



# RETURNING REJECTED ASYLUM SEEKERS: CHALLENGES AND GOOD PRACTICES IN BELGIUM

STUDY OF THE BELGIAN CONTACT POINT  
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## Belgian study and EU comparative study

**Belgian report:** This is the Belgian contribution to the EMN focused study on returning rejected asylum seekers: challenges and good practices. Other EMN National Contact Points (NCPs) produced a similar report on this topic for their (Member) State.

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

**Aim of the study:** The overall aim of the study is to inform decision-makers at both EU and national level including the European Commission, the European Asylum Support Office (EASO) and Frontex, practitioners, policy officers, academic researchers and the general public on (Member) States' approaches to the return of rejected asylum seekers, examining existing policies and identifying good practices.

**Scope of the study:** The study examines approaches and measures taken by the Member States to enhance the return of rejected asylum seekers at different stages of the asylum procedure. The focus of the study is primarily on rejected asylum seekers who have been issued an enforceable return decision following one or more negative decisions on their application for international protection. The study also investigates, to a lesser extent, national measures to prepare asylum seekers for return during the asylum procedure in case their application is rejected. Finally, the study also examines national approaches to rejected asylum seekers who cannot immediately return or be returned.

**Available on the website:** The Belgian report, the Synthesis Report and the links to the reports of the other (Member) States and the Common Template are available on the website: [www.emnbelgium.be](http://www.emnbelgium.be)



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## FACTSHEET - BELGIUM

This EMN-study focuses on the approaches to the return of rejected asylum seekers in Belgium at different stages of the asylum procedure, examining existing policies and identifying challenges and good practices. This report is largely based on input from representatives of the concerned public services, such as the Immigration Office, the Commissioner General for Refugees and Stateless Persons (CGRS) and the Federal Agency for the reception of asylum seekers (Fedasil). Other sources used for this study include legislation, policy briefs, research outputs and previous outputs from the EMN.

### **(Voluntary) return: a priority of the Belgian government**

The return of irregular migrants – including rejected asylum seekers – is considered as an important issue in Belgium and has been a priority of the Belgian government for many years. The return policy is based on the principle that returns are ‘voluntary if possible, forced if necessary’.

### **Authorities involved in the asylum and the return procedures**

Different authorities make decisions in the framework of the asylum procedure (CGRS and the appeal bodies) and the return procedure (the Immigration Office). These authorities cooperate and coordinate to ensure that asylum decisions lead to return at the appropriate moment, either through indirect (the Waiting Register) or direct communication. Some of the information obtained in the framework of the asylum procedure (when an applicant registers his asylum application at the Immigration Office) can also be used for identification and return purposes.

### **Issuing a return decision and the enforcement of the decision**

A return decision is issued by the Immigration Office after a negative decision of the CGRS (when an asylum application is lodged in detention, a return decision is issued immediately), but it cannot always immediately lead to a removal. The appeal procedure in full jurisdiction against a negative decision of the CGRS before the Council for Aliens Law Litigation (CALL) is suspensive, with some exceptions. Furthermore, a return decision cannot lead to the removal of a TCN during the time period available to the TCN to lodge a request for suspension in case of extremely urgent necessity against this decision before the CALL, and – if such a request is lodged – during the examination of the request.

### **Policies and measures to ensure/encourage (voluntary) return**

Several measures and procedures exist in Belgium to ensure that rejected asylum seekers (voluntarily) return to their country of origin when a return decision has been issued. This includes the return path (since 2012), which is a step-by-step process of

provision of information on voluntary return to (rejected) asylum seekers in the reception facilities managed by Fedasil and its reception partners. It is divided into two main phases : (1) voluntary return counselling while the asylum procedure is still ongoing and (2) following a negative (appeal) decision, intensified voluntary return counselling in the open return places by Fedasil and the Immigration Office. If the rejected asylum seeker does not cooperate or no realistic plan for voluntary return is set up, the Immigration Office can take the necessary steps to organize a forced return. Furthermore, the Immigration Office's SEFOR project (since 2011) aims at monitoring all TCNs who have received an order to leave the territory (including rejected asylum seekers not residing in a reception facility). The SEFOR procedure focuses on voluntary return on the one hand and on the preparation of forced return on the other. Other possible measures to ensure the return of rejected asylum seekers are preventive measures to avoid absconding and – in some cases – detention.

