the framework of border control and repatriation may also be checked by Fake and Forged Travel Documents Unit of the Federal Police at Brussels Airport.

48 <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-frontiers/>

Identification in the framework of legal migration procedures

For **residence up to three months** (so called C-visa/Schengen visa/short term visa/short stay visa/visitor's visa) the application has to be made at the **Belgian consular post** (Ministry of Foreign Affairs) where the foreigner resides or at the diplomatic post representing Belgium. As part of the outsourcing of visa applications, for a number of diplomatic posts, contracts are concluded with **visa agencies**.

To establish the identity in the framework of a visa application for short stay, the applicant has to submit his passport and is fingerprinted for collection in the Visa Information System (VIS), and the application is handled in accordance with the EU Visa Code. The Belgian consular post is not allowed to refuse the visa application without consultation of the **Immigration Office** or, when it concerns diplomatic or service passports, the **Federal Public Service Foreign Affairs**. In a number of situations the visa cannot be granted without consultation of the Immigration Office such as for example in case of doubt about the bona fide nature of the application, in case no valid travel document can be submitted (the approval to issue a laissez-passer must be given by the Immigration Office), in case there is a hit in the Schengen Information System (SIS), etc. In fact, the diplomatic post can only issue visa without prior consultation of the Immigration Office if the applicant fulfils all conditions for entry (including the submission of a valid travel document and thereby establishing the identity) and if there is no doubt about the travel purpose (no indications the applicant will overstay).

Also visa applications for **long-term stay** (so called visa D/national visa) have to be submitted to the **Belgian consular post**. In most cases, the visa-application for a long term visa is transferred to the **Immigration Office**. In a limited number of cases, visa may be issued by the diplomatic posts without prior consultation of the Immigration Office for example when it concerns scholarship students, family reunification with a Belgian or EU citizen or in the framework of a labour permit type B.⁽⁴⁹⁾

The **Federal Public Service Foreign Affairs** is responsible for apostillation and legalization of documents. This is not a verification of the content, nor an authentication, but it reduces the risk of fraud, as it is checked whether the document has been issued by the competent authority. If the consular officer doubts the authenticity of the document, an investigation can be conducted.⁽⁵⁰⁾

Upon arrival at the Belgian external borders, **border guards** of the federal police perform a systematic check on all third country nationals. In case it concerns a visa holder, the border guard verifies if the person at the border concerns the same person to whom the visa was issued. For all TCN's, the travel document is verified and scanned by a machine that checks passport codes and uses UV light. The documents are also checked for a hit in the VIS and SIS II. The verification in the SIS II is an alphanumeric check based on name, nationality and date of birth. Furthermore, questions are asked about the travel purpose. When the authenticity of identity documents at

49 Source: FPS Foreign Affairs.

50 Source: FPS Foreign Affairs

Brussels Airport has to be confirmed, the **Fake and Forged Travel Documents Unit of the Federal police** is involved.

When the entry conditions (art. 6 the Schengen Borders Code) are not fulfilled (example: when the person does not have a valid visa or if there is doubt about the identity of the TCN, when there is an unclear travel purpose, etc...), the case is transferred to the **border inspection unit of the Immigration Office** which decides on the admission or refusal of entry into the territory.⁽⁵¹⁾

In Belgium, the **municipalities** are competent for issuing electronic residence cards to foreigners. The municipal officials responsible for issuing the residence cards are in close contact with the Immigration Office. A single point of contact (SPOC) is installed in each municipality as a reference person for detecting cases of identity fraud at the local level in the framework of the application, renewing and issuing of residence cards for foreigners.

Task Force against identity fraud

In 2015 a **federal Task Force “Prevention and Combating Identity Fraud”** was installed, which is coordinated by the General Directorate of Institutions and Population (National Register) of the Federal Public Service (FPS) Home Affairs. This Task Force focuses on the issue of identity fraud in general, and not merely in the context of migration procedures. The purpose is to exchange information between the competent federal authorities, municipalities and consular posts, as well as with the police. This taskforce is made up of identity experts from the various departments of the FPS Home Affairs (General Directorate of Institutions and Population, FPS Foreign Affairs and General Directorate of Security and Prevention), the FPS Foreign Affairs and the Central Squad against Forgery of the Federal police.

The most important objectives of the Task Force are:

- A better coordination and an integrated and integral approach to the prevention of and fight against ID-fraud
- A uniform information flow between the actors involved
- A consulted response to certain new forms of identity fraud discovered at federal and local levels
- Sensitize to the risks of administrative identity fraud
- Develop tools and initiatives to address identity fraud
- Analysis of national and European reports on identity fraud
- Development of exchange and training courses with the municipalities
- Increase exchanges with the actors working in the field and increase expertise.⁽⁵²⁾

⁵¹ Source: Border Inspection Unit Immigration Office and Federal Police at Brussels International Airport.

⁵² Circular of 27 May 2016 on the coordinated approach and fight against identity fraud on a federal and local level.

Access to various EU databases

The Immigration Office has access to EURODAC; the Federal Police, the Immigration Office and the diplomatic posts have access to SIS II and the Immigration Office, the FPS Foreign Affairs and the diplomatic posts have access to VIS. The CGRS has no direct access to VIS, Eurodac and SIS II, but the result of the check of these databases performed by the Immigration Office is in principle in the administrative file that is transferred by the Immigration Office to the CGRS in the framework of an asylum procedure. Besides, the CGRS can contact the Immigration Office for additional information or verification in one of these databases.

(Section 1 – Q7, Q8, Q9, Q10, Q11 and Q12 of the EMN Questionnaire)

Procedural steps to establish identity of third-country nationals in various migration procedures

M Migration procedure	Steps in the procedure to establish identity
<p>International protection</p>	<p>Immigration Office</p> <p>At the Immigration Office the asylum applicant is requested to give his name and to present his identity documents. A photo is taken and asylum applicants (14 years or older) are fingerprinted. The fingerprints are compared in the national and international databases, Printrak, Eurodac and VIS. In case the fingerprints comparison reveals that the person is known under another identity or alias, the Immigration Office tries to establish the true identity.</p> <p>The statements of the asylum applicants related to his identity, origin and route, as well as the answer to a questionnaire filled out at the moment of registering the asylum application, is transferred to the CGRS (Art 51/10 Immigration Act)</p> <p>CGRS</p> <p>The asylum application is assessed by the CGRS, which includes a credibility assessment on the identity in a broad way. Several methods are used to verify the identity such as depth interviews, the inquiry of documentary evidence submitted, COI information and a screening on social media.</p>
<p>Forced return</p>	<p>Municipalities, local police and SEFOR</p> <p>The identification form about the person to whom a return decision was issued has to be transferred by the local authority to the SEFOR Bureau of the Immigration Office. The latter can instruct the police to intercept the TCN if the person is irregularly staying on the territory and does not cooperate under the return procedure.</p> <p>I Identification Cells of the Immigration Office</p> <p>The Identification Cells of the Immigration Office (CID and DID) seek to identify the irregularly staying person if he/she is not in possession of a valid travel document. The Identification Cells establish the identity of the person through several methods. The fingerprints are taken and compared with Printrak, Eurodac and VIS. However, the embassy or the consulate of a person's country of origin has to validate the identification and has to issue a travel document (laissez-passer) in case no valid travel document is available.</p>

<p>Short stay visas</p>	<p>C Consular Post</p> <p>T The application has to be made at the Belgian consular post (Federal Public Service Foreign Affairs) where the foreigner resides or at the diplomatic post representing Belgium. To establish the identity in the framework of a visa application for short stay, the applicant has to submit his passport and is fingerprinted for collection in the Visa Information System (VIS), and the application is handled in accordance with the EU Visa Code.</p> <p>I Immigration Office</p> <p>T The Belgian consular post is not allowed to refuse the visa application without consultation of the Immigration Office, and in a number of situations the positive advice of the Immigration Office is required to issue to visa.</p> <p>B Border Guards</p> <p>U Upon arrival at the Belgian external borders, border guards of the federal police perform a systematic check of all third country nationals. In case it concerns a visa applicant, the border guard verifies if the person at the border is the same person to whom the visa was issued. For all TCN's, the travel document is verified and scanned by a machine that checks passport codes and uses UV light. The documents are also checked for a hit in the VIS and SIS II.</p>
<p>Long stay visas/ permits for family reasons</p>	<p>Consular Post</p> <p>The visa application has to be submitted to the Belgian consular post. The submission of a valid travel document is in principle required to establish the identity (more flexibility when it concerns family reunification with beneficiaries of international protection to establish the identity and the family ties). Fingerprints are currently not taken or stored in the framework of an application for a visa D for family reasons. Until recently Article 30bis of the Immigration Act explicitly excluded the possibility to take fingerprints for applicants applying for family reunification. In the course of 2017, Article 30bis of the Immigration Act has been amended and makes it possible to take and store biometric data for all applicants applying for a visa (including applicants for family reunification). However due to technical reasons this is not yet the case in practice.</p> <p>Immigration Office</p> <p>In most cases, the visa application for a long term visa is transferred to the Immigration Office. In a limited number of cases, visa may be issued by the diplomatic posts without prior consultation of the Immigration Office, for example when it concerns family reunification with a Belgian or EU citizen.</p> <p>Border Guards</p> <p>Upon arrival at the Belgian external borders, border guards of the federal police perform a systematic check on all third country nationals. In case it concerns a visa applicant the border guard verifies if the person at the border is the same person to whom the visa was issued. For all TCN's, the travel document is verified and scanned by a machine that checks passport codes and uses UV light. The documents are also checked for a hit in the VIS and SIS II.</p>

<p>Long stay visas/ permits for study reasons</p>	<p>Consular Post</p> <p>The visa application has to be submitted to the Belgian consular post. The submission of a valid travel document is required to establish the identity. In principle fingerprints are currently not taken or stored in the framework of an application for a visa D for study reasons, with the exception of the fingerprints of students who submit their application in a Belgian diplomatic or consular post in Africa. These fingerprints are taken in the Belgian diplomatic or consular posts (at the embassy) at the moment of the visa application and stored in a national database (AFIS).⁽⁵³⁾</p> <p>Immigration Office</p> <p>In most cases, the visa-application for a long term visa is transferred to the Immigration Office. In a limited number of cases, visa may be issued by the diplomatic posts without prior consultation of the Immigration Office, for example when it concerns scholarship students.</p> <p>Border Guards</p> <p>Upon arrival at the Belgian external borders, border guards of the federal police will perform a systematic check on all third country nationals. In case it concerns a visa applicant the border guard verifies if the person at the border is the same person to whom the visa was issued. For all TCN's, the travel document is verified and scanned by a machine that checks passport codes and uses UV light. The documents are also checked for a hit in the VIS and SIS II.</p>
<p>Long stay visas/ permits for the purposes of remunerated activities</p>	<p>Consular Post</p> <p>The visa application has to be submitted to the Belgian consular post. The submission of a valid travel document is required to establish the identity. Fingerprints are currently not taken or stored in the framework of an application for a visa D for the purpose of remunerated activities.</p> <p>Immigration Office</p> <p>In most cases, the visa application for a long term visa is transferred to the Immigration Office. In a limited number of cases, visa may be issued by the diplomatic posts without prior consultation of the Immigration Office, for example when it concerns a labour permit type B.</p> <p>Border Guards</p> <p>Upon arrival at the Belgian external borders, border guards of the federal police perform a systematic check on all third country nationals. In case it concerns a visa applicant the border guard verifies if the person at the border concerns the same person to whom the visa was issued. For all TCN's, the travel document is verified and scanned by a machine that checks passport codes and uses UV light. The documents are also checked for a hit in the VIS and SIS II.</p>

53 EMN AHQ, Biometric information for legal migration cases, launched by SE EMN NCP, launched on 30 May 2017

2 Methods for establishing identity

2.1 Definition and Documents required for establishing identity

There is no legal, nor formal operational definition of the concept “identity” in the framework of the different migration procedures and the return procedure. However article 1, 14° of the Immigration Act describes the term “**identified foreigner**” as a person in possession of a valid travel document, a valid passport, a valid identity document or a person who belongs to the category for whom the country of origin or the Belgian minister can issue a laissez-passer.⁽⁵⁴⁾

This general **legal definition is valid for all migration procedures**, but is in particular relevant in the framework of legal migration procedures and for what concerns the return procedure. This is linked to the fact that a valid travel document is required both in the context of a return to the country of origin and also to enter Belgium via legal migration procedures.

