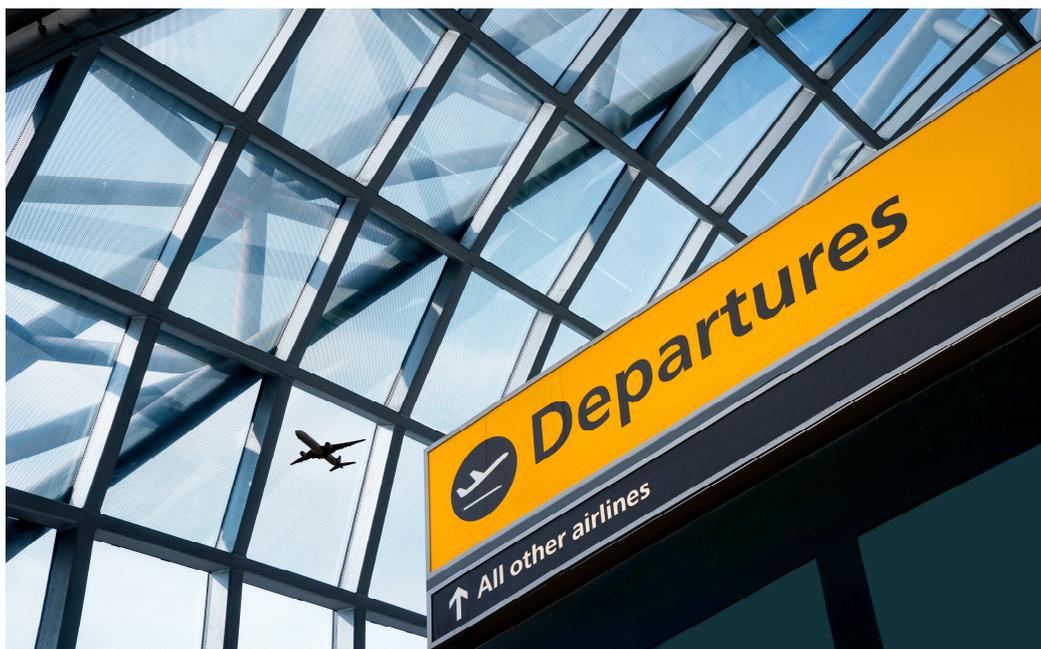




THE EFFECTIVENESS OF RETURN IN BELGIUM: CHALLENGES AND GOOD PRACTICES LINKED TO EU RULES AND STANDARDS

STUDY OF THE BELGIAN CONTACT POINT
OF THE EUROPEAN MIGRATION NETWORK (EMN)

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The Belgian Contact Point of the European Migration Network (EMN) is a multi-institutional entity composed of experts from the Federal Public Service Home Affairs (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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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.

Belgian study and EU comparative study

Belgian report: This is the Belgian contribution to the EMN study on the effectiveness of return in EU Member States. Other EMN National Contact Points (NCPs) produced a similar report on this topic for their (Member) State.

Common Template and EU 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 22 Member States and Norway, an EU Synthesis Report was produced by the EMN Service Provider in collaboration with the European Commission and the EMN NCPs. The EU Synthesis Report gives an overview of the topic in all the (Member) States.

Aim of the study: This study aims at analysing the impact of EU rules on return – including the Return Directive¹ and related case law from the Court of Justice of the European Union (CJEU) – on Member States' return policies and practices and hence on the effectiveness of return decisions issued across the EU. The study also seeks to provide an overview of the challenges encountered by Member States in effectively implementing returns, as well as identify any good practices developed to ensure the enforcement of return obligations in full respect of fundamental rights, the dignity of the returnees and the principle of *non-refoulement*.

Scope of the study: The study focuses on the way the EU standards and procedures on return have been interpreted and applied at the national level and, to the extent possible, on how their application has impacted on the effectiveness of return - bearing in mind the difficulty of drawing strong causal connections between specific policy measures and the number of implemented returns.

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



¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24 December 2008.

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EXECUTIVE SUMMARY & KEY POINTS

This national EMN study analyses the way the EU rules and standards on return have been interpreted and applied at the national level, and how their application has impacted on the effectiveness of return. It focuses more particularly on a contextual overview of the national situation, on the systematic issuance of return decisions, on the risk of absconding, on the effective enforcement of return decisions, on procedural safeguards and remedies, on family life, children and state of health, on voluntary departure, and on entry bans.

For different aspects of return (implementation of (alternatives to) detention, implementation of the return of vulnerable people, the period for voluntary departure and entry bans) good practices are identified. These good practices take into account the definition of “effective return policy”: the enforcement of return obligations in full respect of fundamental rights, the dignity of the returnees and the principle of non-refoulement. Challenges on these aspects of return are also highlighted in this study.

The Belgian national contribution is mostly based on desk analysis of existing legislation and policy documents, recent EMN publications (studies, ad-hoc queries, annual policy reports, ...), input from senior officials from both the Immigration Office and the Federal Agency for the Reception of Asylum Seekers (Fedasil), academic literature, news articles, the website and blog of the State Secretary for Asylum Policy and Migration, reports, newsletters and websites from research institutes, NGOs and IGOs, and input from the Federal Migration Centre (Myria) and the NGO Jesuit Refugee Service Belgium.

The key facts and figures of this national study can be summarized as follows:

- The Belgian authorities consider that the **increase** in the **return rate** is of the **highest importance**. Especially when it comes to third-country nationals (TCNs) who pose a threat to public order or national security. That’s why the last years a lot of changes in the legal and/or policy framework have been made to increase returns in general and returns of third-country nationals who pose a threat to public order or public security in particular. This focus on return and the State Secretary for Asylum Policy and Migration’s firm stance in this matter generate national debate on various aspects on the return policy in Belgium (please see section 1.3)
- In accordance with article 41 of the Charter of Fundamental Rights of the European Union, the Immigration Office (IO) has put a mechanism in place to take into account any changes in the individual situation of illegally staying third-country nationals (**right to be heard**). This in order to see if there are elements against detention or removal, for example presence of family or medical problems (please see section 2.3).
- Officials from the Immigration Office claim that, over the last year, they have paid more and more attention to drafting judicially sound (return) decisions, and that these decisions have become more extensive and better motivated. Nonetheless statistics show that the **Court** for Alien Law Litigation (CALL) has **annulled** or suspended more and **more decisions** (please see section 4.6).
- Over the last years, the return measures and decisions have become less “one-fits-all” and more personalized. This reflects a national trend that aims at **tailoring** the return policy and practice, taking into account the policy priorities, e.g. tailored approach towards returnees from specific third countries, and specific needs of returnees, e.g. tailored projects for returnees with medical needs (please see chapter IX).

- There is a substantial **difference** in the jurisprudence of the **Dutch-speaking and the French-speaking Courts** of first-instance (who are competent for appeals against detention). An illegally staying third-country national has more than twice as much chance of being released from a detention centre if he³ appeals to a French-speaking Court than to a Dutch-speaking Court of first-instance (please see section 4.6).
- The only **alternatives for detention** that are used on a regular basis are FITT-units (please see section 4.4) and open return places (please see section 4.6). FITT-units and open return places are seen by the authorities (and also by NGOs) as good practices (both cost efficient and human). On the other hand the authorities believe the percentage of third-country nationals that are designated to FITT-units or open return places that actually return, is rather low. Most alternatives (for example bail, a reporting obligation, or the obligation to surrender documents) are not or very **rarely used** (please see section 4.5).

³ Disclaimer: Throughout this study, gender-specific terms may be used in order to ease the text flow. Whenever a gender-specific term is used, it should be understood as referring to both genders, as well as to persons with non-binary gender identities, unless explicitly stated. This is done solely for the purpose of making the text easier to read, and no offense is intended.

I. CONTEXTUAL OVERVIEW NATIONAL SITUATION CONCERNING RETURN OF THIRD-COUNTRY NATIONALS

1.1 National measures implementing the Return Directive or equivalent standards

An overview of the national measures implementing the Return Directive can be found in the correlation table (annex 3).

Belgium makes use of the derogation provided under article 2 (2) a and b. National legislation and international conventions regarding extradition are applied, and not the Directive 2008/115/EC.

This derogation applies to third-country nationals who are subject to a refusal of entry and third-country nationals who are apprehended or intercepted while irregularly crossing the external border. It should be noticed that if a third-country national is intercepted while irregularly crossing the external border, he will be given a decision of refusal of entry. Of course the principle of non-refoulement will be respected.

(Section 1 – Q2 & 3 of the EMN Questionnaire)

1.2 Recent changes in the legal and / or policy framework

- Accessing the **database of the police**: some authorized officials from the Immigration Office, who received a special training and have a security clearance, have been granted direct access to certain parts of the central database of the Belgian police (ANG-database). They still need to contact the police or the prosecutors' office to make use of the information for decision making. A problem is that the so far outdated entries in the ANG are rarely deleted. The ANG can for example indicate that a third-country national is a suspect, while he is already cleared of his charges. This direct access makes it easier for the Immigration Office to determine whether or not a foreign national might be a threat to public order or public security. This is part of a process to increase information sharing and cooperation between the police, judicial authorities and the Immigration Office. The first officials got access to the ANG-database in November / December 2016. Later more officials were granted access.²⁹
- Setting up a **radicalism unit**: in May 2016, a new 'radicalisation' unit was set up within the Immigration Office. The new unit allows monitoring and centralisation of individual cases where a link exists with radicalism and terrorism. It helps other units in determining if and which actions have to be taken regarding these third-country nationals (e.g. interception or removal). It also provides coordination between different authorities involved, such as the Immigration Office, the Commissioner General for Refugees and Stateless Persons (CGRS), Fedasil, the police and security services.

²⁹ Article '[Immigration Office has been granted direct access to police database](#)' on website EMN NCP Belgium, and [Royal Decree of 2 April 2016](#) regarding the direct access of officials of the Immigration Office to the database of the Belgian police.

- **Increasing the capacity of detention centres:** the capacity of the detention centres increased in 2016 with an additional 131 places. Belgian authorities want to increase the capacity drastically in the coming years.³⁰ That's why there are plans to create three new detention centres in Holsbeek (50 places for women), Antwerp (144 places for foreigners who pose a threat to public order) and Jumet (200 places). The objective is to have a capacity of more than 1000 places by 2021.³¹
- New laws regarding the **removal of foreigners with residence permits, but who pose a threat to society:** two laws have been adopted, namely the law of 24 February 2017 modifying the Immigration Act on the entry, residence, settlement and removal of foreign nationals in order to reinforce the protection of public order and national security; and the law of 15 March 2017 modifying article 39/79 of the Immigration Act. Both laws were published in the Belgian Official Gazette on 19 April 2017 and entered into force on 29 April 2017. The main aim of these laws is to facilitate the procedure when ending a foreign national's residence right (of more than 3 months) and organising his removal for reasons of public order or national security.

According to the Belgian State Secretary for Asylum Policy and Migration, the procedure to end foreign nationals' residence rights was, prior to these laws, much more time-consuming and laborious, because in most cases a prior advice from the Advisory Committee on Foreigners was needed. It also used to be very difficult or even impossible to remove certain categories of foreigners with residence permits. But now only beneficiaries of international protection are totally protected against a removal. For them removal is only possible if the protection status is withdrawn first.

The new laws foresee in procedural guarantees, like the right to be heard and the principle of proportionality.³² The State Secretary has stated that these laws will only be applied in cases of terrorism and heavy criminality.

Nonetheless the Belgian Human Rights League has criticized these laws. It claims that "posing a threat" to society is very vague, and fears that these laws give the Immigration Office too much power to arbitrarily interpret the meaning of "public order" and "national security". A criminal conviction is for example not needed to be considered a threat.³³

- **Memorandums of understanding** on migration and return with Cameroon (1 February 2017), with Morocco (2016) and with Somalia (also 2016) were concluded. On 24 and 25 April 2017 declarations of intent on migration and return were signed with Iraq (both Baghdad and Kurdish government).³⁴
- A law against **manifestly improper legal action** in asylum and migration matters was adopted by the Belgian parliament on 20 July 2017. This law makes it easier to give an administrative penalty to the third-country national (who is often insolvent) and/or to his lawyer in case of manifestly improper legal action. The penalty can be higher if, as a result of the improper legal action, the Immigration Office must suspend the execution of a

³⁰ Article '[Council of Ministers approves increase of capacity of detention centres for irregularly staying migrants](#)' on website EMN NCP Belgium.

³¹ Article '[Doubling of return capacity approved](#)' on website State Secretary, 14 May 2017.

³² Article '[New laws regarding the removal of foreign nationals legally residing in Belgium who represent a threat to the public order or national security](#)' on website EMN NCP Belgium and the Immigration Office: Legal department.

³³ Article '[Belgium's New Deportation Law Raises Red Flag With Civil Rights Groups](#)' of 13 March 2017 on website Belgian Human Rights League.

³⁴ Immigration Office : Ilobel unit

(return) measure. It is also possible to sanction lawyers who file manifestly improper appeals.³⁵

The Belgian Bars protested against this law. They claimed that it is up to the president of the Bar to sanction improper appeals. The Bars stated that they received only very few complaints regarding improper legal action.³⁶ Myria is worried that this law might stop some lawyers from lodging appeals that are necessary.³⁷

- The law of 10 August 2015 made it easier to refuse or withdraw international protection status for reasons of public order or national security.³⁸

The law of 1 June 2016 provides measures to remove those **persons of whom the protection status has been withdrawn and who pose a threat to society**.