### **Rejected asylum seekers' rights and access to services**

Following a negative asylum decision, rejected asylum seekers' access to certain services is limited. They cannot stay in the reception facilities, but can go to the 'open return places' (located in 'regular' reception centres managed by Fedasil) where they receive the same material aid as during the asylum procedure and receive intensive return counselling from Fedasil and the Immigration Office. They can stay in these open return places until the order to leave the territory expires (usually maximum 30 days). Once this deadline has passed, the rejected asylum seekers will have to leave the open return place and no further accommodation is provided (although the provision of material aid can be extended in certain cases). Moreover, they can no longer access the labour market, are not entitled to social welfare and - once their right to material aid has come to an end - they only have access to urgent medical assistance.

### **Appeals and subsequent asylum applications**

Rejected asylum seekers who have received a return decision can lodge an appeal on the decision before being returned, which can prevent the return from taking place in some cases. Rejected asylum seekers can also lodge a new asylum application. However, the Belgian authorities try to limit abusive subsequent asylum applications by processing them within an accelerated procedure, imposing shorter deadlines on the appeal procedures, and limiting the suspensive effect of the appeal procedure in certain cases. Furthermore, possible 'pull-factors' are also limited (e.g. in case of a subsequent asylum application, applicants are in principle not accommodated in a reception facility during the admissibility examination of the CGRS).

### **Challenges to the return of rejected asylum seekers and measures to manage those**

Several challenges prevent or hinder the return of irregular TCNs (e.g. resistance of the TCN, lack of cooperation from the authorities of the country of return, administrative



challenges, etc.). These challenges usually affect the return of all irregular TCNs, and are not specific to the return of rejected asylum seekers. In Belgium, several measures are implemented in order to manage these challenges and contribute to the return of irregular TCNs (e.g. assisted voluntary return programmes, bilateral cooperation, readmission agreements, etc.). Some are specifically tailored to the return of rejected asylum seekers. For example, this is the case of the differentiated voluntary return packages offered to (rejected) asylum seekers: asylum seekers with pending applications or leaving before the deadline on their order to leave the territory has passed are eligible for a higher return package. Furthermore, strategies targeting specific groups have also been recently implemented: in 2016, Iraqi and Afghan asylum seekers could benefit from higher return premiums, under certain conditions.

### **Status of rejected asylum seekers who cannot immediately return or be returned**

Rejected asylum seekers who cannot immediately return or be returned are not granted a specific status by the Belgian authorities. However, in certain cases, the Immigration Office can extend the order to leave the territory of these TCNs for a certain period of time. There is no distinction in terms of status between rejected asylum seekers who cannot return or be returned through no fault of their own (“no-fault” cases) and those who are considered to have hampered their own return. It is worth mentioning that the “no-fault” cases can apply for a regularisation on humanitarian grounds.

### **Accelerated procedures and list of safe countries of origin**

Belgian legislation does not set out different types of first instance procedures, but not all applications for international protection are processed within the same time frame. In some specifically determined situations, the CGRS has to prioritise/accelerate the examination of an asylum application and has to take a decision within a specific period of time. This is the case – inter alia – when an asylum applicant is from one of the countries listed on Belgium’s list of ‘safe countries of origin’. In principle, these accelerated procedures can contribute to swift removals.

### **Preparing asylum seekers for return during the asylum procedure**

It is part of Belgium’s policy on return to prepare asylum seekers for return early on and through the different stages of the asylum procedure. This is done through the ‘return path’ (see above). This return path is coupled with other means of information on voluntary return: a (rejected) asylum seeker outside of a reception facility can always receive information and apply for a voluntary return via one of the five ‘return desks’, Fedasil’s free hotline, or the network of NGOs in Belgium. Furthermore, the SEFOR procedure focuses on voluntary return on the one hand and on the preparation of forced return on the other hand (see above).