In the context of an application for international protection, the identity of an applicant may also be considered as established, even if no official identity documents or travel documents were submitted. In such situations, the benefit of the doubt can be granted, in case the person concerned has made a sincere effort to support his claim with documentary evidence, a satisfactory justification regarding the lack documentary evidence can be provided, the statements are coherent and plausible and the asylum applicant can be considered as credible in general.⁽⁵⁵⁾

In the context of international protection, it is of utmost importance to determine the nationality and the region of origin, this with a view to assess the risk of persecution or serious harm.

(Section 2 – Q13 of the EMN Questionnaire)

What types of documents are accepted to establish the identity

In the framework of the different migration and return procedures a **wide range of documents** and other information can be accepted as (contributing to) establishing the identity.

54 Immigration Act, Art. 1, 14°

55 Immigration Act, Art. 48/6

Documents accepted as (contributing to) establishing the identity

Type of document	(a) applicants for international protection	(b) for the return process	(c) third country applicants for visitors visa and permits for the purposes of study, family reunification and remunerated activities
Official travel documents: Passports, ID cards	Passport and ID-card	Passport or other valid travel document (laissez-passer)	Passport or other valid travel document (laissez-passer)
Other documents: birth certificates, driving licence, divorce certificates, marriage licences, qualification certificates, house books etc.	Civil status certificates (birth certificate, marriage certificate), driving licence, proof of nationality, etc.	All documents (original or copies) can contribute to establish the identity and can contribute to a positive identification and issuance of a laissez-passer.	Civil status certificates (to establish the family relationship in case of family reunification)
Informal (residence) documents, such as UNHCR registration documents	Copies of ID-documents and civil status certificates, etc. UNHCR/UNRWA registration documents, diploma's and qualification certificates, ...	All documents (original or copies) can contribute to establish the identity and can contribute to a positive identification and issuance of a laissez-passer.	UNHCR registration documents can contribute to establish the identity when no official ID/travel document can be submitted (most often in case of family reunification with a beneficiary of international protection).

As defined by Article 1, 14° of the Immigration Act, the **core documents** for all procedures are a passport, ID card or other valid travel document.

Copies of documents are accepted as contributing to the establishment of identity, in particular copies of the passport and the ID Card. Copies of these documents can be accepted in the framework of the asylum procedure or identification in the framework of a forced return procedure. For what concerns the latter, if a copy of the passport is available, it is more likely that countries of origin consider the person as identified and issue a laissez-passer.

If the applicant is unable to submit the original documents in the framework of legal migration procedures, it can be decided to process the visa application using photocopies. However, the final decision can, in principle, only be taken when the originals of the required documents have been submitted.⁽⁵⁶⁾

(Section 2 – Q14 and Q15a of the EMN Questionnaire)

56 Source: FPS Foreign Affairs

Determining the authenticity of documents

Due to the large number of documents submitted in the framework of different migration procedures only a small fraction of all the documents can be transferred to the specialised and centralised unit of the federal police for authentication.

In 2015 there was a **substantial increase in asylum applications from applicants from Syria, Afghanistan, Iraq and Somalia** and **many documents were submitted** in the framework of the asylum procedure. These countries of origin are all countries of origin for which the authenticity of the documents might be difficult to verify and with a **considerable risk of document fraud, and of fraudulently obtained authentic documents**. Besides, identity documents are quite often issued based on oral statements merely (for example due to a lack of reliable population registers). As a consequence an authentic document might have limited probative value.

In the framework of **legal migration procedures**, in particular family reunification, the major issues are fraud with civil registry documents (mainly for African and Asian countries) and also fraudulently obtained authentic documents.⁽⁵⁷⁾ The increase in positive decisions in asylum applications led to a **substantial increase in the number of family reunification applications** in 2016, especially for Syria, Iraq, Afghanistan and Somalia.⁽⁵⁸⁾ In particular **for family reunification with recognized refugees, verification of the documentary evidence is challenging**.

The Central Squad against Forgery of the Federal Police (CDBV-D/OCRF-D) that is responsible for authentication of documents submitted within the different migration procedures indicated that the three most frequent types of falsifications concern **fraudulently obtained authentic documents, counterfeit documents and forged bio page**.⁽⁵⁹⁾

However, there is no comprehensive statistical information available on the number of forged documents detected at each stage of the migration procedures or on the type of problematic documents in each migration procedure. Only statistics on the number of **intercepted false passports and identity cards** by the federal police were provided in a response to a Parliamentary question. These statistics only refer to the number of false ID-documents intercepted at the external borders, as well as the number of false documents intercepted on the territory that were transferred to Central Squad against Forgery (CDBV-C/OCRF-D).⁽⁶⁰⁾ For what concerns the latter, these statistics are not comprehensive because it is possible that forged identity documents were intercepted on the Belgian territory but were not transmitted to the Central Squad Against Forgery. Concerning the forged documents intercepted on the territory there are also no statistics available regarding the place of interception. The forged identity cards in these statistics concern in most cases false Belgian identity cards, while the fake passports usually concern foreign passports.

57 Source: FPS Foreign Affairs

58 Myria, Federal Migration Centre, Annual Report 2016, p. 119.

59 Source: Central Squad Against Forgery

60 This concerns for example documents transferred to the Central Squad Against Forgery by the municipalities, the local police, the Immigration Office, the CGRS, etc. (see Q11).

In 2016, in total 1,755 forged identity documents (passport or identity card) were detected by the border guards (735 documents) and by the Central Squad against Forgery (1.020 documents). For what concerns the documents intercepted on the territory and transferred to the Central Squad against Forgery, it concerns 477 false ID-cards and 543 false passports.

As regards the false documents intercepted at the external borders (735) in 2016, it concerns mainly documents intercepted at Brussels National Airport (304 false passports and 111 false identity cards), furthermore also 173 false documents (66 passports and 107 identity cards) were intercepted at the border control for the Eurostar train.

The numbers further illustrate that in total, in the past 5 years between 2012 and 2016, the federal police intercepted 10,674 false identity cards and passports (5,508 false documents and another 5,166 false identity documents detected through internal controls).⁽⁶¹⁾

In addition, the federal police also pointed out that the **quality of the false documents is increasing**. The reason could be that it has become easier to purchase professional devices to falsify documents.⁽⁶²⁾

The circular of 27 May 2016 on the coordinated approach and fight against identity fraud at federal and local level refers to the fact that fraudsters use more often the following modus operandi: **look-alikes/imposters** and the submission **of forged or falsified breeder documents** (e.g. birth certificate) that can serve as a basis to obtain other (genuine) identification documents. The guidelines in the circular are intended for the municipal officials responsible for issuing and renewing residence cards, as well as for the staff of consular posts to whom visa applications have to be submitted. The municipal official or consular agent who doubts the authenticity of an identity or travel document or civil status record must examine the document accurately and check certain security features. A number of security features of foreign documents can be verified by the European Council's PRADO website www.consilium.europa.eu/prado. Security features for Belgian documents can be checked on www.checkdoc.be. In case of serious doubt as to the authenticity of the document, the document must be scanned and submitted to the municipal or consular Single Point of Contact (SPOC) for identity fraud, which may conduct further frontline checks in administrative databases.⁽⁶³⁾ In case of clear indications of document fraud, the document is submitted to the Central Squad against Forgery in consultation with the local police.

Furthermore there are internal guidelines for the border guards, consular staff, the Immigration Office and the CGRS on the control of the identity of a person and his identity documents. Sometimes these guidelines are country-specific.

61 Parliamentary question from Barbara Pas on false identity documents, 10/02/2017, Bulletin B115, pp 122-125.

62 Het nieuwsblad, Federale politie onderschept meer dan 1.700 valse identiteitskaarten en paspoorten, de kwaliteit stijgt, 17/05/2017.

63 Parliamentary question from Roel Desyn on identity fraud, 29/09/2016, Bulletin 94.

In its action plan to strengthen the European response to document fraud, the European Commission indicated that the introduction of more security features, new production methods and document inspection systems is making it more difficult to forge or counterfeit identity and travel documents. In response, however, fraudsters are increasingly shifting from ‘traditional’ fraud – which focuses on the physical document, for example by altering the date of validity in a passport (forgery) or producing a totally fake document (counterfeit) – to other types of **document fraud, such as lookalike fraud**. They are also targeting other types of documents, such as the **breeder documents** used to support applications for genuine travel documents. ⁽⁶⁴⁾ As already mentioned this is also a recent trend in Belgium.

(Section 2 – Q15b, Q15c, Q16 and Q17 of the EMN Questionnaire)

Exemptions to the obligation to present an official travel document in the framework of legal migration

There are no official exemptions to the obligation to present an official travel document in the framework of a visa application. In the framework of legal migration procedures the original valid travel document is in principle required to submit an admissible visa application.

However, if it is not possible to present an official travel document, a laissez-passer can be issued by the Belgian Consular Post, but prior consultation of the Immigration Office is always (for visa short stay as well as long stay visa, also called national visa) required in this situation. This happens quite regularly in the framework of family reunification with beneficiaries of international protection.⁽⁶⁵⁾ The exceptions are not listed in legislation, but internal guidelines provide more instructions on situations in which a laissez-passer can be issued.

(Section 2 – Q18 of the EMN Questionnaire)

64 European Commission, Communication from the commission to the European Parliament and the Council, Action plan to strengthen the European response to travel document fraud, 18/12/2016.

65 Source: FPS Foreign Affairs

2.2 Methods used in the absence of documentary evidence of identity in the asylum and return procedure

Methods **used** for establishing identity in the asylum/ return procedure (I) ⁽⁶⁶⁾

Method	Applicants for international protection	Return of rejected applicants for international protection
Language analysis to determine probable country and/or region of origin	Optional (exceptional)	Optional (a rudimentary form of language analysis can be performed. The embassy or consulate of the country of origin may also perform a language analysis).
Age assessment to determine probable age	Part of Standard Practice (in case there is doubt about the age of the unaccompanied minor)	Part of Standard Practice (in case there is doubt about the age of the unaccompanied minor)
Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity) ⁽⁶⁶⁾	Obligatory	Optional
Identity related paper and e-transactions with the authorities (e.g. tax, social benefits)	No	No
Identity related paper and e-transactions with the private sector (e.g. bank)	No	No
Identity related e-transactions in connection with social media	Part of Standard Practice (since 2016)	No
Smartphones and other digital devices: May your law enforcement/immigration authorities confiscate (temporarily or permanently) such devices and access their content in their efforts to establish or verify an identity?	No	No
Other	Gathering country of origin information to support the verification of the nationality and region of origin.	Regular diplomatic missions and contacts with the country of origin to improve the cooperation regarding identification in the framework of return procedures. (If there is no valid travel document available, the embassy of the country of origin has to identify the person and issue a laissez-passer). Occasionally also so called "identification missions" can be organised with the country of origin to identify irregularly staying persons.

⁶⁶ This would depend on the elements included in your national definition of "identity" used within the procedures covered by this Study. See Section 2.1.