- **Asylum fraud unit:** created on 7 May 2017, the international protection follow-up unit targets third-country nationals who have been granted international protection status and go back to their country of origin (for example on holiday) or contacted the authorities of their countries of origin. They risk that their international protection status (refugee or subsidiary protection status) will be revoked.³⁹
- When the police wants to **intercept illegally staying persons at their homes** in order to remove them, it can happen that these persons refuse to let the police enter their homes. And the Constitution guarantees the inviolability of homes. That's why there is a project of law which will allow the police and officials of the Immigration Office to enter the homes of illegally staying persons, when in possession of a prior order of an investigating judge. The police will also be allowed to search the house in order to find identity or travel documents which can be used in the return procedure. This project of law was approved by the Ministerial Council on 30 June 2017. The political debate on this project of law is quite intense. It hasn't been adopted by the Parliament yet.
- On 24 February 2017 a law was adopted in order to rationalize and **reduce the number of removal orders**. It happens often that an illegally staying person gets a removal order, and then starts a residence procedure or asylum application. During different kinds of residence procedures (for example family reunification) and during an asylum application he can stay legally in Belgium while he waits for a decision. In that case he will be issued a temporary residence document.

According to old case law, the temporary residence document made the old removal order disappear. As a result, a new removal order had to be adopted if the residence procedure or asylum application was rejected. So a person could receive in one year multiple removal orders.

Drafting removal orders is time-consuming. On top of that the concerned person can file an appeal against every removal order, which increases the workload of the Council for Alien Law Litigation and the legal fees for the Immigration Office.

Because of the law of 24 February 2017 the old removal orders do not disappear, but are only temporarily suspended during the residence procedure. If the residence procedure or the asylum application is rejected, the suspension of the removal order is lifted. This law must make the return procedure more effective.⁴⁰ Myria claims that this will make it impossible to attack the removal order after the suspension is lifted (as the delay for appeal will be finished by then), and argues that this can be questionable concerning the access to effective remedy.⁴¹

³⁵ Immigration Office: Legal department + article '[Proceduremisbruik in vreemdelingenzaken eindelijk aangepakt](#)' on the website of the political party of the Belgian State Secretary for Asylum Policy and Migration

³⁶ [Press release](#) of the Flemish Bar Association, 24 February 2017

³⁷ Myria: comments on draft version template

³⁸ Immigration Office: Legal department

³⁹ Article '[Belgium and Germany will increase their cooperation to monitor beneficiaries of international protection who temporarily return to their countries of origin](#)' on website EMN NCP Belgium.

⁴⁰ Immigration Office: Legal department and Immigration Act article 1/3

⁴¹ Comments Myria on draft template

1.3 National debate on return

The last years, return (and migration in general) has been a very hot and debated item in Belgium. It has been covered extensively in the media.

The Belgian State Secretary for Asylum Policy and Migration considers the increase in the return rate of the highest importance. Especially when it comes to third-country nationals who pose a threat to public order or national security.

That is why the last years a lot of changes in the legal and/or policy framework have been made to increase returns in general and returns of third-country nationals who pose a threat to public order or national security in particular.⁴⁷

NGOs and left-wing politicians have strongly criticised these numerous changes. They claim that the return policy is too strict and not humane, and they state that international law is not always respected.

There have been recently numerous points of discussion regarding return in the Belgian media and the Belgian parliament. Please find below three of the key points of discussion.

Possibility to detain families with minor children in the near future

Since 2008 families with minor children are in practice no longer detained in detention centres, but in open family units or FITT-units (please see section 4.6). However closed living units for families are currently being built within the detention centre 127bis. The State Secretary claims that these closed living units will be adapted to the needs of families with minor children, and that educational and psychological care will be available. They will be used as a final option for families who refuse to return voluntarily, have fled their FITT-unit, or who pose a threat.

He states that, while FITT-units are considered by NGOs as a good practice in terms of alternatives to detention, in fact a large percentage of these families flee from the (unguarded) FITT-units. The possibility to detain a family with underage children for a limited period of time in a closed living unit located in a detention centre is, according to the State Secretary, necessary for exerting pressure not to escape from the FITT-units. He believes that, because of the closed living units, the percentage of families fleeing open FITT-units will drop.⁴⁸

UNICEF, numerous NGOs and civil society organisations have strongly criticized these plans.⁴⁹ They argue that children should not be detained solely on the basis of their or their parent's migration status, that detention will have a profound and negative impact on the child's health development and well-being, and that detention is never in the child's interest.⁵⁰

Identification of illegally staying Sudanese nationals

In the summer of 2017, a few hundred illegally staying third-country nationals were staying in the Maximilian park in Brussels. A lot of them were migrants in transit who wished to go to the United Kingdom. For them Brussels was just a "pit stop", and they didn't apply for asylum in Belgium. The Prime minister of the Brussels region, Mr. Vervoort described the situation in the park as a humanitarian crisis, and proposed the creation of (emergency) accommodation for these transit migrants. But the State Secretary declared that he didn't want this park to become a new Calais, and strongly opposed the idea.

⁴⁷ Belgian House of Representatives, '[General Policy Note On Asylum and Migration](#)', 27 October 2016, DOC 54 2111/017, p. 26

⁴⁸ [Parliamentary question](#) regarding the detention of families from MP Monica De Coninck on 19 July 2016

⁴⁹ Article '[Detentie van kinderen is niet in hun belang](#)' in the newspaper 'De Morgen', 12 September 2017.

⁵⁰ NGOs started the campaign 'You don't lock up a child. Period.' More information can be found on the campaign's [website](#).

About 200 transit migrants were intercepted and brought to detention centres. Because more or less half of them were presumed Sudanese, the State Secretary invited a Sudanese delegation to come to Belgium and identify their illegally staying compatriots. The Belgian Prime Minister backed the State Secretary, and argued that other European countries have also invited Sudanese delegations for identification purposes.

Left-wing politicians of the opposition and NGOs stressed that the Sudanese president is accused of crimes against humanity, and that the Sudanese regime's human rights' record is particularly worrying. They demanded that the Sudanese are better informed about the possibility to apply for asylum in Belgium, and recalled that Sudanese nationals who do so have a 60% chance of being granted refugee status.

On 22 December 2017, the Belgian Prime Minister officially requested the CGRS to carry out an independent enquiry on testimonies and allegations of mistreatment from Sudanese nationals forcibly returned to their country of origin. In this context and in the framework of this investigation, the Belgian Contact Point of the EMN launched an ad-hoc query⁵¹ on return to Sudan. No less than 24 Member States and Norway responded to this ad-hoc query.

The ad-hoc query showed inter alia that none of the Member States (or Norway) organise systematic monitoring of the returnees in Sudan, that most Member States collaborate with the Sudanese embassies when it comes to identification and issuing travel documents in view of return, that some have received a Sudanese delegation, and that the profile, ethnicity and / or region of origin are not taken into account in the framework of return procedures.⁵²

Attempt to remove Kosovan girl who grew up in Belgium

In the summer of 2016, an illegally staying Kosovan family (father, his 16-year old daughter and his adult son) was intercepted. The mother could not be found. The father and underage daughter were brought to a FITT-unit, while the adult son (who committed several crimes) was put in a detention centre.

The daughter said that she had left Kosovo when she was only a few months old, that she speaks Dutch fluently, and that she is very well integrated. The family claims that it arrived from Germany in Belgium in 2000. Over the years the family started numerous procedures (asylum and medical and humanitarian regularization procedures) in order to obtain a residence permit, but all were rejected. The parents received eight orders to leave the territory, but never complied.

In response to this case, the children's rights commissioner made an appeal for minors who have been staying in Belgium illegally for at least five years, but are well integrated, to be given a residence permit (pardon for children). He believes that, in that case, the child's parents should be allowed to stay too.

The State Secretary disagreed and argued that it's not possible to grant a minor a residence permit without giving the parents also a residence permit. And that would mean that the parents would be rewarded for their illegal stay, for starting numerous procedures, and for refusing to comply with return decisions.⁵³

Because the father and his daughter left the (open) FITT-unit without permission and went into hiding, only the adult son could be removed to Kosovo. When her father later disappeared, the daughter became an unaccompanied minor (UAM) and was granted a temporary residence permit.⁵⁴

⁵¹ EMN National Contact Points and the European Commission use ad-hoc queries to collect information from Member States and Norway in a relatively short time on a wide range of asylum- and migration-related issues, e.g. legal migration, irregular migration, borders, return, visas etc. The EMN produces compilations of the responses to ad-hoc queries, which rapidly assess the perspective of responding Member States and Norway in relation to a specific topic. Approximately a hundred ad-hoc queries are launched every year.

⁵² More information on this ad-hoc query (summary and compilation of answers) can be found on the website of the Belgian Contact Point: <https://emnbelgium.be/publication/emn-ad-hoc-query-returns-sudan>

⁵³ Article '[Children's rights commissioner seeks leave to stay for illegal minors](#)' on website Belgian (Flemish) public service broadcaster (VRT).

⁵⁴ Article '[Djellza gets leave to stay for a year](#)' on website Belgian (Flemish) public service broadcaster (VRT).

(Section 1 – Q4 of the EMN Questionnaire)

II. SYSTEMATIC ISSUANCE OF RETURN DECISIONS

2.1 Practices in issuing return decisions

Competent authority to issue return decisions and duration

Most return decisions are issued by the Immigration Office. In certain cases the municipalities are also competent to issue return decisions.⁷⁶

In Belgium return decisions have an unlimited validity (or until the third-country national returns of course).

The Immigration Office avoids to specify the country of destination (which is usually the country of origin), because it's possible that the third-country national has given a false nationality.

(Section 2 – Q5, 9 & 11 of the EMN Questionnaire)

Refraining from issuing return decisions to certain irregularly staying persons

In Belgium return decision are still issued if the whereabouts of third-country nationals are unknown or if they lack identity or travel documents.

Potential victims of trafficking are not issued a return decision, but an annex 15 (temporary stay) valid for 45 days in order to recover, escape from supposed traffickers and decide whether or not to cooperate with the competent Belgian authorities (please see also section 2.2).⁷⁷

If an illegally staying person has already received an order to leave the territory and there are no new elements, the last order to leave the territory will be reaffirmed (please see section 1.2).

(Section 2 – Q6 of the EMN Questionnaire)

Irregular stay detected on exit

Return decisions are not issued when irregular stay is detected on exit. An irregularly staying person who is about to leave the territory of the Member States / Schengen area is not halted to be imposed a return decision / entry ban, since the risk is too great that he will miss his flight and therefore will not effectuate his return.⁷⁸

⁷⁶ Immigration Office: Litigation unit

⁷⁷ Website EMN Belgium, article on '[New temporary residence document for potential victims of trafficking in Belgium](#)'.

⁷⁸ As opposed to some other Member States, in Belgium the border police can't draft orders to leave the territory. So the border police must contact the Immigration Office and ask to write an order to leave the territory, which then must be notified by the border police. This takes time and so there's a risk the TCN will miss his flight. That's why no return decisions are issued when irregular stay is detected on exit.

As the person will be checked by the border police at departure, the departure will be signalled to the Immigration Office and a notice will be made in the personal file of the concerned person (provided that he has a file – if not a new file will be created).

If there is a notice in the police or Schengen database that this person is wanted, he will of course be halted and he won't be able to depart. In that case, there will be a return decision issued (either when the person is put into administrative detention, when the person will be released by the Federal Public Service Justice after having been confronted with a magistrate, or after having been in prison).⁷⁹

(Section 2 – Q6 of the EMN Questionnaire)

2.2 Right to stay for compassionate, humanitarian or other reasons

Belgian legislation foresees the possibility to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to third-country nationals irregularly staying on Belgian territory.

Humanitarian regularization

According to article 9bis of the Immigration Act, an application for a residence permit of more than 90 days, should as a general rule be submitted at the competent Belgian diplomatic post. In derogation from that principle, it's however possible for a third-country national who stays in Belgium to apply for a residence permit of more than 90 days. In his application the third-country national must prove that there are exceptional circumstances that justify that he starts this procedure when he's already in Belgium. He must prove that it's not possible or very difficult for him to go back to his country of origin and apply for a visa there. The Immigration Office and the State Secretary have considerable discretionary powers when it comes to humanitarian regularization. The third-country national his family situation, state of health and dangerous or volatile situation in his country of origin are taken into account.

The third-country national can receive residence rights for limited or unlimited duration.

Medical regularization

According to article 9ter of the Immigration Act, it's possible for a third-country national to obtain residence rights in case of severe health problems. A doctor who works for or is appointed by the Immigration Office will give his opinion on the medical problem, its severity, and the kind of treatment which is necessary. The availability and accessibility of treatment in the country of origin can be verified if needed.

A residence right may be granted for a limited time, which can become unlimited after five years.

Victims of human trafficking or smuggling

Articles 61/14 - 61/25 of the Immigration Act provide a favourable procedural regime to victims of human trafficking and human smuggling who cooperate with the judicial authorities. The third-country national must be assisted by a recognized centre specialized in the reception and assistance to victims of human trafficking and smuggling. In principle a complaint or incriminating

⁷⁹ Immigration Office: Identification and Removal unit

statement from the third-country national is needed.

A (renewable) residence right of 6 months will be granted if the judicial authorities confirm that the legal procedures are still ongoing, that the third-country national shows a clear intention to cooperate, and that he is not a threat to public order or national security. If these conditions are not or no longer fulfilled or in case of fraud, the residence right may be revoked and a removal order may be issued.

A residence right of unlimited duration may be given if the complaint or incriminating statement led to a conviction, or if the judicial authorities have withheld certain aggravating circumstances.

Family reunification

According to article 12bis of the Immigration Act and article 26/2/1 of the Royal Decree, an application for family reunification should as a general rule be submitted at the competent Belgian diplomatic post. In derogation from that principle, it's however possible for a third-country national staying in Belgium (illegally) to lodge this application.

As a result of an application for family reunification, a residence right may be granted for a limited time, which can become (if certain conditions are met) unlimited after five years.

Unaccompanied minors

When an unaccompanied minor arrives in Belgium, a guardian is appointed. This guardian can start a specific procedure at the Immigration Office, according to articles 61/40 – 61/25. This procedure determines the most durable solution in the best interest of the unaccompanied minor (which can be both return as well as a residence right). To this end, the authorities conduct a 'family assessment' for each individual case.