## Overview of the national situation

The return of irregular migrants is considered as an important issue in Belgium and has been a priority of the Belgian government for many years. The Coalition Agreement of 11 December 2011 stipulated that the return of irregular migrants – based on the principle ‘voluntary if possible, forced if necessary<sup>(1)</sup> – is one of the top priorities of the migration policy. This focus on return was again stressed in the Coalition Agreement of 9 October 2014, which indicated that a strict and humane return policy is the cornerstone of a coherent, efficient and qualitative immigration and asylum policy<sup>(2)</sup>. The return of rejected asylum seekers – more specifically – forms part of the Belgian policy on return, and has become increasingly important in light of the recent increase of asylum applications.

The **voluntary return** of migrants is favoured. Within this framework, a specific focus is put on the voluntary return of rejected asylum seekers. The Coalition Agreement of 2011 stressed that voluntary return should no longer be considered as a last-resort solution and that awareness raising of (rejected) asylum seekers on voluntary return is essential – both during the asylum procedure and following a negative (appeal) decision. In this perspective, the ‘return path’ was introduced in Belgian law in 2012<sup>(3)</sup>, which is a step-by-step individual counselling path offered to (rejected) asylum seekers in the reception facilities managed by the reception agency – Fedasil – and its partners in view of a voluntary return to the country of origin. The ‘open return places’ – that is to say the reception places to which rejected asylum applicants are assigned – were also created.

The strengthening of this return path targeting (rejected) asylum seekers remained a focus of the Belgian return policy in the following years – and still is today. The Coalition Agreement of 2014 underlined that the government would continue to encourage voluntary return through the return path. Furthermore, in his General Policy Note of November 2014, the State Secretary for Asylum Policy and Migration indicated that, in order to encourage voluntary return, the government would increase its efforts to provide (rejected) asylum seekers with information on voluntary return in each reception centre at specific moments of the asylum procedure, and to provide joint assistance on return by Fedasil and the Immigration Office at the open return

1 [Federal Coalition Agreement](#), 11 December 2011, pp. 131-132.

2 [Federal Coalition Agreement](#), 9 October 2014, p. 150.

3 [Law of 19 January 2012 modifying the legislation regarding the reception of asylum seekers](#), Belgian Official Gazette, 17 February 2012.

places<sup>(4)</sup>. In his General Policy Note of 2015, the State Secretary stressed that – in the context of a decreasing interest of migrants for voluntary return at the beginning of 2015 – an Action Plan on voluntary return was elaborated in order to – inter alia – increase the impact of the return path, and that efforts in this sense would be continued in 2016<sup>(5)</sup>.

It is also worth mentioning that the question of the voluntary return of (rejected) asylum seekers, the return path and the open return places was raised on several occasions in the Belgian Federal Parliament over the last years (including on the arrival rate at the open return places and what happens to those who choose not to go to these places<sup>(6)</sup>) and in the media<sup>(7)</sup>.

Besides voluntary return, **forced return** – including of rejected asylum seekers – is also an important part of the Belgian return policy: if voluntary return is not possible, then a forced return can be implemented.

Both the Coalition agreements of 2011<sup>(8)</sup> and 2014<sup>(9)</sup> stipulated that the government would implement forced returns, and would put a specific focus on the swift and efficient return of third country nationals (TCNs) posing a threat to the public order or national security. In his General Policy Note of November 2014, the State Secretary for Asylum Policy and Migration stressed that, in the context of a decreasing number of returns in 2014, one of his priorities was to reverse this trend by adopting a more efficient approach to return through different measures (e.g. making optimal use of EU-funds and Frontex flights)<sup>(10)</sup>. Furthermore, in his Policy Note of 2015, the State Secretary indicated that the staff dealing with return issues at the Immigration Office would be increased in 2016, in order to – inter alia – provide responses to negative decisions on asylum applications. The General Policy Note also indicated that the capacity of the closed centres would be increased to allow for an efficient return policy<sup>(11)</sup>. Moreover, the fight against procedures started by migrants with the sole purpose to delay or prevent a forced return from taking place – including multiple asylum applications – was also mentioned as a priority of the government<sup>(12)</sup>. It is also worth mentioning that the Coalition Agreement of 2014 indicates that solutions will be sought for the small group of migrants who – due to no fault of their own – cannot return to their country of origin<sup>(13)</sup>.