Methods **used** for establishing identity in the asylum/return procedure (II)

Method	Applicants for international protection		Return of rejected applicants for international protection	
	National database	European database	National database	European database
Fingerprints for comparison with National and European databases	Part of standard Practice (Article 51/3 of the Immigration Act describes the conditions under which asylum applicants and other foreigners may be fingerprinted)	Part of Standard Practice	Part of Standard Practice	Part of Standard Practice
Photograph for comparison with National and European databases	Part of Standard Practice (Taking the photograph is part of standard practice – photograph comparison is optional)	No	Part of Standard Practice (Taking the photograph is part of standard practice – photograph comparison is optional)	Optional
Iris scans for comparison with National databases	No	No	No	NA
DNA analysis	No	No	Optional (exceptional: in case of return of families with children if the family ties are not clear)	NA
Other (please describe e.g. type of co-operation with or contacts in third countries, such as diplomatic missions)	<i>If Yes: obligatory, part of standard practice or optional</i> <i>No</i> <i>If Yes, briefly describe what for and under what conditions.</i>			

Recent and planned developments

Since 7 March 2016 a **system of so called “pre-registration”** of the asylum application was introduced. Before the asylum application is formally lodged a screening is performed. This phase of pre-registration implies that fingerprints and a photo are taken and a security screening is done.

The stage of “pre-registration” and the security screening consists of the following elements :

1. Identification by the Immigration Office: The asylum applicant is requested to give his name and to present his identity documents. A photo and fingerprints of each applicant are taken.
2. Screening by the security services: The Immigration Office transfers the list of names (and any aliases) to the Military Intelligence Service (ADIV) and the civil State Security. These services screen the names of asylum applicants in their databases.
3. Screening in the police database: The General National Police Database (ANG-database) is consulted for each applicant who applies for asylum by the police.

As mentioned above, Article 30bis of the Immigration Act defined biometric data as fingerprints and photographic material. In accordance with the new Article 51/3 of the Immigration Act, for asylum applicants, the new article 30bis replaces “photographic material” by “facial images” and defines this “facial image” as a digital image of the face with a resolution and a quality sufficient for the use of the image for purposes of automated biometric comparison. This legislative amendment creates **a legislative framework for automated facial comparison** and could be considered as an indication that automated facial comparison might be increasingly used as identification method in the near future for establishing identity in the asylum and return procedures. However it is important to emphasize that this is not an identification method in the absence of documentary evidence but complementary.

Since August 2016 a training on social media is provided to the protection officers (case-workers) of the CGRS. The **use of social media** for the assessment of the credibility of an asylum application and to establish (elements of) the identity is a relatively new method. This research technique can provide valuable information, in particular in cases where there is a doubt regarding the credibility of the asylum motives and/or the country or region of origin, and in potential cases considered for exclusion. Decisions based on information from Facebook have already been confirmed by the Council for Aliens Law Litigation. Besides, if the information on Facebook corresponds to the statements of the asylum applicant, this can be an additional reason to grant the protection status. The use of social media for the assessment of the credibility of an asylum application and to establish (elements of) the identity is considered as a best practice and guidelines were issued for the protection officers of the CGRS. The amendment of the Immigration Act also defines the **duty to cooperate and specifies that if there** are good reasons to assume the asylum applicant withholds information, documents or other elements for the assessment of the asylum application, the applicant can be invited to submit these elements without delay, **whatever the information carrier is** (see section 1.3).

Since 26 June 2015 the **fingerprints of all asylum applicants are compared with the fingerprints stored in the VIS**. There is no systematic statistical data collected on the number of asylum applicants with a positive hit in the VIS. During the first 35 weeks of 2016, there were 1,781 hits in the VIS (443 visas issued by a Belgian diplomatic post and 1338 visas issued by a diplomatic post of another EU Member State). This on a total of 12,260 asylum applications who were lodged during the first 8 months of 2016. This implies an approximate “positive hit percentage” for the reference period of about 14,5% of asylum applicants in the VIS. It should be noted that asylum applicants below the age of 14 years old are not fingerprinted in the framework of the asylum procedure and that the VIS does not contain fingerprints of children below the age of 12 years, so the percentage of the “positive hit percentage” is merely indicative and not exact.⁽⁶⁷⁾

In the **framework of the return procedure**, the information of visa application in the VIS as well as a photo and fingerprints can be transmitted to the third country for identification purposes. The Belgian Immigration Office can also ask the embassies or consulates of other Member States to transfer a copy of the passport in case of a hit in the VIS.⁽⁶⁸⁾ However, making use of the VIS within the framework of forced return has also proved to be challenging for the Member States,⁽⁶⁹⁾ including for the Belgian Immigration Office. There are some practical and judicial difficulties in this regard such as the fact that third countries are only obliged to accept a hit in the VIS to establish the identity, if this is regulated in a specific readmission agreement. Many embassies of third countries do not accept a VIS-hit as sufficient to establish the identity and still require a copy of the passport before issuing a laissez-passer. The Belgian embassies and consulates store a copy of the passport in the database, but it is more difficult if the visa was issued by another EU Member State, that has not necessarily stored a copy of the passport.⁽⁷⁰⁾ As a consequence, in 2016 only a limited number of persons (no statistical information available) could be identified in the framework of a return procedure through a hit in the VIS.

The **exchange of fingerprints with the countries of origin** is considered as a fruitful method to establish the identity in the framework of return procedures and is more often used in recent years. A wider application of this method for more countries of origin is envisaged (through bilateral or EU agreements). In this context an agreement on digital transmission of these fingerprints was recently made with Morocco (but this is not possible yet due to some technical obstacles).⁽⁷¹⁾

In the framework of the project ‘Videoconferencing for Identification’ of the Immigration Office, interviewing through videoconferencing is increasingly used. The aim of the videoconferencing

67 Source Immigration Office: Printrak/Eurodac Unit

68 EMN Ad-Hoc Query on VIS in return matters (part 1: copies of documents, access to VIS and fingerprints), launched on April 6, 2017.

69 A recent report of the European Commission stressed that, while the VIS is instrumental in assisting in the identification and return of illegal immigrants, its use in the return procedure has so far been rather limited and that recent trends indicate an increased need to use this instrument which provides a proof of identity necessary in a return procedure. The report further suggests how the VIS could possibly play a much more significant role for return purposes.

70 the VIS Regulation doesn’t oblige the storage of scanned pages of the passports in the VIS nor it is provided by the VIS Regulation that information can be exchanged among the Member States (see also EMN Ad-Hoc Query on VIS in return matters (part 1: copies of documents, access to VIS and fingerprints), launched on April 6, 2017.

71 Source: Immigration Office

pilot-project, which started in June 2014, was to test the use of **videoconferencing tools** for the identification of irregularly staying migrants by the authorities of the countries of origin, but also to interview asylum seekers. Belgium, Poland and Luxembourg participated in this pilot project, whereas the Netherlands and the United Kingdom were associated partners. This pilot-project ended on 31 October 2016. A new project was submitted to the European Commission to implement video conferencing in different EU-countries (identification EURLO VCI). The project was approved, but the contract with the Commission still has to be signed. In Belgium, the video conferencing tool has been further tested in 2016 and it was introduced for interviews with asylum seekers. New tools were bought, trainings were given to officials from both the Immigration Office and the Office of the Commissioner General for Refugees and Stateless Persons. Later that year, the video conferencing project became fully operational, and is now used on a regular basis in identification and asylum procedures. Video conferencing tools are available in four closed detention centres (Merksplas, Vottem, Bruges and 127bis), three prisons (Hasselt, Merksplas, and Jamioulx), and the Immigration Office. Besides, the Immigration Office also has two mobile videoconferencing tools.⁽⁷²⁾

(Section 2 – Q19, Q20 of the EMN Questionnaire)

2.3 Methods used to verify the identity of third-country nationals in other migration procedures

Short stay visas		
Method	National database	European database
Fingerprints for comparison with National and European databases	No	Yes: obligatory according to the Visa Code (VIS)
Photograph for comparison with National and European databases	Optional, the Immigration Office has access to Visanet and can perform a photograph comparison.	Yes: obligatory according to the Visa Code (VIS)

72 Belgian Contact Point of the EMN, Annual Report 2016 on Asylum and Migration Policy in Belgium, 2017.

<p>Others (please specify)</p>	<p>A number of consulates have locally recruited document verification officers (DVO), who reinforce the visa section.</p> <p>The verification officers are tasked with the investigation of source documents submitted in the framework of Schengen visa applications. Belgium currently employs verification officers in Abidjan, Abuja, Dakar, Manila, Kinshasa, Casablanca and Yaoundé.⁽⁷³⁾</p> <p>In countries with a high occurrence of fraudulent visa applications or a significant rate of refused entry for Schengen visa holders, Belgium also deploys ILOs and Schengen-visa experts to train consular staff and to build capacity of local authorities.⁽⁷⁴⁾</p>	
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Residence permit for study reasons		
Method	National database	European database
<p>Fingerprints for comparison with National and European databases</p>	<p>Optional in the framework of the visa-application</p> <p>Obligatory in the framework of issuing the residence card (fingerprints are stored on the card but not in a central database).</p>	<p>No</p>
<p>Photograph for comparison with National and European databases</p>	<p>Optional in the framework of visa applications</p> <p>A residence card contains a photograph, but no automated comparison takes place when issuing or renewing the card. The application BELPIC provides the possibility for the municipal official to compare the photographs with the photos on the card issued in the past 15 year (see also section 4.4)</p>	<p>No</p>
<p>Others (please specify)</p>		

73 Source: FPS Foreign Affairs

74 Source: FPS Foreign Affairs

Residence permit for the purpose of remunerated activities		
Method	National database	European database
Fingerprints for comparison with National and European databases	<p>Currently not in the framework of visa applications</p> <p>Obligatory in the framework of issuing the residence card (fingerprints are stored on the card but not in a central database).</p>	No
Photograph for comparison with National and European databases	<p>Optional in the framework of visa applications</p> <p>A residence card contains a photograph, but no automated comparison takes place when issuing or renewing the card. The application BELPIC provides the possibility for the municipal official to compare the photographs with the photos on the card issued in the past 15 year (see also section 4.4)</p>	No
Others (please specify)		

Residence permit for family reasons		
Method	National database	European database
Fingerprints for comparison with National and European databases	<p>Currently not in the framework of visa applications</p> <p>Obligatory in the framework of issuing the residence card (fingerprints are stored on the card but not on central database).</p>	No
Photograph for comparison with National and European databases	<p>Optional in the framework of visa applications</p> <p>A residence card contains a photograph, but no automated comparison takes place when issuing or renewing the card. The application BELPIC provides the possibility for the municipal official to compare the photographs with the photos on the card issued in the past 15 year (see also section 4.4)</p>	No
DNA analysis	Optional (in case the family link cannot be established on basis of the submitted documents)	No
Others (please specify)		

Recent and planned developments

For the moment the fingerprints are only collected in the framework of applications for short stay visa and for student visa for specific groups. The decision has been taken to also collect fingerprints in the framework of applications for a long term visa in a more systematic manner, including in the framework of family reunification. The legal framework has been adapted to make this possible⁽⁷⁵⁾ and the practical implementation is foreseen in the near future.

As mentioned above, Article 30bis of the Immigration Act defined biometric data as fingerprints and photographic material. In accordance with the new Article 51/3 of the Immigration Act, for asylum applicants, the new article 30bis replaces “photographic material” by “facial images” and defines this “facial image” as a digital image of the face with a resolution and a quality sufficient for the use of the image for purposes of automated biometric comparison. This legislative amendment creates a legislative framework for automated facial comparison and could be considered as an indication automated facial comparison might be increasingly used as identification method in the near future for establishing identity in the framework of legal migration procedures of TCN’s. In this respect the E-gates at Brussels national airport (that for the moment only can be used by EU citizens in possession of a passport and by Belgian citizens with an ID-card who arrive from a non-Schengen country) can be considered as a pilot (see also section 4.4).