If the most durable solution is a residence right, a residence permit of one year will be given to the unaccompanied minor, which can be renewed. After three years this residence permit becomes unlimited. If the most durable solution is a residence right, a residence permit of one year will be given to the unaccompanied minor, which can be renewed. After three years this residence permit becomes unlimited.

(Section 2 – Q8 of the EMN Questionnaire)

2.3 Assessment risk of *refoulement*

Belgium has a mechanism in place to take into account any change in the individual situation of the third-country nationals concerned, including the risk of *refoulement*, before enforcing a removal.

Before the decision whether or not to detain an illegally staying person with the aim to remove him is taken, the file of the illegally staying person should be thoroughly examined by an official of the Immigration Office. This in order to see if there are elements against detention or removal (for example presence of family or medical problems).

When the illegally staying person is intercepted, the police will in principle ask three short questions (Why haven't you returned? How is your health? Do you have family in Belgium?) in accordance with article 74/13 of the Immigration Act.⁹⁹ His answers are registered by the police in the electronic "TARAP" report. TARAP stands for "*Traitement Automatisé du rapport Administratif*"

¹⁰³ A rebuttable presumption is an assumption of fact accepted by the Court until disproved.

avec la Police". Because the report is electronic, it's not possible to ask the illegally staying person to sign this report.

If the illegally staying persons doesn't speak (or pretend not to speak) English, German, French or Dutch, it's not always possible for the police to get the help of an interpreter (because this is time consuming and laborious, and sometimes illegally staying persons are intercepted at night or during weekends or holidays). Myria recommends a more systematic use of interpreters, even though knowing that it can be complicated to do so.

As soon as possible after the arrival in the detention centre or FITT-unit (so *a posteriori*, when the decision to detain has already been taken and notified, but of course before enforcing the removal), the intercepted third-country national will fill in a questionnaire in its native language (Since when are you in Belgium? Are you still in possession of travel documents? Do you have a disease that makes it difficult for you to return? Do you have a sustainable relationship? Do you have underage children in Belgium? Do you have reasons why you can't return? ...). After translation of the questionnaire, an official of the Immigration Office must decide whether or not the decision to detain with the aim to remove needs to be altered or cancelled. If the decision is maintained, this will be motivated in a short note, which will be put in the third-country national's file.

If it occurs that an illegally staying third-country national is in prison (because he has been convicted for committing a crime or because he is a suspect), he will have to fill in a questionnaire (similar to the questionnaire used in detention centres and FITT-units) prior to his release from prison. Sometimes an official of the Immigration Office will go to prison and interview him. After analysing his answers, it will be decided whether or not he will be removed. If that is the case, a short note explaining why there are no obstacles for his return, will be put in his file.

(Section 2 – Q10 of the EMN Questionnaire)

III. RISK OF ABSCONDING

3.1 Presumption of existence risk of absconding

The list below provides an overview of the elements constituting rebuttable presumptions¹⁰³ of a risk of absconding in Belgian legislation:¹⁰⁴

- The third-country national has after his illegal entry or during his illegal stay not applied for a residence permit or for international protection within the timeframe set by legislation.
- The third-country national has provided misleading information or false documents within the framework of an asylum, residence, removal or border procedure, or has committed fraud or used other illegal means.
- The third-country national refuses or refused to cooperate with migration authorities.
- The third-country national hasn't complied with, or has made it clear that he doesn't intend to comply with:
 - a return decision
 - a Dublin transfer
 - a decision to turn back at the border
 - an entry ban that is not lifted nor suspended
 - a less coercive measure than detention aimed at returning or transferring
 - a measure restricting liberty in order to safeguard national security or public order

It doesn't matter if the above mentioned measures, decisions, bans or transfers are taken by the Belgian authorities or by the authorities of a Member State.

- The third-country national was issued an entry ban by another Member State that is not lifted nor suspended.
- The third-country national has started a new residence procedure or asylum application immediately after he got an entry ban, a removal order, a decision that ends his residence right, a negative decision in a residence application, or a decision to turn back at the border.
- When questioned about it, the third-country national concealed that his fingerprints were already taken in a State that applies the Dublin Regulation.
- The third-country national has in Belgium or in one or multiple Member States unsuccessfully applied more than once for asylum and / or a residence permit.
- When questioned about it, the third-country national concealed that he already applied for international protection in a State that applies the Dublin Regulation.
- The third-country national has declared or it appears from his file that he is in Belgium for other reasons than he mentioned in his asylum application or residence procedure.
- The third-country national has been given an administrative fine because of manifestly improper legal action before the Council for Alien Law Litigation.

(Section 3 – Q12 of the EMN Questionnaire)

3.2 Measures aiming to avoid the risk of absconding

In Belgium different measures are in place to avoid the risk of absconding for the duration of the period for voluntary departure. For example regular **reporting to the authorities** and the obligation to **stay at a certain place**. These two measures are however used only rarely. The **submission of copies** (no originals) of **documents** is provided for by law. The Belgian authorities

¹⁰³ A rebuttable presumption is an assumption of fact accepted by the Court until disproved.

¹⁰⁴ Article 1 § 2 Immigration Act

are still looking for an appropriate way to implement the deposition an adequate **financial guarantee**.¹⁰⁵

According to the Belgian authorities, none of these measures are effective to prevent the risk of absconding.

(Section 3 – Q13 of the EMN Questionnaire)

3.3 Challenges in determining the existence of a risk of absconding

Myria argues that the criteria constituting a rebuttable presumption of a risk of absconding (please see section 3.1) are **not always well defined**, too broad, and they will in practice allow to detain almost every illegally staying person and every asylum applicant. On top of that only 1 of the 11 criteria is enough to establish a risk of absconding. Myria believes that a combination of different criteria should be necessary to determine a risk of absconding.¹⁰⁹

(Section 3 – Q14 of the EMN Questionnaire)

¹⁰⁵ Immigration Act, article 7 paragraph 4 and Royal Decree of 08.10.1981, article 110quaterdecies. This Royal Decree is available in [Dutch](#) and [French](#).

¹⁰⁹ Paper Myria [*Note à l'attention de la Commission de l'Intérieur, des Affaires générales et de la Fonction publique*](#), 4 July 2017, p.5-7

IV. EFFECTIVE ENFORCEMENT OF RETURN DECISIONS

4.1 Sanctions in case of non-compliance with return decisions

Article 75 of the Immigration Act contains penal provisions for illegal stay and for not complying to the obligation of leaving, staying away from, or residing in certain places (detention centre or address). The sanction is 8 days to 3 months in prison and / or a fine. In case of recidivism within three years, the penalty will be one month to one year in prison and / or a bigger fine. In practice these penal sanctions will only be applied in combination with penal sanctions for public order or national security.¹¹⁰

A project of law has been adopted by the Ministerial Council, but hasn't been adopted by Parliament yet. This project of law aims to change penal provisions for illegal stay, by taking into account case-law of the Court of Justice of the European Union (in particular rulings El Dridi, Achughbabian, Sagor and Affum).

(Section 4 – Q16 of the EMN Questionnaire)

4.2 Mutual recognition of return decisions

Belgium has until now recognized return decisions issued by other Member States only a few times. Partly because the Belgian authorities don't always know if a return decision has been issued by another Member State, and if so whether or not it's enforceable.

Regarding mutual recognition of return decisions, the Immigration Office has taken the EURESCRIM initiative. This is based on a bilateral cooperation between Belgium and Spain. Quite a lot of third-country nationals who are in a Belgian prison have a residence permit from another EU Member State. The Immigration Office has developed a system in order to verify whether the residence permit could be revoked in Spain, so that a return decision could be issued and the third-country national can be returned from Belgium to his country of origin. Furthermore, an entry ban for the whole Schengen area could be imposed.

The goal now is to expand the Spanish-Belgian pilot EU-wide, so that convicted criminals will be systematically sent to their country of origin. In 2015 and 2016 several workshops were organised, to which a dozen Member States and associated states, as well as Frontex.

(Section 4 – Q17 of the EMN Questionnaire)

4.3 Travel documents

EU-travel documents

Belgium issues European travel documents for return in accordance with Regulation 2016/1953. But European travel documents are only used if the authorities of third countries allow to readmit their nationals on this basis. This is only the case for a limited number of countries : Afghanistan, Albania, Kosovo, Turkey (case by case), and Brazil (case by case).

¹¹⁰ Immigration Office: Identification and Removal Unit

For other nationalities, European travel documents can be used in very rare individual cases and only after authorisation of the authorities of the third country (e.g. Israel).¹¹⁶

It's also possible to use European travel documents to return third-country nationals to Italy (if they do not have their original Italian staying permits with them).

There is a substantial difference between forced and voluntary return when it comes to the procedure to request the third country of return to deliver a valid travel document and to accept a European travel document.

Procedure to obtain travel documents

The procedure to obtain travel documents can vary widely from one case to another. It is determined by the nationality of the third-country national, the availability of (copies of) identity documents, whether or not the third-country national cooperates, the existence of readmission agreements, ...

In case of **forced return** the Immigration Office will first of all need to determine the nationality of the third-country national (statements of third-country national, (copies of) identity documents, other documents, accent, ...), then the Immigration Office will contact the embassy or consulate of the third-country national, or the national authorities in the country of origin in writing. If the Immigration Office is in possession of identity documents, a copy of these documents will be attached to the letter or e-mail. If no response is received the embassy or consulate will be contacted again by mail, e-mail or phone. If the third-country national is detained and the embassy or consulate believes it's necessary, an interview with the third-country national will be organised (in the detention centre, the embassy or consulate, or by means of video conferencing).

For some nationalities the authorities are contacted directly, and not via their embassy or consulate.

Much depends on the existence of a readmission agreement (on a Benelux or EU level), or a Memorandum of Understanding (on a national level). They foresee specific rules for the identification / readmission process (mostly via readmission request forms sent to the central national authorities) as well as for the obtaining of the travel document (upon agreement issued by the embassy).¹¹⁷

When it comes to **voluntary return**, it's the responsibility of the third-country national to obtain the necessary travel documents. For example he has to contact his embassy himself. Expenses made to obtain travel documents can be reimbursed by IOM.

If necessary the Immigration Office can help to obtain travel documents. If the third-country national doesn't take the necessary steps to obtain these documents, this can be perceived as an indicator of non-compliance to voluntary return.

In case an asylum seeker who has exhausted all legal remedies complies to voluntary return and proves he has already taken steps to organise this voluntary return (e.g. signed return form and contacted embassy or IOM), the time allowed to leave the territory can be prolonged. This in order to give him more time to organise his return. As a result of this prolongation he might be allowed to stay longer in the reception centre. In case of non-compliance, the time allowed to leave the territory will not be prolonged, and as result he will no longer be given accommodation.¹¹⁸

(Section 4 – Q17 to 19 of the EMN Questionnaire)

¹¹⁶ Immigration Office: Identification and Removal unit

¹¹⁷ Immigration Office: Identification unit

¹¹⁸ Fedasil: International Unit

4.4 Detention

Categories excluded from detention

In Belgium it's possible to detain third-country nationals in the context of the return procedure. Some categories are however **excluded from detention**:

- Unaccompanied minors are never detained.
- Families with underage children are detained in (open) family units (FITT-units) and not in a detention centre. The family can leave the FITT-unit under strict regulations. But from a legal point of view the family is however detained. That's why a family will receive both an order to leave the country and a decision to be detained before being brought to the FITT-unit.

However closed living units for families are currently being built within the detention centre 127bis. These closed living units, who will be ready in the near future, will be adapted to the needs of families with minor children. The State Secretary claims they will be used for families who have fled their FITT-unit, or who didn't follow the rules. He states that a large percentage of the families flee from the (unguarded) FITT-units. He believes that, because of the closed living units, the percentage of families fleeing open FITT-units will drop.

- It's possible that an illegally staying person has certain medical or mental problems that prevent him from being detained in a humane manner.
- Advanced pregnancy or pregnancy with complications.¹¹⁹

Grounds for detention

third-country nationals may be detained on the following grounds: non-compliance with preventive measures, threat to public order or national security, non-compliance with an order to leave the territory, and having filed more than two asylum applications (except if there were new elements).¹²⁰

According to the Immigration law a risk of absconding can also be a ground for detention. According to Immigration law, fraud can be considered as a rebuttable presumption that a risk of absconding exists. And a risk of absconding may be a ground for detention. So indirectly fraud is a ground for detention.¹²¹

Number of detained third-country nationals

[Table 1](#) Third-country nationals placed in detention 2012-2017

	2012	2013	2014	2015	2016	2017	Comments
Total number of third-country nationals placed in detention	Centre: 6.235	Centre: 5.817	Centre: 5.496	Centre: 5.852	Centre: 6.116	Centre: 6.992	EU-citizens excluded, detention at border and Dublin cases included.
Number of third-country nationals	Centre: 4.841	Centre: 4.574	Centre: 4.252	Centre: 4.790	Centre: 4.975	Centre: 5.543	EU-citizens excluded, detention at border and

¹¹⁹ Immigration Office: Sefor Unit

¹²⁰ Immigration Act, article 74/14 §3.

¹²¹ Immigration Office: Legal department

placed in detention (men)							Dublin cases included.
Number of third-country nationals placed in detention (women)	<i>Centre: 1.394</i>	<i>Centre: 1.243</i>	<i>Centre: 1.244</i>	<i>Centre: 1.062</i>	<i>Centre: 1.141</i>	<i>Centre: 1.449</i>	EU-citizens excluded, detention at border and Dublin cases included.
Number of families detained in FITT-units¹²²	?	?	?	139	121	160	EU-citizens and Dublin-cases excluded, detention at border included.
Number of UAMs in detention	0	0	0	0	0	0	UAMs are never detained. ¹²³

Maximum length of detention

The overall **maximum authorised length of detention** (as provided for in national law or defined in national case law) is **8 months**.