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4 Belgian House of Representatives, General Policy Note on Asylum and Migration, 28 November 2014, DOC 54 0588/026, pp. 33-34.

5 Belgian House of Representatives, General Policy Note on Asylum and Migration, 3 November 2015, DOC 54 1428/029, pp. 17-18.

6 See for example: Belgian House of Representatives, Full report of the Interior, General Affairs and Public Service Commission, 21 January 2014, CRIV 53 COM 901, pp.2-5.

7 See for example: 'Francken: Sterke stijging vrijwillige terugkeer van Irakese asielzoekers', De Morgen, 5 January 2016; or 'Wat krijg je van België als je vrijwillig terugkeert?', De Tijd, 7 October 2015; or M. Justaert, '87 procent afgewezen asielzoekers verdwijnt in de illegaliteit', De Standaard, 23 October 2013; or 'Terugkeerbeleid afgewezen asielzoekers geen succes', Het Laatste Nieuws, 22 October 2013.

8 Federal Coalition Agreement, 1 December 2011, pp. 131-132.

9 Federal Coalition Agreement, 9 October 2014, pp. 158-160.

10 Belgian House of Representatives, General Policy Note on Asylum and Migration, 28 November 2014, DOC 54 0588/026, pp. 35-36.

11 Belgian House of Representatives, General Policy Note on Asylum and Migration, 3 November 2015, DOC 54 1428/029, p. 19.

12 Belgian House of Representatives, General Policy Note on Asylum and Migration, 28 November 2014, DOC 54 0588/026, p. 12.

13 Federal Coalition Agreement, 1 December 2011, p. 154.

The question of forced returns was also regularly raised in Parliament (including the number of removals, the costs of removals, or the follow-up on orders to leave the territory<sup>(14)</sup>; the detention of irregular migrants<sup>(15)</sup>; or the issue of migrants who cannot return or be returned to their countries of origin<sup>(16)</sup>) and in the media (including the return flights<sup>(17)</sup>; or the detention of irregular migrants, including rejected asylum seekers<sup>(18)</sup>).

(Section 1 – Q1 of the EMN Questionnaire)

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- 14 See for example: Belgian House of Representatives, Question n° 102 of the MP Emir Kir of 25 March 2015 to the State Secretary for Asylum Policy and Migration, in charge of Administrative Simplification, attached to the Minister of Security and the Interior, 27 April 2015, QRVA 54 022, pp. 193-195; or Belgian House of Representatives, Question n°111 of the MP Filip Dewinter of 20 April 2015 to the State Secretary for Asylum Policy and Migration, 26 May 2015, pp.181-183.
- 15 See for example: Belgian House of Representatives, Question n° 353 of the MP Denis Ducarme of 9 November 2015 to the State Secretary for Asylum Policy and Migration, 28 December 2015, QRVA 54 056, pp. 414-416.
- 16 See for example: Belgian House of Representatives, Full report of the Interior, General Affairs and Public Service Commission, 21 January 2014, CRIV 53 COM 901, pp.12-13
- 17 See for example: J. Matriche, 'Voici les détails des vols de retour forcé pour les demandeurs d'asile déboutés', Le Soir, 25 September 2015.
- 18 See for example : F. Chardon, 'Francken veut doubler les places en centres fermés', La Libre, 25 January 2016; or J. oppelmonde, 'Volgende stap is opening van volledig nieuwe gesloten centra', De Standaard, 25 May 2016.