For what concerns short stay visa, the installation of an Entry-Exit System for TCN’s, including the storage of biometric data for identification purposes, is still being discussed at EU level, it is not clear when the entry-exit will be implemented at a national level and by when it will become fully operational (see also Q33b).

(Section 2 – Q21, Q22 of the EMN Questionnaire)

2.4 Statistical information on methods used to establish identity

	2012	2013	2014	2015	2016	
Total Number of Cases in which language analysis was performed to establish the identity of the third-country national	4	6	7	0	4	Please take note that this concerns only the number of language analysis performed by the CGRS in the framework of the asylum procedure.

75 Article 30bis §2 of the Immigration Act specifies for which categories of third country nationals biometric data can be collected. One of the categories for whom the Immigration Act authorises the collection of biometric data, are non-nationals who applied for a visa. Until the end of 2016 there was an exception in the Immigration Act for the collection of biometric data of applicants applying for family reunification, but this exception has been removed. So according to the current legislation biometric data can be collected for all TCN’s who apply for a visa (short stay or national visa) regardless of the migration purpose. However in practice, until now, biometric data is only collected in the framework of an application for short stay visa (in accordance with obligation of the Visa Code) and for student visa in a number of situations.

Total Number of Cases in which an age assessment was performed to determine whether the third-country national was a minor	953	536	537	1187	1296	Source: Guardianship service It concerns the age assessment tests performed on asylum seeking unaccompanied minors and non-asylum seeking unaccompanied minors. (In the framework of legal migration procedures, for example family reunification, also age assessment tests can be performed but no statistics are available in this regard.)
Outcome majority:	689	405	370	814	902	
Total Number of Cases in which a DNA Analysis was used to establish the family relationship in family reunification cases	975 (551 cases)	1036 (684 cases)	1082 (582 cases)	1219 (657 cases)	1234 (642 cases)	The number only refers to DNA analysis performed in the framework of a visa-applications. The number of tests with a negative outcome is relatively low compared to the number of positive ones. This is due to the fact that, before the DNA is performed the applicant is informed that there is no point in doing a DNA test for non-biological children as the DNA test will reveal it.
Positive outcome:	913	966	1013	1139	1168	
Total Number of Cases in which Interviews were used to determine probable country and/or region of origin	N/A	N/A	N/A	N/A	N/A	An interview is performed in each asylum case (accompanied children are in principle not interviewed) to determine the country and region of origin. (In case the interview does not provide sufficient information to assess the asylum application, an additional interview can be organised). In the framework of return procedures the TCN can be interviewed by staff of the consulate of the country of origin (no statistics available on the total number of interviews). For persons being held in prison interviews are performed by the Immigration Office to establish the identity. Also in the framework of legal migration procedures interviews can be organised to establish the identity or verify the family relationship (no statistics available on the total number of interviews).

3.1 Status and weight of different methods and documents to determine identity

This section describes how a decision on the establishment of identity is made on the basis of the information gathered by the different methods outlined in section 2.

What methods are given most weight?

Procedure for international protection

At the moment of registering asylum applications, the asylum applicants are systematically fingerprinted, a photograph is taken and a security screening is performed. The fingerprints are compared in EURODAC. Although the comparison in EURODAC can lead to valuable information regarding the identity of the applicant, the primary purpose of the EURODAC check is to determine which Member State is responsible for handling the asylum application according to the Dublin III Regulation.

At the stage of registration of the asylum application, documentary evidence is considered as the primary method to establish the identity. The Immigration Office uses the following ranking order when registering the identity:

1. original, valid passport / identity card
2. birth certificate / civil status documents
3. statements

During the assessment of the asylum application by the CGRS, and in particular for what concerns identity elements such as nationality or region of origin, the **interview** is considered to be the most important method. The CGRS always assesses the documents along with the statements of the applicant. This is because, in several countries of origin, authentic documents can be obtained merely on the basis of statements of the applicant, can be obtained via widespread corruption, or simply cannot be verified.

However during the asylum procedure, a correction of the identity, as registered when the application was lodged, e.g. another form of writing, is only possible on the basis of an original and valid passport and can only be done by the Immigration Office.⁽⁷⁶⁾

Return procedure

As regards identification with a view to forced return, the **availability of an identity or travel document** is often decisive.⁽⁷⁷⁾ However, in recent years, the importance of identification through the comparison of fingerprints is increasing: **fingerprint comparison** with the VIS, but increasingly also with databases of the countries of origin in the context of delivering a laissez-passer. Yet, some countries of origin do not accept a hit in the VIS as sufficient to establish the identity and still request a copy of the passport and/or organise an interview to identify the TCN and issue a laissez-passer.

Procedure for legal migration

Generally speaking, the submission of a **valid travel document is decisive** for determining the identity in the framework of legal migration procedures. With some exceptions, the visa application will not be processed if no valid passport is submitted. Upon entry into the territory, verification of the identity will primarily occur through the verification of travel documents.

For what concerns family reunification, the administrative instruction lays down the principle of a cascade system. The family relationship is established using the following modes of proof (in order):

1. Authentic documents, drawn up in accordance with the rules of private international law, with regard to both substantive and procedural requirements and legalisation. This is the main rule to which the two other forms of evidence derogate.
2. *“Other valid forms of proof”*. They are produced only if it is impossible for the foreigner to produce official documents and are subject to the discretionary assessment of the Immigration Office.
3. Interview or supplementary analysis (e.g. DNA test)

The Immigration Office proposes a DNA test if there is doubt as to the documents submitted (and if the other conditions are fulfilled): a visa is not issued except on condition of a DNA-test. If the result of the DNA test is positive, the visa is granted automatically (unless new elements provide evidence of fraud).

76 Internal guideline CGRS.

77 Immigration Act article 1, 14°

Does there need to be consistency between the results obtained from the various methods used?

Procedure for international protection

In principle there needs to be consistency between the statements provided by the applicant, the documents submitted and information on personal data obtained through other methods (VIS, Eurodac, social media, etc.). In case of a lack of coherence, the applicant is in principle confronted and given the chance to provide a clarification. To some extent, the benefit of the doubt can be applied if there is incoherence on certain identity elements, in particular when there is no doubt regarding the nationality/region of origin of the applicant and it is clear there is a risk of persecution or serious harm in case of return.

However when it is obvious that the applicant is withholding crucial information or documents, this can be considered as a lack of cooperation, making it impossible to assess the risk in case of return and can be a ground to reject the asylum application.

Return procedure

In principle the elements obtained through different methods need to point in the same direction. In case different elements disclose different personal data (in particular for what concerns the nationality) this can be a reason for the country of origin not to issue a laissez-passer or a reason for the Immigration Office to cancel the return. However if a valid travel document is available, it is likely the identity will be considered as established, even if there are (less decisive) elements pointing in a different direction (for example different personal data in the asylum file, lack of coherence on certain identity elements between the travel document and the statements of the person concerned).

Procedure for legal migration

In principle the elements obtained through different methods need to point in the same direction. In case different methods reveal a different identity (for example the identity on the passport does not correspond with the identity as registered in the VIS) this will normally be a reason to reject the visa application or to refuse entry at the border. In the framework of family reunification it is possible to perform additional inquiries in case different elements/methods cause doubt regarding the identity and/or family relationship.

Grading structure

Procedure for international protection

There is no formal grading structure, but the benefit of the doubt can be applied.

Return procedure

There is no grading structure, the identity is considered to be established or not (a valid travel document – passport or laissez-passer - to return the person is provided or not).

Procedure for legal migration

There is no grading structure, the identity is considered to be established or not (a valid travel document – passport or laissez-passer - is provided or not).

(Section 3 – Q23, Q24, Q25 of the EMN Questionnaire)

Foto paspoorten

3.2 Decisions taken by the competent authorities on the basis of the outcomes of the identity management procedures

Application for international protection

The registration of the asylum application, security screening and the fingerprinting take place at the Immigration Office. If the fingerprinting (hit in Eurodac or VIS) indicates that another Member State is responsible for handling the asylum application according to the Dublin III regulation, a transfer is requested. If the transfer is accepted, the file can be closed at this stage.

If Belgium is responsible for processing the asylum application, the file is transferred to the CGRS. For what concerns the files transferred to the CGRS for an assessment, there is **no formal phase or procedure to establish the identity preceding the assessment of the asylum claim**. The asylum applicants statements, the documents submitted (ID-documents and other documents), information on the country of origin and all the elements available in the administrative file as a whole are taken into consideration when the person's need for international protection is being assessed.

Return

If a person cannot be identified as coming from of a particular country of origin, he cannot be returned. However, for what concerns the confirmation of the identification by the country of origin, the term "identification" can be interpreted in different ways. For some countries of origin, it may be sufficient to establish a person's nationality instead of having to establish all his other identity details. Most countries of origin want a person identified by nationality, surname, first name and date of birth before they are prepared to issue a laissez-passer. A number of countries are not as strict about a person's exact date of birth because there can be uncertainty

on this aspect. Other countries may also want to know the region of origin to enable them to compare identity details with those in the local registers. Some countries of origin might, for some cases, even want to know the address in the country of origin or the parents' names before they are willing to issue a laissez-passer. The demand of these additional identification details may make it extra challenging to establish the identity.

The Immigration Office has a view on the documents submitted at the CGRS and on the motivation of the decision of the CGRS concerning a rejected asylum applicant, and also on the judgment of the Council for Aliens Litigation if relevant. Besides, in case an original passport is submitted at the CGRS, and this document was not submitted at the stage of registration of the asylum application at the Immigration Office, a copy of this document has to be transferred by the CGRS to the Immigration Office. The recently amended Immigration Act stipulates that original documents establishing the applicant's identity or nationality are retained during the asylum procedure and regulates the return of the documents. It also stipulates that these documents have to be transferred to the Immigration Office in case the asylum application is rejected.

A successful identification of the irregularly staying person by the Immigration Office does not necessarily imply that the country of origin issues a laissez-passer and that the person can be returned. It is possible that a person cannot be returned because the country of origin does not, or not timely issue a laissez-passer. For a number of countries of origin an EU readmission agreement is in place so the Belgian authority can issue the laissez-passer (the so-called European laissez-passer). In this case, or if there is a valid travel document available, the person whose identity has been established can be returned without requiring the country of origin to issue a laissez-passer.⁽⁷⁸⁾

Procedure for third country applicants for visa

The submission of a valid travel document is a condition of admissibility in the framework of a visa application (as already mentioned, in the absence of such a document, exceptionally a laissez-passer can also be issued by the Immigration Office).

If the identity was not sufficiently established, for example due to the lack of required travel documents or if false or fraudulent information was used, the visa application will be rejected, or the residence permit can be withdrawn⁽⁷⁹⁾ in case the fraud is revealed after arrival on the territory.

If the identity, or the family relationship in the framework of family reunification, cannot be considered as established, a visa will be refused. However, the family members of beneficiaries of international protection whose parental or alliance links precede their arrival on the territory, benefit from a more flexible regime for what concerns the submission of official documents. The impossibility to submit official documents must be 'real and objective', that is to say, independent of the will of the applicant. This is the case, in particular:

78 Source Immigration Office, Identification Unit.

79 Immigration Act, Article 74/20.

- when Belgium does not recognize the country as being a State;
- where the internal situation of the country considered is such that it is impossible to obtain the official documents there, either because the official documents have been destroyed and they cannot be supplemented, or because the national competent authorities are dysfunctional or no longer exist;
- where the obtaining of official documents requires a return to the country concerned or contact with the authorities, which are difficult considering the personal situation of the applicant.

In case official documents or “other valid forms of proof” cannot be produced, to establish family ties, the authorities can make use of other inquiry (interview or DNA analysis, see also Q23). The Immigration Office assesses the impossibility on a case-by-case basis taking into account all the elements in the file of the applicant.

Though, the fact that family members of beneficiaries of international protection benefit from a more flexible regime to prove the identity and family ties, does not mean that the identity and family ties do not have to be established. If also the other valid forms of proof, interview or an additional inquiry do not establish the identity or the family ties, the visa will not be granted.