When there is a new detention measure the length of detention restarts from zero again. For example after 7 months in a detention centre, a travel document could finally be obtained for a third-country national, but his forced removal fails, because he refuses to board the plane. In that case a new detention measure will be notified to the third-country national and the counter is reset to zero. Other example: a third-country national will be forcibly returned by plane after 3 months of detention, but the return has to be annulled because he applies for asylum the day before. Also in this case, a new detention measure will be notified to the third-country national and the counter is reset to zero.

The detention can **never be more than 18 months** (even when there are new detention measures or if the third-country national is at the government's disposal). This limit (18 months) is mentioned in the Return Directive (articles 15.5 and 15.6), but not in Belgian law (Immigration Act).

Review detention

Detention is ordered by administrative authorities, namely the Minister (State Secretary) or his delegate (officials of Immigration Office). The initial term of detention is maximum two months. This term can (if certain conditions are met) be prolonged with another two months. After this first extension, the Minister (State Secretary) is the only one competent to take a decision to extend the term again (every time with one month). The maximum period of 5 months can be extended to 8 months (by monthly decision) if there are public policy or national security reasons.¹²⁴

¹²² Only the number of families who are "detained" in FITT-units (who are an alternative for detention) are mentioned here. Sometimes families (with adult children) are detained in detention centres, but those stats or not available.

Illegally staying families with underage children can be accommodated in FITT-units. FITT stands for Family Identification and Return Unit. FITT-units (or open family units) consist of individual houses and apartments. Residents have freedom of movement with certain restrictions and rules. FITT-units are an alternative to detention, but from a legal point of view the family is however detained.

¹²³ UAMs are never detained, unless in case of doubt. In that case the so declared UAM will stay in detention until the results of the age determination tests are known.

¹²⁴ Immigration Act: article 7, paragraph 2 and following

The **lawfulness of detention** is reviewed by a judge ex officio. The first 4 months of detention, the third-country national has the possibility to lodge a non-suspensive appeal for the Court of first-instance. Within 5 working days the Court has to pronounce a ruling. When there is no ruling within 5 working days, the foreigner must be released. If in these first 4 months the third-country national doesn't appeal, the detention won't be reviewed by a judge.

After 4 months, the Immigration Office must ask the Court's confirmation of the legality of every decision to extend the detention by one month.¹²⁵

Detention will be reviewed by the Immigration Office (administrative authority) when the third-country national is detained 2 months. The Immigration Office can decide to prolong the detention with two more months if the first steps to remove the detained third-country national (e.g. contact embassy to obtain a travel document) were taken within 7 working days after the confinement, if these steps were continued with requisite care, and if the effective removal within a reasonable period is still possible.¹²⁶

When the detention is prolonged with a 5th, 6th, 7th or 8th month, the Immigration Office drafts a decision to extend the detention by one month. Then the State Secretary asks the Court of first-instance to review and confirm the legality of the decision to extend the detention.¹²⁷

The third-country national also has the right to appeal (non-suspensive) against his detention before the Court of first-instance (judicial authority) every month. An appeal can be lodged against the decision of the Court before the Indictment Chamber at the Court of Appeal (*Chambre des mises en accusation* or *Kamer van Inbeschuldigingstelling*) within 24 hours. Against this final decision, a purely judicial appeal can be introduced at the Court of Cassation. The review of detention by the Court remains very restrictive in scope. Only the legality of the detention can be examined, not the opportunity of it. This means that only the accuracy of the factual motives of the detention decision can be scrutinised i.e. whether the reasons are based on manifest misinterpretations or factual errors or not.¹²⁸

It's also possible to start under certain conditions an urgent suspension proceeding before the Council for Alien Law Litigation (administrative authority). The appeal has a suspensive nature if lodged within 10 (first return decision) or 5 (not first return decision) calendar days. The appeal is not against the detention, but against the return decision. But if the Council suspends the return decision, the third-country national will usually be released.

Detention capacity

[Table 2](#) Detention capacity

	Situation as of 31 December 2016	Situation as of 31 December 2017	Situation as of 30 June 2018	Comments
Number of detention centres	5	5	5	
Maximum capacity¹²⁹	583	613	613	Capacity FITT units not included

¹²⁵ Immigration Act: articles 71, 72, 73 and 74

¹²⁶ Immigration Act: article 7, paragraph 4

¹²⁷ Immigration Act: article 74, 1st paragraph

¹²⁸ AIDA, [Country Report: Belgium](#), 2016 update, p. 94-95

¹²⁹ Please note that the capacity in the detention centres can vary due to for example renovations and insufficient staff.

As a general rule third-country nationals subject to return procedures are detained in **specialized detention facilities**.

The following categories are exceptions to this general rule:

1/ Illegally staying third-country nationals who are in prison for criminal activities. At the end of their sentence, their removal will be prepared from there. If possible the third-country national will be brought directly from prison to the airport. If a return can't be organised from prison, he will be transferred to a detention centre in order to organise from there the identification and removal process.

2/ In principle UAMs are never detained. They can stay in centres specialized in the reception of UAMs. In case of doubt, the UAM will stay in detention until the results of the research to determine the minority are available.

3/ Illegally staying third-country nationals with severe psychiatric problems can stay temporarily in a mental institution or care facility to determinate the possibility of return or to stabilise their physical and mental condition.

4/ Illegally staying families with underage children can be accommodated in FITT-units. FITT stands for Family Identification and Return Team. FITT-units (or open family units) consist of individual houses and apartments. Residents have freedom of movement with certain restrictions and rules. They can leave their accommodation under strict regulations in order, for example, to take their children to school, buy groceries, visit their lawyer and participate in religious ceremonies. (...). FITT-units are an alternative to detention, but from a legal point of view the family is however detained. There are FITT-units at Zulte (3 studios and 3 houses), Tielt (3 houses), Sint-Gillis-Waas (8 houses), Tubize (6 apartments) and Beauvechain (6 houses).¹³⁰

The maximum detention capacity, which is based on the infrastructure and the workforce, can in principle never be exceeded. This in order to guarantee the safety of both residents and staff.¹³¹

So if the Immigration Office wants to detain an illegally staying third-country national, but the maximum detention capacity has already been reached, another third-country national must be released or removed first. Only then will it be possible to detain the third-country national.

(Section 4 – Q20 to 28 of the EMN Questionnaire)

4.5 Alternatives to detention

Table 3 Alternatives to detention

Possible alternatives to detention	Applied in Belgium?
Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)	Yes. This alternative is foreseen in national legislation, but used only rarely.
Obligation to surrender a passport or a travel document	No. Belgian legislation doesn't allow this. Everybody (with exception of children) must always be able to prove his identity by means of an identity or travel document. That's why the law only mentions the submission of copies of documents. ¹³²
Residence requirements (e.g. residing at a particular address)	Yes. This alternative is foreseen in national legislation, but is used very rarely (only certain cases of public order or national security). It's difficult to organise, because the cooperation of local authorities is needed.

¹³⁰ Immigration Office: Detention Centres Department, Control and Coordination Unit

¹³¹ Immigration Office: Detention Centres Department, Control and Coordination Unit

¹³² Royal Decree of 8 October 1981, article 110quaterdecies.

Release on bail (with or without sureties)	No. This alternative is foreseen in national legislation, but the Belgian authorities haven't developed a proper framework yet.
Electronic monitoring (e.g. tagging)	No. This alternative is not foreseen in national legislation.
Guarantor requirements	No. This alternative is not foreseen in national legislation. This might be linked to the framework for release on bail.
Release to care worker or under a care plan	No. This alternative is not foreseen in national legislation.
Community management programme	No. This alternative is not foreseen in national legislation.
Other alternative measure	<p>Yes. When his asylum application is rejected, the third-country national needs to leave the reception centre and go to another centre (which has open return places). There, voluntary return counselling is intensified and the staff has specific expertise on voluntary return. Voluntary return counsellors from Fedasil and liaison officers from the Immigration Office (in charge of forced return) have pro-active return counselling meetings with those rejected asylum seekers. In case a rejected asylum seeker does not take a formal decision to voluntarily return, the Immigration Office may organise a forced return. These open return places are part of the "Return Path" (please see section 4.6).</p> <p>If an illegally staying family with minor children asks for accommodation, the family can be sent to a FITT-unit. The family can leave the FITT unit under strict regulations. But from a legal point of view the family is however detained.</p>

(Section 4 – Q29 of the EMN Questionnaire)

4.6 Challenges and good practices regarding (alternatives to) detention

Challenges (alternatives to) detention

Several **challenges** associated with the implementation of detention and / or alternatives to detention were identified:

- For officials **drafting decisions** (for example removal orders and decisions to detain) according to legal principles (for example principle of the obligation to state reasons and the principle of due diligence) **is challenging** and time-consuming. The Court for Alien Law Litigation rules often that those principles are violated. This results in releases, and this is perceived by the officials and the police as discouraging.
- Officials claim that, over the last year, they have paid more and more attention to drafting judicially sound decisions, and that these decisions have become more extensive and better motivated. Nonetheless the Court for Alien Law Litigation has annulled or suspended more and more decisions (see next paragraph).
- **The Court for Alien Law Litigation rules more and more in favour of the third-country nationals** when it comes to appeals against return decisions. In 2012 only 1.63% of the appeals (normal procedure, so urgent suspension procedure not included) before this Court against orders to leave the territory (annex 13quinquies and annex 13) and against orders to leave the territory with detention in order to be removed (annex 13septies) were lost (annulment or suspension) by the Immigration Office. In 2013 (5.04%), 2014 (6.67%), 2015 (12.38%) and 2016 (14.88%) this percentage has risen considerably. In 2017 (first six months) the Council for Alien Law Litigation ruled in 12.16% of the appeals against these removal decisions in favour of the third-country nationals.¹³³

The same trend (although to a lesser extent) can be noticed when it comes to urgent suspension proceedings against these decisions (annex 13quinquies, annex 13 and annex 13septies). In 2012 the Immigration Office lost 15.10% of these appeals. In the following years (2013: 21.66%, 2014: 17.02%, 2015: 20.97%, 2016: 22.77%, 2017 (first six months): 18.86%) this percentage increased.

- There is a substantial **difference in the jurisprudence of the Dutch-speaking and the French-speaking Courts** of first-instance (who are competent for appeals against detention). When an illegally staying third-country national appealed in the last five years (2012-2016) against his detention before a French-speaking Court of first-instance, he had a 17.33% chance that the Court ordered his release. Dutch-speaking Courts of first-instance ordered in that same period only in 7.24% of the appeals that the third-country national had to be released.¹³⁴ So an illegally staying third-country national has more than twice as much chance of being released from a detention centre if he appeals to a French-speaking Court then to a Dutch-speaking Court of first-instance.
- There is also a difference in jurisprudence of the Dutch-speaking and French-speaking chambers of the Council for Alien Law Litigation (who is competent for appeals against return decisions), but this difference is much less pronounced. When from 2012 to 2016 an illegally staying third-country national appealed against an annex 13quinquies, annex 13 or an annex 13septies (three most common return decisions) before a French-speaking

¹³³ Immigration Office: Litigation unit

¹³⁴ Immigration Office: Litigation department

chamber of the Council, he had a 8.96% chance of winning the appeal (suspension or annulment). At a Dutch-speaking chamber of the Council, this is only 6.92%.¹³⁵

- The last years the capacity of the detention centres decreased because of extensive renovations and lack of staff. But in 2016 and 2017 the total **capacity of detention centres** in Belgium **increased**. Nonetheless it happens often that an illegally staying third-country national for whom detention is considered appropriate, can't be detained because the detention centres are full. The maximum detention capacity, which is based on the infrastructure and the workforce, can in principle never be exceeded. There are plans to drastically increase the capacity of the closed centres in the coming years.
- Families with underage children who are detained in a **FITT-unit**, frequently disappear. In 2016 38% of the families returned, 35% disappeared and 27% was set free.¹³⁶ However in terms of family and children rights and in terms of costs compared to detention centres, FITT-units are regarded by the authorities and NGOs as a good practice (please see section 4.4).
- The only **alternatives for detention** that are used on a regular basis are FITT-units and open return places. Most alternatives are not or very **rarely used** (please see also section 4.5).
- It happens very often that rejected asylum seekers do not wish to go to **open return places**, where they are guided in organising their return, and instead choose to abscond. For example in the first five months of 2017 1.353 people were designated to an open return place. Only 25% of them actually went to the open return place. Of those people who actually went, 22% left the open return place when the term for voluntary departure expired, 38% disappeared, and only 29% have resorted to assisted voluntary return.¹³⁷
- Myria believes that the **detained third-country nationals should be better informed about the state of the procedure** (has the embassy been contacted already in order to obtain a travel document, did the embassy agree, when will the Court reach a verdict, ...). This in order to avoid stress. Detained third-country nationals do not always have a good idea of what is going on.¹³⁸ The Immigration Office emphasizes that those third-country nationals who want to return are informed about their return.

Good practices (alternatives to) detention

Several examples of **good practices** in the implementation of detention and alternatives to detention were identified in Belgium:

- The number of irregularly staying third-country nationals who were **removed directly from prison** increased significantly over the last years. In 2017 a total of 1.622 third-country nationals were removed directly from prison. This is an increase compared to 2016 (1.595) and 2015 (1.437). In 2014 the total number was only 625.¹³⁹ This increase is the result of several factors, including modifications to the Criminal Code which made it possible for the Immigration Office to start organising the return of a third-country national in prison at an earlier stage.

¹³⁵ Immigration Office: Litigation department

¹³⁶ Immigration Office: Statistical unit

¹³⁷ Immigration Office: Statistical unit

¹³⁸ Myria: comments on draft version template.

¹³⁹ Benchmarking exercise on return practices in EU Member States, EMN, summer 2017. Figures provided by the Repatriation unit of the Immigration Office. In the first half of 2018 856 third-country nationals were removed directly from prison.

Belgian legislation foresees that long term condemned foreigners (sentence above three years) can be released after 1/3 or 2/3 of their sentence, provided that they cooperate to their identification and return. If so the removal can be organised up to 6 months before the foreigner is in the conditions for early release. Persons who have to purge their full sentence can also be returned as of 6 months prior to the end of the sentence.