# 2

## Policies and measures vis-à-vis rejected asylum seekers at the point of rejection

### 2.1 How asylum decisions trigger the issuance of return decisions

#### 2.1.1. Issuing an enforceable return decision

Following a negative decision by the Commissioner General for Refugees and Stateless Persons (CGRS) – that is to say both rejections of a first or subsequent asylum application after examination on its merits and decisions not to take into consideration an asylum application – the Immigration Office **issues a return decision** (an order to leave the territory) to the rejected asylum seeker<sup>(19)</sup>.

However, **the appeal procedure in full jurisdiction** against a negative decision of the CGRS before the Council for Aliens Law Litigation (CALL) **is suspensive**. No removal can take place during the time period available to the rejected asylum seeker to lodge an appeal before the CALL, and – if an appeal is lodged – during the examination of this appeal (until the CALL takes a decision). If the CALL takes a negative decision on an appeal against a decision of the CGRS, the Immigration Office does not issue a new order to leave the territory. The order that was issued following the negative decision on the asylum application by the CGRS can be extended by 10-day periods (usually maximum 30 days)<sup>(20)</sup>. The rejected asylum seeker is expected to leave the Belgian territory voluntarily before the deadline stipulated on the order expires. Once the deadline has passed, a forced return can be organized by the Immigration Office.

The **appeal in full jurisdiction before the CALL against a decision of the CGRS not to take into consideration a subsequent asylum application is not suspensive** when the return decision does not lead to a risk of direct or indirect refoulement and: (i) the applicant lodged a first subsequent asylum application within 48 hours before the removal in order to delay or prevent it; or (ii) the applicant lodged a new subsequent asylum application following a final decision on a previous subsequent asylum application<sup>(21)</sup>. In these cases, the return decision can be enforced immediately, once the time limit to lodge a request for suspension of the return decision in case of extremely urgent necessity – as well as the time necessary for the examination of a possible

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<sup>19</sup> Art. 52/3 of the Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 31 December 1980 (hereafter: the Immigration Act).

<sup>20</sup> Ibid.

<sup>21</sup> Art. 39/70 of the Immigration Act.

request – has passed. A return decision cannot lead to the removal of the TCN during the time period available to the TCN to lodge a request for suspension in case of extremely urgent necessity against this decision before the Council for Alien Law Litigation (CALL), and – if such a request is lodged – during the examination of the request (until the CALL takes a decision). The time-limit to lodge such a request is 10 days following the notification of a first return decision and 5 days following the notification of a subsequent return decision<sup>(22)</sup>.

Regarding **asylum applications lodged in detention**, a return decision (order to leave the territory or refusal of entry and refolement decision at the border) is issued immediately. This is the case for first and subsequent asylum applications. The implementation of this decision is suspended during the examination of the asylum application by the CGRS and during the examination of the (possible) appeal by the CALL.

The **appeal before the Council of State** (cassation) is **not suspensive**.  
(Section 2 – Q5 of the EMN Questionnaire)

Although there are no statistics available, return decisions issued before all asylum appeals have been exhausted lead in some cases to the applicant being returned. As mentioned above, it depends on the type of asylum application (first or subsequent application) and the place where the asylum application was lodged (in detention or not).

(Section 2 – Q6 of the EMN Questionnaire)

## 2.1.2. Authorities involved in the asylum and return procedures and their coordination and cooperation

### **The different authorities**

In Belgium, different authorities are involved in the asylum and return procedures:

The **Immigration Office** (part of the Federal Public Service Home Affairs) is competent for the entry to the territory, residence, settlement and removal of foreign nationals in Belgium. Regarding the asylum procedure, the Immigration Office registers the asylum applications on the territory and at the border (including subsequent asylum applications); it applies the Dublin III Regulation; it is responsible for the asylum seeker's legal residence status throughout the procedure; and it delivers orders to leave the territory and organizes returns.