In case there are humanitarian or medical issues, a more flexible approach is possible (for example for what concerns the validity period of the travel document), but also in these situations the identity needs to be sufficiently established.⁽⁸⁰⁾

(Section 3 – Q26, Q27, Q28 of the EMN Questionnaire)



80 Source Immigration Office.

Databases and data procedures

4.1 Legal framework and agreements for data-sharing

Agreements with other agencies/departments

There are numerous legislative provisions, internal guidelines and agreements for what concerns the exchange of personal data and administrative files (containing personal data) between Federal Public Services, stakeholders and departments involved in migration procedures. For example:

There are instructions in internal vade mecums explaining in which situations the visa applications (and all the personal data submitted) have to be transferred by the consular post of the **FPS Foreign Affairs to the Immigration Office** before a decision on the visa application can be taken.

The exchange of personal data between the **Immigration office and the municipalities** in the framework of issuing residence permits, but also in the framework of the return procedure is regulated by a number of internal guidelines and circulars such as the circular adopted on 10 June 2011. Information on the exchange of personal data between the Immigration Office, the municipalities and the consular posts as regards identity fraud is regulated by the circular of 27 May 2016.⁽⁸¹⁾

As mentioned above personal data and documents are also exchanged between the **CGRS and the Immigration Office**. Article 51/10 of the Immigration Act provides that the statements of the asylum applicant related to his identity, origin and route, and answer to a questionnaire filled out at registration of the asylum application has to be transferred to the CGRS. Internal guidelines stipulate that a copy of the passport, submitted for the first time at the level of the CGRS has to be sent to the Immigration Office. As mentioned above, Article 48/6 §2 of the amended Immigration Act provides that in case the asylum application is rejected, the original identity documents have to be transferred to the Immigration Office which can give it back to the applicant, but also can make use of these documents in the framework of a return procedure. Furthermore, in this respect, the coalition Agreement of 9 October 2014, states that all Belgian authorities should provide all documents to the Immigration Office that can be useful for establishing the identity of a third country national.⁽⁸²⁾

81 Circular of 27 May 2016 on the coordinated approach and fight against identity fraud on a federal and local level.

82 Federal Coalition Agreement, 9 October 2014, p. 106.

The administrative file including, all personal data and documents, has to be transferred to the **Council for Aliens Law Litigation (CALL)** in case an appeal was lodged against a decision of the Immigration Office or the CGRS.

Carriers

There is no exchange of personal data between the Immigration Office and airline companies as regards access to the Belgian territory. However it is worth mentioning that the Belgian PNR (Passenger Name Record) law⁽⁸³⁾ obligates carriers (air, train, road and maritime transport) to send their passenger data to a special passenger data database, making it possible to analyse the data in the framework of the fight against terrorism.

Authorities in one or more other countries

With several countries of origin there are memoranda of understanding (EU or bilateral), including regarding the exchange of personal data. Besides the more general MoU's and readmission agreements, often more specific agreements need to be made regarding the exchange of biometric data.

International organisations

In principle personal data obtained in migration procedures is not shared with international organisations. The federal police can exchange personal data with Europol and Interpol, but this is for criminal cases and not for establishing identity in regular migration procedures.

The personal data and biometrics stored in European databases such as Eurodac, VIS and SIS II evidently imply international (European) data sharing, but these European databases are not international organisations as such and do not analyse the personal data.

Private entities

For a number of countries, the visa application can be lodged through an external service provider (outsourcing partner).⁽⁸⁴⁾ It is contractually stipulated that the personal data will be destroyed immediately after forwarding the file to the competent Belgian authorities. Such a private service provider is not involved in assessing the visa application or is not authorised to take a decision.

83 Law of 25 December 2016 regarding the processing of passenger name records, published on 25 January 2017.

84 Algeria, China, Egypt, Philippines, India, Kenya, Morocco, Nigeria, Ukraine, Pakistan, Palestinian Territories, Russia, Saudi Arabia, Thailand, Tunisia, Turkey, United Kingdom, United Arab Emirates, Vietnam and South Africa.

4.2 Data procedures and databases

Within the framework of the various migration procedures personal data of individuals is collected in national databases.

1. Procedure for international protection:

- Biographic: name, nationality, date and place of birth, place of residence in the country of origin, ethnic origin, personal data on the nuclear family, ethical origin, religion, etc.
- Biometric: fingerprints, facial image

Personal data stored in the framework of the procedure for international protection is stored in the database of the Immigration Office (Evibel) and in the database "Actio" of the Office of the Commissioner for Refugees and Stateless Persons (CGRS). In the field "personalia" the name, surname, birth date, place of birth, country of birth and nationality are listed, but also personal data on ethnical origin and religion is stored in the database of the CGRS. The fingerprints are stored in Printrak (managed by the Immigration Office).

2. Return of persons in irregular stay:

- Biographic: name, nationality, date and place of birth, other relevant personal information that could be useful to determine the country of origin and to obtain a laissez-passer.
- Biometric: fingerprints, facial image

Personal data on irregularly staying persons is stored in the database of the Immigration Office (Evibel).

3. Legal Migration procedures:

- Biographic: name, nationality, date and place of birth, passport number, marital status, etc. (depends on the migration motive)
- Biometric: fingerprints, facial image

The consular posts and the Federal Public Service Foreign Affairs store and manage the information on visa applications through Visanet. Personal data on persons involved in legal migration procedures is also stored in the database of the Immigration Office (Evibel).

(Section 4 – Q30 of the EMN Questionnaire)



4.3 Use of databases in the screening process

The different databases managed by different national authorities involved in migration processes can be listed as follow:

- The **Eurodac National Access Point and Printrak** (database containing fingerprints of asylum applicants) is managed by the Immigration Office (Federal Public Service Interior).
- The **VIS National Access Point (BELVIS)** is managed by the Immigration Office (Federal Public Service Interior).
- The **SIS National Access Point** is managed by the Federal Police.
- The national **population register** is managed by the direction “Institutions and Population” (Federal Public Service Home Affairs).
- **Evibel** is the database of the Immigration Office; it contains information, personal data and documents on all persons applying for a visa or permit to stay (asylum applicants, legal migration procedures, applicants for a permit on humanitarian and medical grounds). Besides, the database contains also information on irregularly staying persons who were apprehended.
- **Actio** is the database of the CGRS and only contains information and personal data on asylum applicants.
- **Visanet** is the programme managed by the Federal Public Service Foreign Affairs to store and manage the information on visa applications.

In the Framework of Visa-applications there are also EU restrictive lists used such as the EU Visa Ban list.

Databases, watch list and reference tools used for identity determination

	VIS	SIS	EURODAC	National databases and watch lists
International protection	X	X	X	X
Return	X	X	X	X
Short stay visas	X	X		X
Long stay visas and residence permit for study reasons	X	X		X
Long stay visas and residence permits for family reasons	X	X		X
Long stay visas and residence permits for the purposes of remunerated activities	X	X		X

Belgium supports the collection and storage of biometrics in the Schengen Information System as foreseen within SISII/AFIS. The current alphanumeric search can lead to false hits and the use of a false identity or linguistic variations might prevent the detection of a person registered in SIS.

As mentioned above, the plan is to extent the collection of biometric data in the framework of legal migration procedures, including for long stay visa. The legal framework has been put in place.

For what concerns the VIS, it would be interesting if the database also would store a digital copy of the travel document.⁽⁸⁵⁾

However, the most significant potential added value does not seem to come from collecting additional data, but lies in the adequate use of already available data and intelligent linking of data available in different databases (so called interoperability). Interoperability, and the different options to bring this into practice are currently discussed at European level. To achieve the goal of interoperability of different EU data management systems in limited or extended form, technical obstacles will need to be overcome. Though, the biggest challenge might be the creation of a legal framework.

Also at a national level the interoperability of national databases for the management of borders and migration should be improved. This seems possible from a technical point of view, however also at the national level a legal framework needs to be put in place.

⁸⁵ This was proposed by Belgium in the framework of the recast of the VIS regulation

Besides the question of linking the databases, there is also the issue of access. In Belgium the access of the municipal officials to the information stored in EU-databases is non-existing and possibilities for comparison with personal data collection in the framework of various migration procedures are limited. Of course privacy concerns need to be taken into account, but there could be reflection on whether all the actors involved in establishing identity in the migration process have sufficient access to the available data to establish the identity and reveal ID-fraud.

(Section 4 – Q31, Q32 of the EMN Questionnaire)

4.4 Recent and planned developments

Recent developments

As regards the recent major developments on the processing of personal data and databases the **following developments can be highlighted:**

EURODAC

As indicated above, since 7 March 2016 a system of so called “pre-registration” of asylum applications was introduced. Before asylum applications are formally lodged, a screening is performed and asylum applicants are fingerprinted. For what concerns comparison of Eurodac at the stage of “pre-registration” there is only a comparison for CAT3 (irregular stay on the territory), and at this stage the fingerprints are not yet stored in Eurodac. At the stage of the actual lodging of the application also a comparison for CAT1 (asylum applicants) and CAT2 (illegal border crossing) is performed.⁽⁸⁶⁾

VIS

In accordance with Article 48(4) of the VIS Regulation, the European Commission adopted the Decision 2010/49/EC of 30 November 2009 determining the first regions for the start of the collection of biometrics when applying for a Schengen visa. The collection of biometric data started at the consulates in Northern Africa in 2011 and was expanded to the rest of the world in the past few years. In accordance with the VIS regulation all applicants for a Schengen visa⁽⁸⁷⁾ must present themselves at the Belgian consular posts to register their biometric data. Besides alphanumeric data (name, surname, date of birth), a set of 10 fingerprints is stored, a photo is taken at the Belgian embassies and consulates and a signature is registered in the system.⁽⁸⁸⁾ In 2016 the roll-out of the national VISANET system at the external border crossing points was completed. A new application, called Inqvis, was developed and is used since 2016 by the Immigration Office to check the VIS.

86 Source Immigration Office: Printrak/Eurodac Unit

87 except for the exceptions provided for in the European Regulation

88 https://diplomatie.belgium.be/nl/Diensten/Diensten_in_het_buitenland/biometrie

Furthermore, since June 2015 the fingerprints of asylum applicants are systematically compared with the fingerprints stored in the VIS (see also Q19B).

e-GATES

In 2015 the Belgian Federal Border police started with the operational implementation of the first automated border control gates at Brussels National Airport. The gates use facial recognition technology to verify the user's identity against the data stored in the chip in their biometric passport or ID-card. For the moment, these gates can only be used by EU citizens in possession of a passport and by Belgian citizens with an ID-card who arrive from a non-Schengen country. These gates aim at checking more passengers while keeping the same number of border guards, and should allow arriving passengers to proceed through border control more swiftly.⁽⁸⁹⁾

Biometrics stored on residence cards

Since September 2014 residence cards for foreigners contain a chip with biometric data. When applying for a residence permit, the photo of the applicant is scanned and a digital signature is registered. Also, eight fingerprints are scanned at the application and when the residence permit is retrieved. The electronic residence card for foreigners is not an identity card and does not replace a valid ID/valid national passport of the country of origin.

The introduction of electronic residence cards for foreigners is obviously a step forward for identification purposes and in the fight against ID-fraud. However the fingerprints are only on the cards and are only temporarily stored until the card is issued. In Belgium, until now, a picture for these electronic residence cards is not taken on the spot at the time of application by the municipal official. This could be the way forward in the fight against ID-fraud, and also to assure the quality of the photo. However, since the end of 2016, it is possible for municipal officials to consult the photographs and signatures on identity cards and residence cards issued in the course of the last 15 years, through the application BELPIC.⁽⁹⁰⁾

Picture: specimen of an electronic residence card type A ⁽⁹¹⁾



89 Source: Belgian Immigration Office (Border Control unit)

90 Parliamentary question from Roel Desyn on identity fraud, 29/09/2016, Bulletin 94

91 Source: <http://www.agii.be/thema/vreemdelingenrecht-internationaal-privaatrecht/verblijfsdocumenten/elektronische-vreemdelingenkaarten/elektronische-a-kaart#o>

Planned pilots in the field of identity management architecture and data sharing

EURODAC

As part of the security screening of asylum applicants, a number of sets of fingerprints are also sent to the Judicial Identification Service. The completion of the electronic gateway between the Immigration Office and the Federal Police for the transfer of these biometric data is expected to be completed in the near future.