As a result the third-country national in prison doesn't need to be brought to a detention centre first. This is considered a good practice by the State Secretary for Immigration and Asylum because the capacity of the detention centres is limited.¹⁴⁰

- **Identification prior to detention** happens only for illegally staying persons with certain nationalities (nationalities for whom it takes a lot of time to obtain a travel document). For some nationalities identification prior to detention is not possible, because the embassy or consulate of these countries wants to interview its nationals before issuing a travel document. Recently there were projects regarding pre-identification in the cities of Charleroi (illegally staying Algerians who have violated public order numerous times) and Antwerp (illegally staying Moroccans who have committed drug-related crimes). It's important that in a closed centre there is among residents a balance between different ethnic groups. If one ethnic group is overrepresented, there is a risk of disturbances. That's why there are maximum quota, for example for nationals of Maghreb countries. The two projects focus each on a different Maghreb country. Because of identification prior to detention, the detention period will be shorter which is in the interest of both the third-country national (humanitarian perspective) and the Belgian authorities (financial and capacity perspective).¹⁴¹
- **Families** who cooperate with the organisation of their return and who sign a contract indicating their commitment to cooperate, are allowed to **stay in their homes until departure**.¹⁴² In practice this is rarely used, because families are reluctant to return.
- As an alternative to detention for families with minor children, **FITT-units** were created. In a strictly legal sense the families remain detained, but there are practical differences to the detention centres. Since the family units are open, the families can leave the houses under specific rules, in order to e.g. visit their lawyer, bring their children to school, buy groceries or attend religious celebrations. Visits in the family units are allowed.

There are currently 29 FITT-units. Until the end of 2016, the average daily cost of a person in a family unit was around € 95,- to € 100,-. This is much lower than the average staying cost in a detention centre (between € 180,- and € 200,-).

So in terms of family and children rights and in terms of costs compared to detention centres, FITT-units are definitely a good practice in the implementation of alternatives to detention. However the high rate of absconding (efficiency) is regarded by the authorities as a challenge.

- **Supporting officers (coaches)** are appointed by the Immigration Office to accompany the families during their stay in the family units. These civil servants collect all necessary information for the further identification of the families, inform the families about the legal procedures (asylum, appeals, ...) and will assist the families in their preparation of the return. The coaches will first of all propose a(n) (assisted) voluntary return scheme.
- **NGOs can visit detention centres and FITT-units.** For example the NGO Jesuit Refugee Service Belgium visits detention centres on a weekly basis and all FITT-units every two weeks.

¹⁴⁰ [Annual Report on Asylum and Migration Policy in Belgium](#), Belgian Contact Point of the European Migration Network, published June 2017, page 13-14.

¹⁴¹ Immigration Office: Sefor unit

¹⁴² This is stipulated in the Immigration Act (article 74/9 § 3).

Families in FITT-units can contact the NGOs at their own initiative.¹⁴³

- The Immigration Office sometimes notifies **removal orders with delayed detention** to illegally staying third-country nationals. After the notification the third-country national can go home again. He has the possibility to file an appeal with suspensive effect within 5 or 10 days against the decisions. When the appeal is rejected or when no appeal has been filed within 5 or 10 days, the police can intercept the third-country national and escort him directly to the airport. This doesn't happen very often, because there is a high risk that the third-country national is not at home when the police wants to intercept him a few hours before his flight leaves and the effectiveness turns out to be zero .
- Open return places are mentioned above as alternatives to detention. These open return places are a part of the **Return Path**. In the Return Path, asylum seekers receive, from the outset of their application for international protection and at specific key moments in their asylum procedure, information about the voluntary return option (and the possibility of reintegration support in case of voluntary return). By talking to them about the voluntary return option at different stages of the asylum procedure, voluntary return will be less taboo and more discussable for the asylum seeker. The main outcome of the Return Path, is that all (rejected) asylum applicants are systematically and proactively informed about the voluntary return option and the risks of a forced return, and that they know where they can find more information and / or apply for a voluntary return.¹⁴⁴
- The detained third-country national has the possibility to file an urgent appeal with suspensive effect at the Council for Alien Law Litigation within 5 (if it's not the first time he receives a removal order) or 10 calendar days (if it's the first time). Within this 5 or 10 day period the third-country national can't be removed against his will. It happens that the third-country national wants to leave Belgium as fast as possible, and doesn't wish to use his right to appeal. In that case he can sign a form by which he **declares he wants to return voluntarily immediately**. Then his removal can be organised much quicker. This is in the interest of both the third-country national (his detention will be shorter), the Immigration Office (cost-efficient) and the Council for Alien Law Litigation (reduced workload).¹⁴⁵

(Section 4 – Q30 & 31 of the EMN Questionnaire)

¹⁴³ NGO Jesuit Refugee Service Belgium: advocacy officer

¹⁴⁴ Ad-hoc query on '*Means to incentivise (voluntary) returns of irregular staying third-country nationals*', launched by the European Commission on 2 December 2016.

¹⁴⁵ Benchmarking exercise on return practices in EU Member States, EMN, summer 2017.

V. PROCEDURAL SAFEGUARDS AND REMEDIES

5.1 Principle of non-refoulement and Article 3 ECHR

Article 74/13 of the Immigration Act states that when taking a return decision, the Minister or his delegate takes into account the higher interest of the child, family life of the third-country national and his state of health.

When a return decision is issued, the **principle of non-refoulement** and / or article 3 of the European Convention on Human Rights (ECHR) aren't always thoroughly assessed, because it's rather **time consuming** to do this. And sometimes the Immigration Office lacks the time and staff to do this assessment.

It's for example possible that an illegally staying third-country national (who has never applied for asylum, or who's asylum application has been rejected a long time ago) is intercepted by the police in the middle of the night or during the weekend. Then the return decision has to be taken quickly and only a few officials are working. And when the police intercepts an illegally staying third-country national, that person's identity or nationality isn't always immediately clear.

Another example is that after a decision of refusal of refugee status and subsidiary protection is taken by the CGRS, the Immigration Office normally issues an order to leave the territory, which has almost always the same motivation. It's for example not checked if the third-country national has ever invoked health problems.

As a general rule, possible violations of the principles of non-refoulement and article 3 ECHR are more thoroughly examined when the Immigration Office considers issuing a return decision with detention, then when a return decision without detention is considered. This in accordance with a ruling of the ECHR in case nr. 21563/08 N F against the Netherlands (14 January 2014).¹⁷⁵

During detention an assessment will be made concerning the execution of the return decision. So before enforcing a removal the principle of *non-refoulement* and of Article 3 are always and systematically checked.

Myria states that there should be no exceptions or limitations to this principle which prohibits the Member States to return any person who risks inhumane or degrading treatment. According to Myria it should be organised that, in any situation, this risk is assessed before any return regardless if the person applied for asylum or regularization or not.

The principle is that a person who seeks protection has to claim asylum. One can claim asylum before and during detention. One will not be returned as long as there is no decision by the CGRS concerning the asylum claim.

And if the third-country national has a medical problem (or claims to have one) he can always apply for medical regularization. In case of detention, his state of health will be assessed by a doctor immediately after arrival in the detention centre.

¹⁷⁵ [Ruling of the ECHR in case nr. 21563/08 N F against the Netherlands](#) (14 January 2014): *'...the Netherlands authorities do not, at least not for the time being, intend to proceed effectively with the applicant's removal to Afghanistan. It further notes that, should such steps be taken, the applicant can challenge this (see K v the Netherlands, no 33403/11, § 25, 18 October 2011). 36 In these circumstances and recalling its findings in comparable cases (see I v the Netherlands (dec), no 24147/11, §§ 37-39, 18 October 2011, K v the Netherlands, cited above, §§ 34-36, and H v the Netherlands (dec), no 37833/10, §§ 39-41, 18 October 2011), the Court considers that, in the absence of any realistic prospects for his expulsion to Afghanistan, the applicant cannot claim to be a victim within the meaning of Article 34 of the Convention as regards his complaint that his return to Afghanistan would be in violation of his rights under Article 3 of the Convention'*

(Section 5 – Q32 of the EMN Questionnaire)

5.2 Appeals

In general the appeal against a return decision (before the **Council for Alien Law Litigation**) must be lodged within 30 days after notification. But if the return decision is notified to the third-country national in a detention centre, in a FITT-unit, or if the third-country national is at the government's disposal (only happens when he is a threat to society) the deadline is 15 days.¹⁷⁶

There is no deadline when it comes to appeals against detention before a **Court of first instance** (please see section 4.4).

The appeals against return decisions before the CALL are in general not suspensive. But it's possible to start an urgent suspension proceeding (which is **suspensive**) before this Council, but only when the extremely urgent nature of the appeal is established. It must be demonstrated that the normal procedure would take too long.

This is for example the case for third-country nationals who received an order to leave the country, are detained and will be forcibly removed in a short time. The appeal has a suspensive nature if lodged within 10 (first return decision) or 5 (not first return decision) calendar days.¹⁷⁷

There is no obligation for the third-country national concerned to attend the hearing of the CALL or Court of first instance in person. He can always ask a lawyer to represent him.

(Section 5 – Q33 to 38 of the EMN Questionnaire)

¹⁷⁶ In accordance with article 39/57 §1 of the immigration Act.

¹⁷⁷ In accordance with article 39/57 §1 of the Immigration Act.

VI. FAMILY LIFE, CHILDREN AND STATE OF HEALTH

6.1 Categories of vulnerable third-country nationals in the context of return

In Belgium different categories of persons are considered **vulnerable** in relation to return and detention: minors (accompanied and unaccompanied), disabled persons, pregnant women, single parents with underage children, and victims of torture, rape, or another type of severe psychological, physical or sexual violence.¹⁷⁸

When it comes to the detention and return of vulnerable third-country nationals a **case by case approach** is used.

In specific cases detention may be possible, but only as a **last resort**. The Immigration Office claims that if vulnerable third-country nationals are detained, the necessary precautions and accompaniment will be foreseen in the detention centre or the alternative to detention (e.g. FITT-units).¹⁷⁹ Unaccompanied minors are never detained.¹⁸⁰

According to the Immigration Office, the return will be organised taking into consideration the degree and kind of vulnerability. The Immigration Office states that necessary precautions and actions are taken in order to organise the return under humane and dignified conditions.

(Section 6 – Q39 of the EMN Questionnaire)

6.2 Assessment of the best interest of the child

Difference between accompanied and unaccompanied minors

When it comes to assessing the **best interest of children**, there is a difference between accompanied and unaccompanied minors.

Most return decisions are drafted by officials of the Immigration Office. These officials must not only look at the situation of the parents, but also of the children (**accompanied minors**). It is very often the case that it's in the higher interest of the child to stay with his parents. So if the parents must return, it's in the interest of the minor to accompany his parents. But other element are also taken into account to determine the best interest of the child. For example the age of the child, the duration of stay in Belgium, and his education (for example whether or not appropriate education is available in het country of origin).

The Council for Alien Law Litigation sometimes annuls a return decision of a third-country national adult with underage children, because it's not proven that the best interest of the child has been taken into account.¹⁸¹

When an **unaccompanied** minor arrives or is detected in Belgium, a guardian is appointed. This guardian can start a specific procedure at the Immigration Office. This procedure determines the most durable solution in the best interest of the unaccompanied minor (which can be both return as well as a residence permit).

¹⁷⁸ Immigration Act: article 1, 12° (list of which categories of people are considered vulnerable)

¹⁷⁹ Immigration Office: Identification and Removal unit

¹⁸⁰ Immigration Act: article 74/16 and 74/19

¹⁸¹ Immigration Office: Sefor unit

To this end, the authorities conduct a “family assessment” for each individual case. In this context, the Immigration Office can contact the Belgian diplomatic post in the country of origin to collect the necessary information. In this regard the family of the unaccompanied minor is consulted.

This does not mean that the unaccompanied minor will return to his or her country of origin, but it makes it possible to determine whether or not adequate and safe reception and care are available, and whether or not a return is in the best interest of the unaccompanied minor.¹⁸²

Elements considered in determining the best interest of the child

Table 4 Elements considered in determining the best interest of the child

Elements considered ¹⁸³	Comments
Child’s identity	If a child is stateless or if a child has the Belgian nationality as opposed to his parent(s)
Parents’ (or current caregiver’s) views	<p>When it comes to accompanied minors, parents can express their views on the best interest of their child in the framework of the right to be heard (please see section 2.3).</p> <p>When it comes to unaccompanied minors, the parents (who are often still in the country of origin) will be contacted if possible, and their views will be taken into account.¹⁸⁴</p>
Child’s views	When it comes to unaccompanied minors, the child’s views will be considered, but not when it comes to accompanied minors.
Preservation of the family environment, and maintaining or restoring relationships	<p>It’s possible that one of the parents resides legally in Belgium and the child and the other parent are illegal.</p> <p>The Immigration Office states that it respects the principle of family unity. That’s why it will first of all try to find a solution for the family as a whole (in Belgium or in the country of origin). But a temporary return of part of the family (without entry ban) may solve the legislative and judicial vacuum in which the families sometimes find themselves (since some categories of family reunification can only be applied for from abroad and are linked to specific criteria). In case of public order or national security however, a separation of family members can’t be excluded.¹⁸⁵</p> <p>When it comes to unaccompanied minors, family unity is also an important element.</p>
Care, protection and safety of the child	<p>If it appears (in the framework of the right to be heard or from the child’s file) that the child needs extra care, it will be examined whether or not this extra care is available and accessible in the country of origin.</p> <p>It may occur, that – due to the lack of parental care – it is decided by the Court or by the administration that it is in the best interest of the child to stay in Belgium while his parents (or only one parent) are</p>

¹⁸² EMN ad-hoc query on ‘Return of unaccompanied minors’, requested by Finland on 3 March 2017.