The 2013 revision of the Eurodac regulation provides the authorisation to law enforcement authorities to access the personal data stored in Eurodac. In Belgium the police can access this information, but only upon request to the Immigration Office. Until now, the federal police still has no direct access to Eurodac due to IT problems and required upgrades of the software system, this issue would be solved in the near future.⁽⁹²⁾

'Evibel New Generation'

The central database of the Immigration Office is being rebuilt and modernised. The objective is to automate the processes as much as possible and make the process more efficient, as well as to allow the fully electronic management of the files and to make the file accessible from a distance.

The collection of fingerprints in the framework of long stay visa

For the moment the fingerprints are only collected in the framework of short stay visa (in the VIS in accordance with the Visa Code) and for student visa for specific groups. The plan is to also collect fingerprints in the framework of applications for a long term visa in a more systematic manner, including family reunification. The legal framework has been adapted to make this possible⁽⁹³⁾ and the practical implementation is foreseen in the near future.

PNR and API

The **Passenger Name Record (PNR) Law** was adopted on 25 December 2016.⁽⁹⁴⁾ It transposes the EU PNR Directive (2016/681), the Advanced Passenger Information (API) Directive as well as part of the Directive 2010/65/EU (reporting formalities for ships). The purpose of using PNR data is to 'detect and prosecute terrorist offenses', while the purpose of API data is to 'improve

92 Source Immigration Office

93 Article 30bis §2 of the Immigration Act specifies for which categories of third country nationals biometric data can be collected. One of the categories for whom the Immigration Act authorises the collection of biometric data, are non-nationals who applied for a visa. Until the end of 2016 there was an exception in the Immigration Act for the collection of biometric data of applicants applying for family reunification, but this exception has been removed. So according to the current legislation biometric data can be collected for all TCN's who apply for a visa (short stay or national visa) regardless of the migration purpose. However in practice, until now, biometric data is only collected in the framework of an application for short stay visa (in accordance with obligation of the Visa Code) and for student visa in a number of situations.

94 Law of 25 December 2016 regarding the processing of passenger name records, published on 25 January 2017

border control and fight irregular immigration'. The Belgian government has decided not to limit the scope of the law to airlines, but also to include other international modes of transport, international travel by bus, high-speed train and boat. At present, the Royal Decree for the airline sector is ready, but still needs to be written for the other transport sectors. The law also foresees the collection of PNR data for intra-Schengen flights.

The carriers will send PNR and API data from travellers going from, to, or across Belgium before departure to a single access point, with the aim of checking these data with relevant databases of the intelligence and security services. This data will be analysed by the Passenger Information Unit (PIU), which was recently created within the Federal Public Service Home Affairs, consisting of its own analysts as well as seconded experts from the police, intelligence services and customs. The carriers will have to check the conformity between the travel documents and the identity of the passenger, to guarantee that the data meet the standards as defined by law. This is not an identity check as such and it is not a limitation of the free movement of persons within the Schengen area.⁽⁹⁵⁾ Begin 2017, Belgium has also reached an agreement on a pilot with France, the Netherlands, UK and France on the control of passenger lists on international trains.⁽⁹⁶⁾

SIS/AFIS:

The collection and storage of biometrics in the Schengen Information System is foreseen within the project SISII/AFIS. Implementation is foreseen in the course of 2018. A first step is to adjust the national systems to make it possible to upload fingerprints. In a second phase, a pilot and test phase is envisaged. The rolling out of SIS II/AFIS will require significant investments because not only border guards, but also other police units who perform SISII checks will need to be provided with new equipment.

Entry-Exit System and ETIAS

The proposal for an Entry-Exit System and the proposal to amend the Schengen Border Code in relation to the Entry-Exit System is still being discussed at EU level. The entry-exit system will apply to **third country nationals, both those requiring a visa and those visa-exempt**, admitted for a **short stay** of 90 days in any 180 day period. It will register their entry, exit and refusal of entry. It will also store **information on their identity** and on their **travel documents**, as well as **biometric data** (four fingerprints and the facial image). The information will be stored in the central database of the Entry-Exit System, connected to national uniform interfaces. The information will be accessible to border authorities, visa authorities and the authorities within the Member States competent to check if a third country national fulfils the conditions of entry or stay.⁽⁹⁷⁾

95 Source: Belgian Federal Public Service Home Affairs (Crisis Centre).

96 <https://www.n-va.be/nieuws/minister-jambon-veiligheid-thalys-en-eurostar-verhogen>

97 http://www.consilium.europa.eu/en/press/press-releases/2017/06/30-entry-exit-system/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Entry-exit+system%3a+Council+confirms+agreement+between+President+and+European+Parliament+on+main+political+provisions

The idea of establishing a **European Travel Information and Authorisation System (ETIAS)** with similar objectives as the US 'ESTA' system was launched by the Commission in April 2016. Creation of such a system provides an additional layer of control over visa-exempt travellers. ETIAS would determine the eligibility of all visa-exempt third country nationals to travel to the Schengen Area, and whether such travel poses a security or migration risk. Information on travellers would be gathered prior to their trip.⁽⁹⁸⁾

It is not clear yet when the Entry-Exit system and ETIAS will be implemented at national level and when it would become operational.

Interoperability

In the course of the coming years the possibilities of interoperability of existing and new systems will be further explored. At EU level reflections and discussions are being held on three dimensions of interoperability: a single search interface (SSI), a shared biometric matching service and a common identity repository system. The European Commission has decided to set up an Expert Group on IT Systems and Interoperability at senior level with EU agencies, national experts and institutional stakeholders to start the process.⁽⁹⁹⁾ Also at national level, linking available information stored in different databases seems to have great potential and the options, benefits and risks as well as the practical and legal obstacles could be explored further.

(Section 4 – Q21, Q22 of the EMN Questionnaire)

98 European Commission - Press release, State of the Union 2016: Commission Targets Stronger External Borders, 14 September 2016.

99 http://europa.eu/rapid/press-release_IP-16-1248_en.htm

Public and Parliamentary debate

The **Law of 21 November 2017** modifying the Immigration Act and the Reception Act was heavily debated in the Parliament before it was adopted on November 9, 2017 (see section 1.3). Before the Draft Law was adopted it was sent back to the Commission Internal Affairs for parliamentary debate in October. One of the most debated issues of the Draft concerns the provision making it possible to ask the asylum applicant to provide access to information on electronic information carriers (including smartphones). There was a negative advice from the **Belgian Privacy Commission** regarding this aspect, that criticized in particular the fact that there were no provisions in the Draft Law on

- how the approval of the applicant would be asked to grant access to information stored on electronic information carriers
- how the gathered information would be stored
- how such information would be examined in the framework of the assessment of the asylum application.

Besides there was also a critical advice from the UNHCR which raised, amongst others, its concerns about the burden of the proof and the enforced provisions regarding the duty to cooperate. The government reacted on these critical notes by announcing that Royal Decrees would be issued to address the concerns of the Belgian Privacy Commission and the UNHCR.

A platform of NGO's found that the outcome of the parliamentary debate - the elaboration of certain delicate provisions by Royal Decree - was disappointing due to the fact that a Royal Decree does not need to be discussed in the Parliament and considers the outcome as a missed opportunity to clarify the legal provisions in the Immigration Act itself.⁽¹⁰⁰⁾

In the second half of 2017 there was also a lot of political, parliamentary and public debate on Sudanese nationals returned following an identification mission by a Sudanese delegation in Brussels. The Sudanese nationals were part of a group of hundreds of transits migrants that were apprehended in the Maximiliaan Park in Brussels. The collaboration with the Sudanese regime in

¹⁰⁰ <https://www.vluchtelingenwerk.be/nieuws/vandaag-stemt-de-kamer-over-wetsontwerpen-die-onze-asielwetgeving-ingrijpend-wijzigen>

the matter was criticized as well as the way the identification mission was organized.⁽¹⁰¹⁾

The adaptations to existing databases and further introduction of biometric data (for example, SISII/AFIS) and creation of the above-mentioned new databases (**such as EES, ETIAS**), still need to be approved by the EU Parliament in plenary and will have to be implemented at national level to meet European obligations in the coming years. At the end of December 2015 parliamentary questions were asked in the national Parliament about the planning of the implementation of the Smart Borders Package (EES / RTP / Schengen Amendment Code)⁽¹⁰²⁾ but the debate on this issue mainly took place at European level where the LIBE committee often provided critical reflections, pleaded for safeguards to protect privacy and proposed amendments to the regulations.

As far as **PNR** is concerned, this directive has already been transposed into national law (see Q33b). Prior to the implementation in national law parliamentary questions were asked⁽¹⁰³⁾ and a parliamentary debate was held, including regarding the period during which the personal data can be stored. Some Belgian NGO's, such as the "La Ligue des droits de l'homme"⁽¹⁰⁴⁾ criticized the mass data collection and argued that useful information about dangerous people will be drowned in a lot of unnecessary information and pleaded instead for targeted surveillance of persons who pose a threat.

The 2013 revision of the Eurodac Regulation broadened the scope to also enable law enforcement authorities to access the Eurodac database, taking into account safeguards on data protection. In the past NGO's and some politicians have always been very critical regarding the access of police services to personal data stored in migration or asylum databases such as **Eurodac**. The argument is that asylum applicants, or migrants in general risk to be criminalized.⁽¹⁰⁵⁾ The proposals for recast of the Eurodac Regulation include the possibility for Member States to store and search data belonging to third-country nationals or stateless persons who are not applicants for international protection and found irregularly staying in the EU, so that they can be identified for return purposes.⁽¹⁰⁶⁾ ECRE, the European network of NGOs involved in protecting the rights of refugees and asylum applicants, seriously questioned the premise that collecting and storing fingerprints and facial images of irregularly staying migrants in the Eurodac is necessary to control irregular migration and identify migrants. ECRE also argues that expansion of the database would violate Articles 7 and 8 the EU Charter of Fundamental Rights.⁽¹⁰⁷⁾

For what concerns interoperability, the Fundamental Rights Agency (FRA) indicated that interoperability involves risks for fundamental rights and that safeguards need to be in place

101 Mondelinge vragen in de Kamer van Volksvertegenwoordiging over de Soedanese identificatiemissie, 4/10/2017, V5420936.

102 Parliamentary question from Olivier Chastel on the implementation of the Smart Borders Package, 28/12/2015, Bulletin 56.