¹⁸³ When it comes to unaccompanied minors, a procedure to determine the most durable solution which is in his best interest (which can be both return as well as a residence permit) will be determined. In order to determine the unaccompanied minor his best interest, a holistic approach will be used in which all elements that are mentioned in this table will be considered.

¹⁸⁴ Immigration Office : Minteh unit (‘Minteh’ stands for ‘*Mineur et Traite des Etres Humains*’, which means minors and human trafficking)

¹⁸⁵ Immigration Office: Identification and Removal unit

	removed. In many cases this is linked to a problem of public order or national security.
Situation of vulnerability	/
Child's right to health	If it appears (from the right to be heard or from the child's file) that the child has severe medical problems, it will be examined whether or not treatment and medication is available and accessible in the country of origin.
Access to education	In most countries of origin, children have access to adequate education. In some cases a return may be deferred so that the child can finish the school year. ¹⁸⁶ The Immigration Office has guidelines when it comes to children who are in their last year.
Other (please describe)	/

Unaccompanied minors without a residence permit

When a return decision against an unaccompanied minor cannot be carried out, he is not granted a right to stay. But the higher interest of the unaccompanied minor is always paramount.

When at the end of the specific procedure the unaccompanied minor is not granted a residence permit, the Immigration Office normally orders the guardian to bring back the unaccompanied minor to where he came from. But there is no sanction if the unaccompanied minor stays in Belgium.

Unaccompanied minors are until their 18th birthday always **entitled to housing, education and medical care**, whether they are legally or illegally staying.¹⁸⁷

Reintegration unaccompanied minors

For unaccompanied minors who voluntarily return, Fedasil has created a **specific reintegration program**.

Unaccompanied minors receive extra in kind assistance. On top of that it might be possible to grant each parent in the country of origin an additional in kind reintegration support of € 700,-. This in-kind assistance can be used for a "family project" which can make the return of the unaccompanied minor to his family more acceptable. A certain group of unaccompanied minors is sent to Europe by the family or community for economic reasons. This makes it hard for the unaccompanied minor to return empty handed, or even to contact his family when preparing his voluntary return. Via the in-kind reintegration assistance, Fedasil aims to facilitate the return of the unaccompanied minor and to make this return more accepted by the family and local neighbourhood.¹⁸⁸

(Section 6 – Q40 to 43 of the EMN Questionnaire)

¹⁸⁶ If a first removal decision is taken between the beginning of the Easter holidays and the end of the school year, it's possible that the removal decision is deferred until the end of the school year (Circular 29 April 2003 regarding the removal of families with minor children who attend school, article 2, Circular available in [French](#) and [Dutch](#)).

¹⁸⁷ EMN ad-hoc query on 'Return of unaccompanied minors', requested by Finland on 3 March 2017

¹⁸⁸ Fedasil: International Unit

6.3 State of health in the return procedure

Possibility to postpone or prolong return decisions for health reasons

In Belgium the enforcement of the return decision can be postponed on the grounds of **health issues**.

When in detention, a doctor will upon arrival in the detention centre after examination decide whether or not a resident is fit to stay in the centre. Before removal the doctor must examine the resident again to determine whether or not he is fit-to-fly. If the resident is not fit-to-fly the removal will be annulled. The detainee has always the right to consult a doctor of his own choice who doesn't work in the detention centre, but at his own costs.

When the third-country national is not detained, he can always ask to prolong the term of his removal order on the basis of medical grounds (through certificates issued by a doctor).

Whether or not the third-country national is detained, he can always start a medical regularization procedure (this procedure is not suspensive). It's possible that because of this procedure he will be granted a temporary or permanent residence permit (please see section 2.2).

Before issuing a return decision (with or without detention), the third-country national his file is analysed. If there are element in his file that suggest he has health problems, they will be taken into account when deciding whether or not a return decision will be issued.

Assessment of the accessibility of medical treatment

There is a difference in the assessment of the **accessibility of medical treatment in the country of return** between assisted voluntary return and forced return.

Regarding assisted voluntary return, Fedasil has developed the **AMAAR-project** in cooperation with a doctor of Fedasil's medical unit, IOM and Caritas International Belgium. AMAAR stands for Adapted Medical Assistance After Arrival. It consists of three components: analysis of medical treatment available in the country of origin, maximal referral to already existing healthcare, and financing of medical costs (if necessary) for a period of six months (exceptionally 12 months). The aim is to minimize the obstacles to make a voluntary return feasible.

In 2017 11 third-country nationals returned with the help of the AMAAR-project.

When it comes to forced return the Immigration Office is responsible for the assessment. The so called special needs unit of the Immigration office aims at humanising the forced return of vulnerable third-country nationals with **special needs**. The aim of the project is to provide these persons with tailored support before, during and after their forced return. It is implemented by the Immigration Office in cooperation with local partners in the countries of origin.

Prior to return, support is provided in the closed detention centres (e.g. urgent psychiatric admissions of residents and the purchase of medication). During the return procedure, a tailored medical or social escort is provided. After return, reintegration assistance and monitoring activities are organised in certain cases (e.g. medical follow-up). This depends on the availability and accessibility of medical care in the country of return, which is assessed by the MedCOI-unit (MedCOI stands for Medical Country of Origin Information).¹⁸⁹ The period medication is provided depends on e.g. the availability and affordability in the country of origin, and the type of health problem.

¹⁸⁹ Immigration Office: Ilobel unit

In 2017 the special needs unit provided reintegration support for 72 third-country nationals.¹⁹⁰

Pregnancy

Pregnancy as such is not a cause for postponement, but can be if it's a pregnancy with complications or if the pregnancy is already advanced.

If a woman is at least 24 weeks pregnant or if she has a pregnancy with complications, she can ask to extend the term of her return decision until 2 months after she has given birth, which will then be granted.¹⁹¹

As of 34 weeks no forced return is possible. Forced return with escort is possible until 24 weeks but rarely executed. It happens very rarely that a woman who is more than 25 weeks pregnant, will be detained. Because it normally takes at least a few weeks to obtain travel documents and organise her flight.

Possibility to detain third-country nationals with health problems

Persons belonging to vulnerable groups, with the exception of unaccompanied minors, can be detained in certain circumstances.

Whether or not a person with special needs (medical or psychological problems) can be detained, is decided on a case-by-case basis.

(Section 6 – Q44 to 49 of the EMN Questionnaire)

6.4 Challenges and good practices regarding the return of vulnerable persons

Challenges

The following **challenges** associated with the implementation of the return of vulnerable persons were identified:

- Right now it's difficult to remove **families with underage children**, because when they are detained in an open FITT-unit, they often escape. From a legal point of view families are detained in a FITT-unit, but the units are not guarded, they have their own house key and can leave if they want to (please see also section 4.6).
- **Unaccompanied minors** will never be subject to forced return. For them return happens only on a voluntary basis. Voluntary return is only possible when his parents in the country of origin agree to his return. These parents often do not wish to be traced. And when they are traced, they do not give their consent for the return. Sometimes the minor was sent by his parents to Europe for economic reasons and the parents might have hoped the minor would send them money. Fedasil tries to obtain their consent by promising to provide in kind assistance to the parents if the minor has returned (please see section 6.2). Nonetheless it remains problematic to obtain the parents' consent. As a result unaccompanied minors who want to return, are sometimes forced to stay in Belgium. This is considered a challenge both for the Belgian authorities and the unaccompanied minor.

¹⁹⁰ EMN ad-hoc query on 'Means to incentivise (voluntary) returns of irregular staying third-country nationals', requested by the European Commission on 2 December 2016.

¹⁹¹ Immigration Office: Identification and Removal Unit

- For the voluntary return of people with severe medical or psychiatric needs, IOM would like to ensure, according to its internal guidelines, that the returnee will be taken care of by his family. However the **family often sees the returnee with severe medical or psychiatric needs as a burden** and doesn't want to take care of him. In that case other local reception possibilities will be examined. It is however not evident to find this. As a result organising the voluntary return of someone with medical or psychiatric needs can sometimes take a lot of time. That's why Fedasil will sometimes organise the return itself.¹⁹²

Good practices

The following **good practices** were identified:

- Returnees with (mental or physical) **health problems**: special needs project (forced return) and AMAAR project (assisted voluntary return). This is considered a good practice by the Belgian authorities, because the return obligation is enforced, while respecting the fundamental rights and dignity of returnees (please see section 6.3).
- Fedasil has, in addition to the AMAAR-project, a pool of **medical or social escorts** that can accompany a voluntary returnee if needed. These medical or social escorts (nurses, doctors, social workers, ...) also make sure that the continuity of the medical treatment is guaranteed immediately upon arrival in the country of origin and / or in the first weeks or months after the return. They often work in the reception centre the returnee stayed in, and so they know the returnee (and his problems) well, which is an advantage. Fedasil can also ask the help of IOM for organising an escort. Sometimes the escorts stay a day or two longer in the country of return in order to gather targeted information (for example by visiting a psychiatric hospital in order to collect relevant information to improve the voluntary return counselling toward this particular target group). In 2017 Fedasil conducted 33 medical or social escorts.¹⁹³
- In 2015, Fedasil launched an online **monitoring tool** (pilot) in ten countries of origin for voluntary returnees who have been granted reintegration assistance. It aims at collecting data, analysing (standardized statistical) data and evaluating the return process and the impact of return and reintegration activities. The reintegration service provider, in consultation with the returnee, fills out a questionnaire six months after the return to the country of origin. The returnee evaluates his situation at that moment, including his overall socio-economic situation (employment, housing, medical situation, social network, ...) and his reintegration project. Fedasil centralizes all the information obtained. The first results of this pilot monitoring exercise were available in September 2016. In 2017 this tool was further developed.¹⁹⁴
- **Return counsellors**, doctors and nurses who work in the open reception centres, and first line support workers sometimes go on **monitoring missions** to countries of origin. There they can talk with local staff members of IOM, Caritas, and other service providers, and visit voluntary returnees who received reintegration assistance. These missions enable return counsellors to provide more and more accurate information on return to potential returnees, and make them more credible towards the target group. In 2017 monitoring missions for return counsellors and first line support workers were organised to inter alia Ukraine, Cameroon, Albania and Georgia.

¹⁹² Fedasil: International Unit

¹⁹³ Fedasil: International Unit

¹⁹⁴ ['Annual Report on Asylum and Migration Policy in Belgium'](#), Belgian Contact Point of the European Migration Network, published June 2017, page 77.

- Persons who are detained and for whom extra attention is necessary due to their vulnerability or because they misbehave (e.g. violent behaviour towards other residents or staff) are put on the **extra care list**. This list allows staff of the Immigration Office to take into account this vulnerability or misbehaviour. In the detention centres, this list is followed up on an almost daily basis by a multidisciplinary team (consisting of management, security staff, medical staff, social workers, educators, ...). In the main office of the Immigration Office, this list is followed up on a weekly basis (weekly meeting between the removal unit, identification unit, asylum unit, psychologists, ...) in order to prioritize the return of these persons as well as to assess whether an effective return is still feasible or whether other options should be considered.¹⁹⁵
- **Extra reintegration support** for vulnerable migrants in case of voluntary return. For example families with underage children will receive an extra € 500,- per case, and pregnant women, elderly, and persons with health problems are entitled to an extra € 500,- per person.¹⁹⁶
- Fedasil has developed the "My Future" project for **unaccompanied minors** who don't have a realistic chance of legal stay in Belgium. This project prepares the minor for the day he turns 18 and won't be entitled anymore to accommodation in a reception facility. He will receive the necessary information so he can make a decision about his future (voluntary return, staying illegally in Belgium, migration to another country, ...). He will also receive an intensive work-related training, which will help him to find a job in his country of origin or elsewhere. The My Future project is a combination of individual coaching and collective sessions. The network of the unaccompanied minor (for example his guardian and his family in the country of origin) and different actors (for example authorities, voluntary return counsellors, tracing service and social workers) are involved.¹⁹⁷
- Vulnerable (and other) migrants from certain countries can benefit from the **ERIN** Specific Action return program. The Immigration Office has national annexes for 11 countries, but has the possibilities to expand this depending on the needs.¹⁹⁸

(Section 6 – Q50 & 51 of the EMN Questionnaire)

¹⁹⁵ Immigration Office: Identification and Removal unit.

¹⁹⁶ EMN ad-hoc query on '*Support to persons who have returned to the country of origin*', launched by Norway on 31 May 2017.

¹⁹⁷ Fedasil, International Unit

¹⁹⁸ Immigration Office: Ilobel unit. For more information regarding the ERIN Specific Action program, please click [here](#).

VII. VOLUNTARY DEPARTURE

7.1 Period of voluntary departure

Initial period

Normally a period of 30 days for voluntary departure is given automatically with the return decision. But it's possible to give a period for voluntary departure between 6 and 0 days (so no period) in the following cases:

- When the third-country national already received a period for voluntary departure but didn't oblige.¹⁹⁹
- When there is a risk of absconding.
- When an application for legal stay has been dismissed as manifestly unfounded or fraudulent.
- When the third-country national poses a risk to public policy, public security or national security.
- When the third-country national hasn't respected the alternative measures.
- When the third-country national has applied for asylum more than two times (except when there were new elements).²⁰⁰

In determining the duration of the period for voluntary departure, the individual circumstances of the case must be assessed. If third-country nationals are pregnant or sick (for example tuberculosis) they can be given more than the normal 30 days for voluntary departure.

Possibility to extend initial period

After a return decision with a period for voluntary departure is issued, it's possible to **extend** the initial period if necessary, taking into account the specific circumstances of the individual case. For example the existence of children attending school, the existence of other family and social links, the willingness of the irregularly staying third-country national to cooperate with competent authorities in view of return, advanced pregnancy and health problems.

The willingness to cooperate plays a role in the decision to extend, but not in the decision to determine the initial duration of the period for voluntary departure.

(Section 7 – Q52 to 56 of the EMN Questionnaire)

7.2 Monitoring effective return

¹⁹⁹ Article 74/14 of the Immigration Act lists all the cases in which a period between 7 and 0 days can be given

²⁰⁰ Immigration Act: article 74/14

Belgium has a mechanism in place to verify if a third-country national staying irregularly has effectively left the country during the period for voluntary departure:

- The border police at the airport provide lists of illegally staying third-country nationals who have left the country to the Immigration Office.
- IOM provides lists of voluntary returnees to the Immigration Office on a monthly basis.
- Third-country nationals can also return with the help of the Immigration Office (hotline). Their return is registered.
- When his asylum application is rejected, the third-country national needs to leave the reception centre and can only have accommodation in a reception centre which has open return places (part of the Return Path, please see section 4.5). There a return counsellor (voluntary return) from Fedasil will pro-actively discuss the voluntary return option with the third-country national, in cooperation with a liaison officer from the Immigration Office (forced return). If he returns (or absconds) this will be registered.
- In the framework of some procedures, orders to leave the territory are notified at the municipality. There the third-country national will, with the help of a municipal official, fill in and sign a form regarding the follow-up of his return. Two weeks later he has to present himself again at the municipality and prove that he has taken the necessary steps to organise his return. The municipality will inform the Immigration Office about whether or not the third-country national showed up and if progress regarding his return was made.
- If a third-country national has received an order to leave the territory, and the address of the third-country national is known, the police will be asked to check whether or not he still resides at this address after the time limit for voluntary return.

The different mechanisms listed above are not watertight. As for a lot of irregularly staying third-country nationals the Belgian authorities do not know whether or not they have left.²⁰¹

(Section 7 – Q57 of the EMN Questionnaire)

7.3 Challenges and good practices related to the period for voluntary departure

Challenges

The following challenges associated with the period for voluntary departure were identified:

- Absconding during the period for voluntary departure, because there is no willingness to return.
- Verification of the departure within the period of voluntary departure: sometimes it happens that the third-country national returns by his own means and without any help, and doesn't inform the Belgian authorities about his return.
- During the period of voluntary return the third-country national can start a new procedure with suspensive effect (for example asylum application, family reunification). Sometimes he only does that to prevent the enforcement of his return. This abuse of procedures poses a big problem for the Belgian authorities.

Good practices

Only one example of **good practice** associated with the period for voluntary departure was identified in Belgium:

- If the third-country national is willing to cooperate constructively with his return, the period for voluntary departure can be prolonged. The third-country national can demonstrate his

²⁰¹ Immigration Office: Sefor unit

willingness to cooperate by inter alia a proof of introduction of an application for Assisted Voluntary Return and Reintegration (AVRR).²⁰²

(Section 7 – Q58 & 59 of the EMN Questionnaire)

²⁰² Immigration Office: Identification and Removal unit

VIII. ENTRY BANS

8.1 Duration and grounds entry bans

Belgian national legislation (Article 74/11 § 1 of the Immigration Act) establishes a link between the grounds on which an entry ban was imposed and the time limit of the prohibition of entry:

- Maximum 3 years: if no period for voluntary return is given or if a former return decision has been ignored.
- Maximum 5 years: fraud or unlawful means in order to get legal stay or to maintain legal stay, or marriage, registered partnership or adoption solely to get legal stay or to maintain legal stay.
- More than 5 years: serious threat to public order or national security.²⁰³

Of course exceptions exist for humanitarian reasons.²⁰⁴

It should also be mentioned that there is **no longer a limit to the duration of an entry ban**. In 2017 two new laws regarding the removal of foreigners with a residence permit, but who pose a threat to society, have been adopted by the Belgian parliament. Before the laws were adopted, it was not possible to issue an entry ban for more than 10 years.

The length of the entry ban will depend on the duration of the sentence, the reasons why the person has been convicted (kind of violation of public order, violation of national security), the family background of the person, if he was illegally staying on the territory, had a temporary or permanent staying permit, or was granted refugee or subsidiary protection status (which was withdrawn), ...

Article 74/11 § 1, paragraph 1 of the Immigration Act states that when determining the duration of an entry ban, all the relevant circumstances in each particular case must be taken into account.²⁰⁵

In 2017 a total of 1.746 entry bans were issued. The **most common period of validity was 3 years** (849).²⁰⁶

In Belgium an entry ban doesn't **start applying** on the day it is issued or on the day the third-country national leaves the EU, but **on the day of notification** (article 74/11 § 3 of the Immigration Act). So the entry ban can expire if the third-country national has never left the territory.²⁰⁷

If the EU will impose (in accordance with the **Ouhrami ruling** of the Court of Justice, C 225/16) that entry bans only get into force once the third-country national has effectively returned, a legislative change in Belgium will be needed. And third-country nationals who got an entry ban will then have to prove that they have left the territory on a specific date, in order to calculate whether the entry ban is still valid or not.²⁰⁸

(Section 8 – Q60 to Q63 of the EMN Questionnaire)

²⁰³ Immigration Act : article 74/11, § 1, paragraph 4

²⁰⁴ Article 74/11 § 2 of the Immigration Act states that no entry ban can be given to foreigners whose residence rights based on being victims of human trafficking or smuggling are ended (unless they are a threat to public order or national security).

²⁰⁵ Article '[New laws regarding the removal of foreign nationals legally residing in Belgium who represent a threat to the public order or national security](#)' on website EMN NCP Belgium and the Immigration Office: Legal department.

²⁰⁶ Immigration Office: Statistical unit.

²⁰⁷ Immigration Office: C-SIS unit

²⁰⁸ Immigration Office: Identification and Removal unit

8.2 Registration entry bans in SIS

In Belgium entering an alert into the Schengen Information System (SIS) when an entry ban has been imposed on a third-country national doesn't happen systematically. Entering alerts into the SIS systematically is not always possible in practice (increasing number of entry bans, number of staff needed, other important tasks, ...).

So, in Belgium **alerts are entered by priority**: in the database of notified entry bans, officials look for the persons who have already returned and/or for persons who pose a threat to public order or national security. In those groups, priority of treatment is given to the ones with the longest period of validity of the entry ban.²⁰⁹

This practice is in accordance with the principle of proportionality provided for in article 21 of the Regulation for SIS II (1987/2006): "*Before issuing an alert, Member States shall determine whether the case is adequate, relevant and important enough to warrant entry of the alert in SIS II*".

(Section 8 – Q64 of the EMN Questionnaire)

8.3 Challenges and good practices implementation entry bans

The following challenges associated with the implementation of entry bans were identified:

- In Belgium entry bans enter **into force at the time of notification** (and not at the time of implementation of the order to leave the territory). Many persons who were issued an order to leave the territory and an entry ban are not returned by force; they remain on the territory and consequently the entry ban, which is entered into force, has no effect.
- **Monitoring** is only possible for those who are returned by force or via an AVR (assisted voluntary return) program (not for those who return independently).

Only one good practice was identified:

- As mentioned in section 8.1, new laws regarding the removal of foreigners with a residence permit, entered into force on 29 April 2017. Because of these laws, there is **no longer a limit to the duration of an entry ban**. Before the laws were adopted, it was not possible to issue an entry ban for more than 10 years. The Belgian authorities consider this is a good practice. They claim it will benefit public order and national security. It's too early and very difficult to evaluate the effectiveness.

(Section 8 – Q68& 69 of the EMN Questionnaire)

²⁰⁹ Immigration Office: C-SIS unit

CONCLUSIONS

Over the last couple of years the Belgian **policy, legislation and administrative practice regarding return have changed considerably**. A lot of new legal and other initiatives were introduced recently and more initiatives are ongoing.

These numerous changes were made for different reasons. One of the main reasons is the strong **focus on return** of the current Belgian authorities. Other reasons are the fight against terrorism and radicalism, the fight against the abuse of residence procedures, migratory flows, and to bring Belgian legislation in compliance with EU legislation.

NGOs and independent actors like Myria, the Bars, the Federal Ombudsman and the children's rights commissioner have strongly **criticized** many of these initiatives and worry that fundamental rights, the dignity of returnees, and the principle of non-refoulement could be violated.²¹⁰

This study has established that in Belgium there is a tendency to **tailoring** the (voluntary and forced) return of third-country nationals. For example the AMAAR and special needs project for returnees with health problems, the possibility for differentiation in the AVR packages, the extra care list for detained third-country nationals, the right to be heard, ... This tendency to tailoring, in accordance with the principle of the obligation to state reasons and the principle of due diligence, can also be seen in the drafting of return decisions. Over the last years return decisions have become less one-motivation-fits-all and more personalized.

It's hard to overestimate the importance of the impact of EU rules on the effectiveness of return in the Belgian context. It's also very difficult to assess the exact impact of these rules.

Case-law of the Court of Justice for instance has had **far reaching implications** for existing Belgian regulations and practices, and will probably continue to do so in the years to come. One example is the Ouhrami ruling (26 July 2017, C 225/16) which states that an entry ban shall be effective the moment the third-country national leaves the Schengen area. Because Belgian law stipulates that an entry ban gets into force on the day of notification, a legislative change will be needed in order to ensure its compliance with this ruling.

Sometimes **following EU rules in practice can be difficult**. For example when the police intercepts an illegally staying third-country national during the weekend, it's not easy to respect the right to be heard. If the illegally staying third-country national doesn't speak (or pretend not to speak) English, German, French or Dutch, it's difficult for the police to get the help of an interpreter (because this is time consuming and laborious, and during the weekend it's difficult to find an interpreter). And if (based on the hearing of the third-country national, the verification of his statements during the hearing, and the analysis of his file) the Immigration Office thinks it's necessary to issue a removal order to the third-country national, this removal order has to be notified within 24 hours after the third-country nationals interception.

Over the last years **the motivation of removal decisions**, including decisions to detain, has become **more comprehensive and much more time-consuming**. Nevertheless the Council for Alien Law Litigation is ruling more and more in favor of the illegally staying person (please see section 4.6).²¹¹ Officials of the Immigration Office believe this might be a result of legislation regarding return, including the Return Directive, the Charter of Fundamental Rights and case law of the European Court of Justice and the European Court for Human Rights.

Of course all actors in the field of migration believe it's a good thing that the fundamental rights and the dignity of illegally staying third-country nationals are ensured. Some officials from the Immigration Office however believe that when third-country nationals and their lawyers appeal against a return decision, a **violation of these fundamental rights** is invoked almost

²¹⁰ NGO Jesuit Refugee Service Belgium: advocacy officer

systematically, and that this claimed violation is often **unjustified**. They have the impression that third-country nationals often unjustly hide behind fundamental rights to hinder their return.

(Section 9 – Q70 & 71 of the EMN Questionnaire)

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²²⁰ REG stands for 'Return Expert Group'. It functions as a platform for practical cooperation and the sharing of good practice and expertise on return. The EMN REG provides a structure for planning, follow-up and monitoring of return activities in the EU. The EMN REG connects key stakeholders, including from Member States, representatives of EU funded programmes and when appropriate civil society.

Annex 1: Definitions

The notions of “effective return” and “effective return policy” are used in multiple EU policy documents but not explicitly defined. For the purposes of this study, **effective return** is understood as the actual enforcement of an obligation to return, i.e. removal or voluntary departure (both defined below), and **effective return policy** is considered as one which is successful in producing a desired or intended result, i.e. the enforcement of return obligations in full respect of fundamental rights, the dignity of the returnees and the principle of *non-refoulement*.²²²

Similarly, there are no commonly agreed definitions of the concepts of “good practice” and “policy challenge”.²²³ For the purposes of this study, the term **good practice** refers to specific policies or measures that are proven to be effective and sustainable, demonstrated by evaluation evidence and/or monitoring and assessment methods using process data and showing the potential for replication. Good practices may cover both the formulation and the implementation of policies or measures, which have led to positive outcomes over an extended period of time. A number of criteria can be used to select good practices, including their policy relevance, scope, evidence-base on their outputs and outcomes, timescale for application, effectiveness and potential for learning and replication in a different (national) context. The term **policy challenge** is defined as an issue that existing policies, practices and/or institutions may not be ready or able to address.²²⁴

The following key terms are used throughout the study. The definitions are taken from the EMN Glossary v4.0²²⁵ or 3.0 unless specified otherwise in footnotes.

Assisted voluntary return: Voluntary return or voluntary departure supported by logistical, financial and / or other material assistance.

Detention: In the global migration context, non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented.

Detention centre: In the global context, a specialised facility used for the detention of third-country nationals in accordance with national law. In the EU return context, a specialised facility to keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when: there is a risk of absconding; or the third-country national concerned avoids or hampers the preparation of return or the removal process.

Entry ban: An administrative or judicial decision or act prohibiting entry into and stay in the territory of the Member States for a specified period, accompanying a return decision.

Irregular stay: Means 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 Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.

²²² This definition is based on the definition of effective as “successful in producing a desired or intended result” included in the Oxford Dictionary, available at <https://en.oxforddictionaries.com/definition/effective>.

²²³ In particular, the notion of ‘good practice’ has been mired in confusion with the terms ‘best practices’, ‘good practices’ and ‘smart practices’ being often used interchangeably. For an overview of the methodological issues and debates surrounding ‘best practice research’, see e.g. Arnošt Veselý, ‘Theory and Methodology of Best Practice Research: A Critical Review of the Current State’, *Central European Journal of Public Policy* – Vol. 5 – No 2 – December 2011.

²²⁴ Given the lack of a standard definition of policy challenge within the EU context, this definition is broadly based on the one provided by Policy Horizons Canada, the foresight and knowledge organisation within the federal public service of the Canadian government. See <http://www.horizons.qc.ca/eng/content/policy-challenges-0>, last accessed on 19 May 2017.

²²⁵ Available at:

http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf.

Removal: Means the enforcement of the obligation to return, namely the physical transportation out of the Member State.

Removal order: An administrative or judicial decision or act ordering a removal.

Return: As per Art. 3(3) of the Return Directive, means the process of a third-country national going back - whether in voluntary compliance with an obligation to return, or enforced - to:

- his or her country of origin, or
- a country of transit in accordance with Community 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 he or she will be accepted.