103 Parliamentary question from Philippe Blanchart on the PNR directive, 31/08/2015, Bulletin 40.

104 https://www.rtbef.be/info/belgique/detail_mesures-antiterroristes-critiques-acerbes-de-la-ligue-des-droits-de-l-homme?id=9160909

105 <http://www.bartstaes.be/nl-BE/artikel/fractiebericht/asielzoekers-en-vluchtelingen-zijn-geen-criminelen/25734>

106 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/eurodac_proposal_en.pdf

107 ECRE Comments on the Commission Proposal to recast the Eurodac Regulation, COM(2016) 272.

to ensure the quality of the information stored about the person and the purpose of the data processing. However FRA also acknowledges interoperability comes along with opportunities, such as support for the detection of missing children or victims of human trafficking.⁽¹⁰⁸⁾

As regards the collection of information for purposes of return, a parliamentary question on the **exchange of information between the CGRS and the Immigration Office** in the framework of the return of rejected asylum applicants raises the concern that the country of origin could get informed about the asylum application. The question was asked whether this is not compromising the asylum application. The question was also asked how the information exchange between the CGRS and the Immigration Office relates to the Belgian Privacy Act.⁽¹⁰⁹⁾ The State Secretary for Asylum Policy and Migration replied that information from the asylum file, or the mere fact that the person concerned has filed an asylum application, is never communicated to the country of origin by the Immigration Office. The Secretary of State also pointed out that the information exchange of the CGRS to the Immigration Office is limited to the identity information required for the identification of the foreigner and therefore there is no violation of the Privacy Act.⁽¹¹⁰⁾

When implementing European legislation on the processing and storage of personal data into national legislation, advice is often obtained from the **Belgian Privacy Commission**. However, it is typical in the current context that the chairman of the Privacy Commission, in the preamble to the annual report 2016, indicates that the security issues after the attacks in Paris and Brussels have an impact on the opinions of the Privacy Commission. In the current context, a new balance must be found between security on the one hand and the right to privacy and data protection on the other hand.⁽¹¹¹⁾

Data protection authorities

National legislation and administrative practice regarding the processing of personal data need to be in accordance with the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data, also referred to as “**Privacy Act**”⁽¹¹²⁾. The Privacy Act is intended to protect citizens against the abuse of their personal data. The rights and obligations of the individual whose data are processed as well as the rights and obligations of the processor have been laid down in this act. However a number of Articles of the Privacy Act do not apply when it concerns processing of personal data managed by any public authority that has been designated by Royal Decree after deliberation in the Council of Ministers, having received the opinion of the Commission for the Protection of Privacy with a view to the fulfillment of that authority’s administrative police duties.

The Belgian Commission for the Protection of Privacy, also known as the “**Privacy Commission**”, is an independent federal body ensuring the protection of privacy when personal data are

108 <http://fra.europa.eu/en/publication/2017/fundamental-rights-interoperability>

109 Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data

110 Parliamentary question from Monica De Coninck on information exchange, 21/06/2016, Bulletin 112

111 <https://www.privacycommission.be/jaarverslag-rapport-annuel/nl/>

112 <https://www.privacycommission.be/en/privacy-act>

processed.⁽¹¹³⁾ As mentioned above the Belgian Privacy Commission gave a negative advice regarding the legislative proposal to alter the Immigration Act making it possible to verify electronic information carriers in the framework of the asylum procedure.

The **General Data Protection Regulation (GDPR)** of 14 May 2016 on the protection of personal data should be transposed into national regulation within two years. The Belgian Privacy Commission systematically suggests in its advices to anticipate the GDPR when taking national initiatives on the management of personal data or when national regulation is being developed.

Most of the above mentioned planned measures (EES, ETIAS, SISII/AFIS) are currently still negotiated at EU level. In this regard, the Belgian Privacy Commission is involved in the EU Working Party on the protection of personal data (also known as **Article 29 Working Party**).⁽¹¹⁴⁾

For what concerns the transposition of the **Passengers Name Record Directive** (EU PNR Directive (2016/681)) into national legislation, the advice was asked to the Privacy Commission in the framework of a preliminary draft law on transposition of the PNR directive. In its recommendation⁽¹¹⁵⁾ of 15 December 2015 the Privacy Commission provided a favourable opinion on a number of aspects, but a non-favourable opinion with regard to some other provisions. These recommendations of the Privacy Commission were taken into account when the PNR Directive was transposed into national legislation.

113 The Privacy Commission was established by the Belgian Federal House of Representatives with the Act of 8 December 1992

114 established in application of article 29 of Directive 95/46/EC

115 Advice 55/2015 of 16 December 2015

Conclusions

Identification in the procedure for international protection

In the second half of 2015 Belgium was confronted with a strong **increase in applicants for international protection**. It concerned in particular applicants from Syria, Iraq and Afghanistan and to a lesser extent also applicants from African countries such as Somalia and Guinea. As explained in section 1.1 of this report, these nationalities pose specific difficulties as regards establishing the identity and assessing the documentary evidence.

The high number of applications and the many identity documents produced makes it **impossible to systematically transfer all identity documents to specialized police services for authentication**. In addition, for several countries of origin, authentic documents are merely issued on the basis of oral statements or can be obtained through widespread corruption. Besides, the population registers for a number of countries of origin are unreliable and for some failed states it is not even possible to obtain official identity documents. Evidently, in these situations, the submission of original identity documents cannot be demanded. However there are also situations where the asylum applicant withholds his identity documents. This does not necessarily involve identity fraud, and this can be due to the fact that the applicant was advised to do so to hamper the return procedure in case the asylum application would be rejected. However, in cases where it is reasonable to expect that identity documents are submitted, the recently altered Immigration Act specifies more clearly that these documents have to be submitted by the applicant as soon as possible. The new law also provides clearer provisions for the retention and return of (identity) documents to the asylum applicant.⁽¹¹⁶⁾ The more stringent legal provisions seem to leave little room to apply the benefit of the doubt and to grant a protection status when identity fraud is proven, or when a manifest lack of cooperation has been demonstrated. Furthermore the new legal provisions also enshrine the practice to use social media as a tool to establish the identity and assess the asylum application.

Although there is no formal stage or procedure to establish the identity preceding the assessment of the asylum claim, **documentary evidence** is considered as the primary **method** to establish the identity **at the stage of registration of the asylum application**. During registration also a

¹¹⁶ The new Article 48/6 §1 of the Immigration Act explicitly refers to the provision of all documents with regard to identity, nationality, age, background, places of residence and travel route. The adapted Immigration Law also provides that the national and international documents establishing the applicant's identity or nationality are retained during the asylum procedure and regulates the return of the documents (Article 48/6 §2)

photo is taken, asylum applicants are fingerprinted and the fingerprints are compared with Printrak, Eurodac and VIS.⁽¹¹⁷⁾ During the assessment of the asylum application by the CGRS, and in particular for what concerns identity elements such as nationality or region of origin, an **in-depth interview** is considered to be the most important method. The asylum applicants' statements, the documents submitted (ID-documents and other documents), information on the country of origin and all the elements available in the administrative file as a whole are taken into consideration when the person's need for international protection is being assessed. Because of the reasons mentioned above, no identity document has absolute probative value.

Identification in framework of (forced) return

Also establishing the identity in the context of return continues to be very challenging. The most important obstacles are a **lack of cooperation from the person concerned** and also a lack of cooperation on the part of some countries of origin to confirm the identity and issue a laissez-passer.

As regards identification with a view to forced return, the availability of an identity or travel document is often decisive to establish the identity and is required to implement the return. If the irregularly staying person never had a valid travel document, withholds it or has destroyed his documents, the identity needs in principle to be confirmed by the **consular post of the country of origin** before they are willing to **issue a travel document** (so called laissez-passer) to return the person to his country of origin.

It speaks for itself, that if a person cannot be identified as coming from a particular country of origin, he cannot be returned. However, for what concerns the confirmation of the identification by the country of origin, the term "identification" can be interpreted in different ways. For some countries of origin, it may be sufficient to establish a person's nationality instead of having to establish all his other identity details. Most countries of origin want a person identified by nationality, surname, first name and date of birth before they are prepared to issue a laissez-passer. Other countries may also want to know the region of origin to enable them to compare identity details with those in the local registers. Besides, some countries of origin do not accept a VIS-hit as sufficient to establish the identity and still require a copy of the passport before issuing a laissez-passer.

The lack of cooperation from the consular posts of the countries of origin can be manifest, but for many countries of origin, the cooperation is substandard, which translates into late replies to identification requests, demand for many details regarding the identity or background information and reluctance to issue a laissez-passer. Sometimes the cooperation on identification varies between consular posts. A change of staff at a foreign consular post can significantly improve or worsen the cooperation as regards identification in return procedures.

Many countries of origin are far less cooperative and more demanding regarding the proof to establish the identity when it concerns a forced return compared to a voluntary return.

117 The applicant is also screened in SISII (alphanumeric) and personal data is transferred to the police and security services

Identification in legal migration procedures

The Belgian visa policy aims to find a good balance between promoting economic relations and being customer oriented towards bona fide travellers on the one hand, and on the other hand, to provide sufficient safeguards to refrain persons who have malicious intentions, are a danger to public order or national security or attempt to make improper use of their visas (for example over stayers).

Establishing the identity in the framework of a visa application is more straight forward, in particular for what concerns short stay visa where the procedures as foreseen in the Visa Code have to be applied and where fingerprint comparison can take place through the Visa Information System (VIS). The **submission of a valid travel document** is a condition of admissibility in the framework of a visa application. Only as an exception, in the absence of a valid travel document, a laissez-passer can also be issued by the Immigration Office. However it is worth mentioning that the family members of beneficiaries of international protection whose parental or alliance links precede their arrival on the territory, benefit from a more flexible regime for what concerns the submission of official documents.

The increase in positive decisions on asylum applications in the past few years led to a substantial increase in the number of family reunification requests, especially for Syria, Iraq, Afghanistan and Somalia. In the framework of **family reunification** with beneficiaries of international protection and in particular for the countries of origin mentioned above, there is quite often no valid travel document. This makes establishing the identity (and the family ties) in the framework of family reunification for this group more challenging compared to establishing the identity in other legal migration procedures such as applications for short-stay visas, family reunification with EU-citizens and visa for study-related reasons or for the purposes of remunerated activities.

Way forward?

In recent years, there has been an increase in the collection and storage of personal data, **including biometric data**, such as the collection of biomaterial data in the framework of visa applications for short stay through the VIS. However the incorporation and adequate use of biometrics for establishing the identity is a long-term process and there is obviously room for further progress. The plan to incorporate biometrics in the Schengen Information System (SISII/AFIS) and the collection of biometric data in the framework of applications for long stay visa are just a few examples of promising projects.

Though, the most significant potential added value does not seem to come from collecting additional data, but lies in the adequate use of already available data and intelligent linking of data available in different databases (so called interoperability). **Interoperability**, and the different options to bring this into practice are currently discussed at European level. To achieve the goal of interoperability of different EU data management systems in limited or extended form, technical obstacles will need to be overcome. Aside from technical difficulties, the biggest challenge might be the creation of a proper legal framework. Evidently it cannot be a goal to

collect as many personal data as possible and to provide as many actors as possible access to these data without a clear added value. Data protection by design and by default seems to be a core data protection principle.

Taking into account the security risks but also taking into account technological evolutions, the challenge lays in **finding a new balance** between making use of all available personal data to increase security on the one hand and to ensure the right to privacy and data protection on the other hand.



Legislation

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- Draft Law modifying the law of 15 December 1980 on the entry, residence, settlement and removal of foreign nationals, adopted in the Parliament on 10 November 2017, DOC 54 2549/008.
- Royal Decree of 8 October 1981 concerning the implementation of the law on the access to the territory, stay, settlement and removal of foreign national, *Belgian Official Gazette*, 27 October 1981 (*Royal Decree implementing the Immigration Act*).
- Law of 30 April 1999 on the employment of foreign workers, *Belgian Official Gazette*, 21 May 1999.
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (*Directive 2003/86*).
- Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data (Privacy Act).
- Belgian Consular Code, 21 December 2013.
- Directive 2011/95/EU of the European Parliament and of the council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.
- Circular of 17 September 2013 concerning information exchange between civic registrars and the Immigration Office in case of a marriage declaration or a declaration of legal cohabitation.
- Law of 4 May 2016 introducing various provisions regarding migration and asylum, *Belgian Official Gazette*, 26 June 2016. Entry into force on 7 July 2016.
- Law of 18 December 2016 inserting a general residence condition into the Law of 15

December 1980 on the access, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 8 February 2017.

- Law of 25 December 2016 regarding the processing of passenger name records, 25 January 2017.

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- Belgian House of Representatives, General Policy Note on Asylum and Migration, State Secretary for Asylum Policy and Migration in charge of administrative Simplification 27 October 2016, DOC 54 2111/017.
- Federal Coalition Agreement, 9 October 2014.

Publications

Belgian Contact Point to the European Migration Network

- EMN Study on 'Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors – an EU comparative study', May 2010;⁽¹¹⁸⁾
- EMN Study on 'Establishing Identity for International Protection: Challenges and Practices', February 2013;⁽¹¹⁹⁾
- EMN Study on 'The Return of Rejected Asylum Seekers: Challenges and Good Practices', November 2016;⁽¹²⁰⁾
- EMN Study on 'Family reunification of third-country nationals in the EU', July 2017.
- EMN Ad-Hoc Query on 'Control and verification of biometric data of biometric documents', requested by LU NCP on 16th September 2013;⁽¹²¹⁾

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- EMN Ad-Hoc Query on 'The mode of issuing the identity documents and resident permits', requested by BG NCP on 23rd April 2014;⁽¹²²⁾
- EMN Ad-Hoc Query on 'Recent or planned developments in the field of identity documents and information systems', requested by EE NCP on 16th June 2014;⁽¹²³⁾
- EMN Ad-Hoc Query on 'Proof of identity regarding third-country nationals who apply for residence permit', requested by FR NCP on 18th June 2014;⁽¹²⁴⁾
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- Belgian Contact Point to the EMN, *2015 Annual Policy report on Asylum and Migration Policy in Belgium*, 2016.

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- <http://www.sefor.be/en/vragen/>
- https://ec.europa.eu/homeaffairs/sites/homeaffairs/files/policies/borders/docs/c_2010_1620_en.pdf
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- <https://www.n-va.be/nieuws/minister-jambon-veiligheid-thalys-en-eurostar-verhogen>
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- <http://fra.europa.eu/en/publication/2017/fundamental-rights-interopability>
- <https://www.privacycommission.be/jaarverslag-rapport-annuel/nl/>

Statistics

- Eurostat
- Immigration Office
- CGRS
- SPF Foreign Affaires
- Myria

Annex 1: Definitions

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v4.0⁽¹²⁶⁾ unless specified otherwise in footnotes.

The EU acquis does not give a definition of “identity.” Whilst, for the purposes of this study, identity is also understood to include a person’s nationality, more specific criteria used by the (Member) States are requested in Section 1.3. On the basis of the responses received, the Synthesis Report will then consider commonalities amongst the (different) definitions used. As a starting point, within the context of this Study, **identity** is defined as follows: “a unique set of characteristics related to a person such as name, date of birth, place of birth, nationality, biometric characteristics, etc. making it possible to individualize a person.” For a definition of **identification** and **identity verification**, see subsection **Fout! Verwijzingsbron niet gevonden.** above.

Other relevant definitions are:

‘Applicant for international protection’: is defined as “a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken”.

‘Application for international protection’: is defined as “a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU,⁽¹²⁷⁾ that can be applied for separately”.

‘Asylum seeker’ is defined in the global context as “a person who seeks safety from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments; and in the EU context as a person who has made an application for protection under the Geneva Convention in respect of which a final decision has not yet been taken.”

‘Compulsory return’ in the EU context is defined as “the process of going back – whether in voluntary or enforced compliance with an obligation to return– to:

- one’s country of origin; or
- a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or

¹²⁶ Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf, last accessed on 24th March 2017.

¹²⁷ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011.

- another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

Synonym: Forced return

'Forced return' is defined in the EU context as “the process of going back – whether in voluntary or enforced compliance with an obligation to return– to: one’s country of origin; or a country of transiting accordance with EU or bilateral readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.”

Synonym(s): compulsory return, removal, refoulement

'Irregular stay': is defined as “the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State”.

'Rejected applicant for international protection': is defined as “a person covered by a first instance decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period”.

'Residence permit': is defined as “any authorisation issued by the authorities of an EU Member State allowing a non-EU national to stay legally in its territory, in accordance with the provisions of Regulation 265/2010 (Long Stay Visa Regulation).”⁽¹²⁸⁾

'Return decision': is defined as “an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return”.

'Return': is defined as “the movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous”.

'Risk of absconding': is defined as “in the EU context, existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is subject to return procedures may abscond”.

'Third-country national': is defined as “any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code”.

'Unaccompanied minor': is defined as “a minor who arrives on the territory of the Member States

¹²⁸ Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa, OJ L 85, 31.3.2010

unaccompanied by the adult responsible for them by law or by the practice of the Member State concerned, and for as long as they are not effectively taken into the care of such a person. It includes a minor who is left unaccompanied after they have entered the territory of the Member States.”
 Synonym(s): UASC, unaccompanied and separated child

In addition, the forthcoming EMN Glossary 5.0 (2017) includes the following entries:

'Establishment of identity of individuals in international protection': is defined as “process which is commonly carried out on the basis of a review of documentary evidence, but which makes use of different procedures and methods e.g. a physical-technical examinations of the documents, investigations in the country of origin via the embassies, the taking of finger prints, speech-text-analysis and age assessment, when documentary evidence is inauthentic, inadequate, insufficient or absent.”

'False and Authentic Documents Online': is defined as “a European Union internet-based image-archiving system set up to support the rapid sharing between EU Member States of images of genuine, false and forged documents in order to aid the combating of irregular migration and the use of fraudulent documents.”

'Language analysis for the determination of origin': is defined as “analysis of mainly spoken, but also written, language as a method for helping to establish the nationality, region or ethnic origin of applicants for international protection.”

'Public Register of Authentic Travel and Identity Documents Online': is defined as “a reference database containing information about authentic travel and identity documents and other important documents issued by authorities from EU Member States and Schengen countries and some third countries.”

The following abbreviations and national terms are used in this study:

Immigration Office (IO)	French: Office des étrangers Dutch: Dienst vreemdelingenzaken
Office of the Commissioner General for Refugees and Stateless Persons (CGRS)	French: Commissariat général aux réfugiés et aux apatrides Dutch: Commissariaat-generaal voor de Vluchtelingen en de Staatlozen
Council for Alien Law Litigation (CALL)	French :Conseil du contentieux des étrangers (CCE) Dutch : Raad voor Vreemdelingenbetwistingen (RVV)

Immigration Act	<p>French: Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers /</p> <p>Dutch: Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</p>
Royal Decree implementing the Immigration Act	<p>French: Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</p> <p>Dutch : Koninklijk besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</p>

Annex 2: National authorities/ institutions involved in identity establishment in various migration procedures

	International protection	Return	Short stay visas	Long stay visas/ permits for family reasons	Long stay visas/ permits for study reasons	Long stay visas/ permits for the purposes of remunerated activities
Consulates/ Embassies			X	X	X	X
Immigration authorities (Immigration Office)	X (registration and Dublin procedure)	X	X	X	X	X
Asylum authorities (CGRS)	X (assessment)					
Police	X (screening at registration)	X (apprehension of persons in irregular stay)				
Border guard (Border Inspection Unit of the IO and the border guards of the federal Police)	X (applications made at the border)	X (refusal of entry at the border)	X	X	X	X
Security services	X (screening at registration)					
Identification centre	N/A	N/A	N/A	N/A	N/A	N/A
Central Squad against Forgery of the Federal Police (CDBV-D/OCRF-D)	X (Documents can be send to this unit for the purpose of authentication)	X		X (Documents can be send to this unit for the purpose of authentication)	X (Documents can be send to this unit for the purpose of authentication)	X (Documents can be send to this unit for the purpose of authentication)

Annex 3: Studies and reports of the Belgian Contact Point of the EMN (2009-2017)

The present annex lists the national studies and reports published by the Belgian Contact Point of the EMN between 2009 and 2017. The other EMN National Contact Points (NCPs) produced similar reports on these topics for their (Member) State. For each study, the EMN Service Provider, in cooperation with the European Commission and the EMN NCPs, produced a comparative Synthesis Report, which brings together the main findings from the national reports and places them within an EU perspective.

The Belgian reports mentioned below are available for download on www.emnbelgium.be

The reports from the other NCPs as well as the Synthesis Reports are available on http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm

2009

- April 2009* The Organisation of Asylum and Migration Policies in Belgium
- June 2009* Annual Report on Asylum and Migration Policy in Belgium – 2008
- July 2009* Unaccompanied Minors in Belgium - *Also available in French and Dutch*
- October 2009* Programmes and Strategies in Belgium Fostering Assisted Voluntary Return and Reintegration in Third Countries - *Also available in French and Dutch*
- December 2009* EU and Non-EU Harmonised Protection Statuses in Belgium

2010

- January 2010* Annual Report on Asylum and Migration Policy in Belgium – 2009
- August 2010* Satisfying Labour Demand Through Migration in Belgium

2011

- January 2011* Temporary and Circular Migration in Belgium: Empirical Evidence, Current Policy Practice and Future Options
- March 2011* Annual Report on Asylum and Migration Policy in Belgium – 2010
- May 2011* EU and Non-EU Harmonised Protection Statuses in Belgium (update)
- October 2011* Visa Policy as Migration Channel in Belgium

2012

- January 2012* Practical Measures for Reducing Irregular Migration in Belgium
- March 2012* Annual Report on Asylum and Migration Policy in Belgium – 2011
- April 2012* Misuse of the Right to Family Reunification : Marriages of Convenience and False Declarations of Parenthood in Belgium - *Also available in French and Dutch*
- September 2012* Establishing Identity for International Protection: Challenges and Practices in Belgium - *Also available in French and Dutch*
- September 2012* The Organization of Migration and Asylum Policies in Belgium (update)
- October 2012* Migration of International Students to Belgium, 2000-2012
- December 2012* Intra-EU Mobility of Third-Country Nationals to Belgium - *Also available in French*

2013

- May 2013* Annual Report on Asylum and Migration Policy in Belgium – 2012
- July 2013* Attracting Highly Qualified and Qualified Third-Country Nationals to Belgium
- August 2013* The Organisation of Reception Facilities in Belgium
- October 2013* The Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures in Belgium

2014

- February 2014* Migrant Access to Social Security – Policy and Practice in Belgium - *Also available in French and Dutch*
- June 2014* Good Practices in the Return and Reintegration of Irregular Migrants: Belgium's Entry Bans Policy and Use of Readmission Agreements
- June 2014* The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Belgium
- July 2014* Annual Report on Asylum and Migration Policy in Belgium – 2013
- October 2014* Policies, Practices and Data on Unaccompanied Minors in Belgium (2014 Update)
- December 2014* Admitting Third-Country Nationals for Business Purposes in Belgium

2015

- June 2015* Determining Labour Shortages and the Need for Labour Migration from Third Countries in Belgium - *Also available in French*
- July 2015* Annual Report on Asylum and Migration Policy in Belgium - 2014
- August 2015* Dissemination of Information on Voluntary Return: How to Reach Irregular Migrants not in Contact with the Authorities in Belgium

2016

- May 2016* Changes in Immigration Status and Purposes of Stay in Belgium
- May 2016* Integration of Beneficiaries of International Protection into the Labour Market in Belgium
- June 2016* Annual Report on Asylum and Migration Policy in Belgium - 2015
- December 2016* Returning Rejected Asylum Seekers: Challenges and Good Practices in Belgium
- December 2016* Resettlement and Humanitarian Admission in Belgium

2017

- June 2017* Annual Report on Asylum and Migration Policy in Belgium - 2016
- July 2017* Family Reunification of Third Country Nationals in Belgium
- August 2017* Illegal Employment of Third Country Nationals in Belgium
- November 2017* Challenges and good practices for establishing applicants' identity in the migration process in Belgium
- Upcoming* The effectiveness of return in Belgium: challenges and good practices linked to EU rules and standards
- Upcoming* The changing influx of asylum seekers in 2014-2016: Belgium's responses