Return decision: 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 programme: Programme to support (e.g. financial, organisational, counselling) the return, possibly including reintegration measures, of a returnee by the State or by a third party, for example an international organisation.

Returnee: 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. The definition covers all categories of migrants (persons who have resided legally in a country as well as failed asylum seekers) and different ways the return is implemented (e.g. voluntary, forced, assisted and spontaneous). It does not cover stays shorter than three months (such as holiday visits or business meetings and other visits typically considered to be for a period of time of less than three months).

Risk of absconding: 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: Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of the Treaty on the Functioning of the European Union 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: A minor who arrives on the territory of an EU Member unaccompanied by the adult responsible for them by law or by the practice of the EU Member State concerned, and for as long as they are not effectively taken into the care of such a person. A minor who is left unaccompanied after they have entered the territory of the EU Member State.²²⁶

Voluntary departure: Compliance with the obligation to return within the time-limit fixed for that purpose in the return decision.

Voluntary return: The assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee.

²²⁶ Definition taken from the EMN Glossary v 6.0

Annex 2: Abbreviations and national terms

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

Immigration Office (IO)	French: <i>Office des Etrangers</i> Dutch: <i>Dienst Vreemdelingenzaken</i>
Office of the Commissioner General for Refugees and Stateless Persons (CGRS)	French: <i>Commissariat général aux réfugiés et aux apatrides</i> Dutch: <i>Commissariaat-generaal voor de Vluchtelingen en de Staatlozen</i>
Federal Agency for the Reception of Asylum Seekers (Fedasil)	French: <i>Agence fédérale pour l'accueil des demanders d'asile</i> Dutch: <i>Federaal agentschap voor de opvang van asielzoekers</i>
Federal Migration Centre (Myria)	French: <i>Centre fédéral Migration</i> Dutch: <i>Federaal Migratiecentrum</i>
Council for Alien Law Litigation (CALL)	French: <i>Conseil du Contentieux des Etrangers (CCE)</i> Dutch: <i>Raad voor Vreemdelingenbetwistingen (RVV)</i>
Immigration Act	French: <i>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</i> Dutch: <i>Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</i>
Royal Decree implementing the Immigration Act	French: <i>Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</i> Dutch: <i>Koninklijk besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</i>
AVR(R)	Assisted Voluntary Return (and Reintegration)
UAM	Unaccompanied minor
TCN	Third-country national (please see annex 1 for definition)
FITT-unit	Family Identification and Return Unit. Also known as open family unit

Annex 3: Correlation table

Table 5 correlation table on national measures implementing the Return Directive

Directive 2008/115	Belgian Immigration Act of 15 December 1980	Royal Decree of 8 October 1981	Other Acts or Decrees
Art.1	No formal transposition required		
Art. 2, § 1	Title IIIquater	Title II, chapter X	
Art. 2, § 2, a)	Art. 74/10	/	/
Art. 2, § 2, b)	/	/	/
Art. 2, § 3	Art.74/10, in combination with 1, 3° and specific provisions restrained under title II, chapters 1 to 1bis.	/	/
Art. 3,1)	Art. 1, 3°	/	/
Art. 3, 2)	Art. 1, 4°	/	/
Art. 3, 3)	Art. 1, 5°	/	/
Art. 3, 4)	Art. 1, 6°	/	/
Art. 3, 5)	Art. 1, 7°	/	/
Art. 3, 6)	Art. 1, 8°	/	/
Art. 3, 7)	Art. 1, 11° Please note that the law of 21 November 2016 gives a definition of the risk of absconding.	/	/
Art. 3, 8)	Art. 1, 9°	/	/
Art. 3, 9)	Art. 1, 12°	/	/
Art. 4, § 1, a)	Art. 7	/	/
Art. 4, § 1, b)	Art. 7	/	/
Art. 4, § 2	Art. 7	/	/
Art. 4, § 3	Art. 7	/	/
Art. 4, § 4, a)	Art.74/8, §§ 2, 5 and 6, 74/15, 74/17.	/	Art. 1 and 37 of the Police Functions Act of 5 August 1992
Art. 4, § 4, b)	Art. 22, 74/17	/	/
Art. 5	Art. 22, 74/13, 74/17	/	/
Art. 6, § 1	Art. 7	/	/
Art. 6, § 2	Art. 7 and 28	/	/
Art. 6, § 3	Art. 7, paragraph 1, 9° Please note that the law of 21 November 2016 makes this provision in line with article 4, § 3, of the Directive 2008/115/CE has been introduced in Parliament. This proposal narrows the scope of article 7, paragraph 1, 9°, to bilateral agreements or	/	/

	arrangements which entered into force before the date of entry into force of the Directive		
Art. 6, § 4	Art. 1/3, 9bis; 9ter; 61/2 to 61/5; 61/14 to 61/25.	Art. 26/2/1	/
Art. 6, § 5	Art 1/3	/	/
Art. 6, § 6	Art 1/3	Annexes 13sexies, 13septies, 14, 14ter, 14quater and 44	/
Art. 7, § 1	Art. 74/14, § 1, paragraph 1 and 2	/	/
Art. 7, § 2	Art. 74/14, § 1, paragraph 3 to 5	/	/
Art. 7, § 3	Art. 7, paragraph 4 and 74/14, § 2, paragraph 2 and 3	Art.110quaterdecies	/
Art. 7, § 4	Art. 74/14, § 3 Please note that this article was modified by the law of 21 November 2016. It now takes into account abuses of the procedure for international protection.	/	/
Art. 8, § 1	Art. 27, 28, 29 and 74/15, §§ 1 and 2	/	/
Art. 8, § 2	Art. 74/14, § 2, paragraph 1 and 74/15, § 1, 2°	/	/
Art. 8, § 3	Art. 7, 27 and 28	Annex 13septies	/
Art. 8, § 4	Art. 74/15, § 2, paragraph 1	/	Article 1 and 37 of the Police Functions Act of 5 August 1992
Art. 8, § 5	Art. 74/15, § 2, paragraph 2	/	/
Art. 8, § 6	Art. 74/15, § 3	/	Articles 9/1 to 9/4, of the Royal Decree of 20 July 2001 regarding the inspection and operation of the Inspectorate General of the Federal and Local Police Forces
Art. 9, § 1, a)	Art. 74/17, § 1, paragraph 1 and 2.	/	/
Art. 9, § 1, b)	Art. 39/70, 39/79 and 39/83	/	/
Art. 9, § 2, a)	Art. 74/17, § 2, paragraph 1, 1°	/	/
Art. 9, § 2, b)	Art. 74/17, § 2, paragraph 1, 2°	/	/
Art. 9, § 3	Art. 74/17, § 2, paragraph 3 and 4	/	/
Art. 10, § 1	Art. 74/16	/	Articles 8, 9 to 16 of Title XIII, of chapter 6, "Guardianship for unaccompanied foreign minors" of the Program

			Act of 24 December 2002
Art. 10, § 2	Art. 74/16	/	/
Art. 11, § 1, a)	Art. 74/11	/	/
Art. 11, § 1, b)	Art. 74/11	/	/
Art. 11, § 2	Art. 74/11	/	/
Art. 11, § 3	Art. 74/11 and 74/12	/	/
Art. 11, § 4	/	/	/
Art. 11, § 5	Art. 74/11	/	/
Art. 12, § 1	Art. 62 and 74/18	Art.110duodecies and 110terdecies	Article 508/1 and following of the Judicial Code. Linguistic assistance is granted within the framework of legal assistance, in accordance with article 508/10 of the Judicial Code Article 4 of the Act of 29 July 1991 concerning the explicit motivation of government acts.
Art. 12, § 2	Art. 74/18		Article 508/1 and following of the Judicial Code. Linguistic assistance is granted within the framework of legal assistance, in accordance with article 508/10 of the Judicial Code.
Art. 12, § 3	/	/	/
Art. 13, § 1	Art. 39/2, § 2, 39/77, 39/79, 39/81, 39/82, 39/83 and 63	/	/
Art. 13, § 2	Art. 39/2, § 2 and 39/79	/	/
Art. 13, § 3	Art. 39/56	/	Art. 508 /1 d following of the Judicial Code
Art. 13, § 4	/	/	Art. 508 /1 d following of the Judicial Code
Art. 14, § 1, a)			Art. 38 of the law of 12 January 2007 regarding the reception of asylum seekers and certain other categories of aliens. Art. 26 of the Royal Decree of 14 May 2009 regarding the rules and operation measures in the living units, as referred to in article 74/8, § 1 of the Immigration Act of 15 December 1980. Art. 34 to 37 of the Royal Decree of 2

			August 2002 regarding the closed centres as referred to in article 74/8, § 1 of the Immigration Act of 15 December 1980.
Art. 14, § 1, b)			<p>Article 23 to 30 and 39 of the Act of 12 January 2007.</p> <p>Art. 53 of the Royal Decree of 2 August 2002.</p> <p>Art. 36 to 40 of the Royal Decree of 14 May 2009</p> <p>Art 57, § 2, of the Act of 8 July 1976</p> <p>Royal Decree of 12 December 1996 regarding urgent medical care for illegally staying foreigners by Public Centres for Social Assistance.</p>
Art. 14, § 1, c)		/	<p>Article 24, § 3 of the Constitution</p> <p>Article 1, § 7 of the Act of 29 June 1983 concerning compulsory school attendance</p> <p>Art. 10, § 1(2) of Title XIII of chapter 6, "Guardianship for unaccompanied foreign minors" of the Program Act of 24 December 2002</p>
Art. 14, § 1, d)			<p>Article 36 of the Act of 12 January 2007</p> <p>Article 68 of the Royal Decree of 2 August 2002</p> <p>Article 7 and 41 of the Royal Decree of 14 May 2009</p>
Art. 14, § 2	Art. 74/17	/	/
Art. 15, § 1, a)	Art. 7 and 27, § 3	/	/
Art. 15, § 1, b)	Art. 7 and 27, § 3	/	/
Art. 15, § 2	Art. 7(3) to 7, 63 and 71 to 74	/	/
Art. 15, § 3	Art. 71 to 74	/	/
Art. 15, § 4	Art. 7	/	/

Art. 15, § 5	Art. 7	/	/
Art. 15, § 6, a)	/	/	/
Art. 15, § 6, b)	/	/	/
Art. 16, § 1	Art. 74/8	/	Art. 2 of the Royal Decree of 2 August 2002
Art. 16, § 2	/	/	Article 15, 24, 25 and 26 to 45 of the Royal Decree of 2 August 2002 Article 24, 25 and 26 to 32 of the Royal Decree of 14 May 2009
Art. 16, § 3	/	/	Article 52 to 61 of the Royal Decree of 2 August 2002 Art. 36 to 40 of the Royal Decree of 14 May 2009
Art. 16, § 4	/	/	Article 42 to 45 of the Royal Decree of 2 August 2002 Art. 27 to 32 of the Royal Decree of 14 May 2009
Art. 16, § 5	/	/	Art. 17 of the Royal Decree of 2 August 2002 Art. 7, 8, 18 and 45 of the Royal Decree of 14 May 2009
Art. 17, § 1	Art. 74/9 and 74/19	/	/
Art. 17, § 2	Art. 74/9 and 74/19	/	Art. 83 of the Royal Decree of 2 August 2002 Royal Decree of 14 May 2009
Art. 17, § 3	Art. 74/9 and 74/19	/	Article 67 to 74 and 83 of the Royal Decree of 2 August 2002
Art. 17, § 4	Art. 74/9 and 74/19	/	
Art. 17, § 5	Art. 74/9 and 74/19	/	
Art. 18, § 1	/	/	/
Art. 18, § 2	/	/	/
Art. 18, § 3	/	/	/
Art. 19	/	No formal transposition required	No formal transposition required
Art. 20, § 1	/	No formal transposition required	No formal transposition required.
Art. 20, § 2	/	No formal transposition required	No formal transposition required
Art. 21	/	No formal transposition required	No formal transposition required
Art. 22	/	No formal transposition required	No formal transposition required

Art. 23	/	No formal transposition required	No formal transposition required
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Annex 4: Studies and reports of the Belgian Contact Point of the EMN (2009-2018)

The present annex lists the national studies and reports published by the Belgian Contact Point of the EMN between 2009 and 2018. 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 EU 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 EU Synthesis Reports are available on http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm

2009

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

2010

<i>January 2010</i>	Annual Report on Asylum and Migration Policy in Belgium – 2009
<i>August 2010</i>	Satisfying Labour Demand Through Migration in Belgium

2011

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

2012

<i>January 2012</i>	Practical Measures for Reducing Irregular Migration in Belgium
<i>March 2012</i>	Annual Report on Asylum and Migration Policy in Belgium – 2011
<i>April 2012</i>	Misuse of the Right to Family Reunification : Marriages of Convenience and False Declarations of Parenthood in Belgium - <i>Also available in French and Dutch</i>
<i>September 2012</i>	Establishing Identity for International Protection: Challenges and Practices in Belgium - <i>Also available in French and Dutch</i>
<i>September 2012</i>	The Organisation of Migration and Asylum Policies in Belgium (update)
<i>October 2012</i>	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 Belgiumz
December 2016 Resettlement and Humanitarian Admission in Belgium

2017

June 2017 Annual Report on Asylum and Migration Policy in Belgium - 2016

<i>July 2017</i>	Family Reunification of Third Country Nationals in Belgium
<i>August 2017</i>	Illegal Employment of Third Country Nationals in Belgium
<i>December 2017</i>	Challenges and good practices for establishing applicants' identity in the migration process in Belgium

2018

<i>July 2018</i>	The effectiveness of return in Belgium: challenges and good practices linked to EU rules and standards
<i>Upcoming</i>	Annual Report on Asylum and Migration Policy in Belgium - 2017
<i>Upcoming</i>	The changing influx of asylum seekers in 2014-2016: Belgium's responses
<i>Upcoming</i>	Belgian approach on unaccompanied minors after the asylum process
<i>Upcoming</i>	Labour market integration of third-country nationals in Belgium