The **Office of the Commissioner General for Refugees and Stateless Persons (CGRS)**, an independent federal administration, is the instance competent to examine asylum cases and grant/refuse or withdraw refugee status or subsidiary protection. Since 1 September 2013, the CGRS (and no longer the Immigration Office) is also the competent authority to decide whether to take into consideration a subsequent asylum application or not. The Immigration Office is still the competent authority for registering subsequent asylum applications.

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22 Art. 39/57 and art. 39/83 of the Immigration Act.

The **Council for Alien Law Litigation (CALL)** is an administrative court responsible for handling appeals against individual decisions made in application of the Immigration Act, that is to say decisions regarding the entry, stay and removal of foreign nationals. It hears appeals against decisions made by the CGRS and the Immigration Office.

The CALL can hear an appeal in full jurisdiction against the following decisions of the CGRS: refusal to grant refugee status and subsidiary protection status; refusal to grant refugee status but granting of subsidiary protection status; refusal to take into consideration an asylum application from a citizen of a safe country of origin; and refusal to take into consideration a subsequent asylum application. In the framework of a full jurisdiction appeal, the CALL can confirm the CGRS' decision, reverse the decision (and thus grant a protection status), or annul the decision and send the file back to the CGRS who has to take a new decision. An appeal in full jurisdiction is suspensive (with some exceptions), which means that no removal can take place during the appeal procedure.

Furthermore, the CALL can hear an appeal for annulment against the decisions of the CGRS not to take into consideration an asylum application from a citizen of an EU Member State or a candidate State, or from an applicant who has already obtained refugee status in another EU Member State; and against decisions of the Immigration Office (including against an order to leave the territory or a detention decision). The CALL can either confirm the CGRS' or the Immigration Office's decision, or annul the decision and send the file back to the CGRS or the Immigration Office who has to take a new decision. Within the framework of such a procedure, the CALL can thus not grant an international protection status. An appeal for annulment is not suspensive, but a request for suspension can be lodged with the appeal.

The **Council of State**, an administrative Court, hears cassation appeals against decisions made by the CALL. Each cassation appeal is examined by the Council of State as to its admissibility. It can either be declared admissible (and thus eligible for further processing) or inadmissible if the Council considers it is not within its competence or does not have power of jurisdiction in the matter, or when the appeal is found to be without cause or obviously unfounded. If declared admissible, the Council of State examines the appeal (the legality of the decision only). The Council of State then either nullifies the CALL's ruling, thereby sending the file back to the CALL, or rejects the appeal. Appeals before the Council of State have no suspensive effect on the return decision.

Finally, **the Federal Agency for the reception of asylum seekers (Fedasil)** is responsible for the reception of asylum seekers and other target groups and coordinates the voluntary return programmes.

### **Coordination and communication between these different authorities**

The different authorities involved in the asylum procedure and the return procedure coordinate and communicate to ensure that asylum decisions trigger the return procedure at the right time. The asylum procedure is recorded in the Waiting Register – which is a subset of the Population



Register intended specifically for asylum seekers – by the different authorities involved. All asylum seekers are registered in the Waiting Register when they lodge an asylum application. The decisions taken in the framework of the asylum procedure are also registered (decision of the CGRS, appeal decision of the CALL, etc.), as well as other relevant pieces of information on important steps of the asylum procedure. The different authorities mentioned above have access to this Waiting Register, which allows a transfer and sharing of information. No automatic alerts are sent to the Immigration Office about the decisions in the asylum procedure registered in the Waiting Register, but the Immigration Office can always consult this database to find out about a decision taken in order to determine whether a return decision is enforceable or not.

Furthermore, the different authorities also communicate directly. The CGRS – after making a decision on an asylum application – sends a copy of the asylum decision to the Immigration Office, to inform them of the end of the asylum procedure and the decision taken.

In case an appeal is lodged, the CALL always sends a copy of its appeal decision to the concerned applicant and the CGRS. It is not mandatory for the CALL to also send a copy of the appeal decision to the Immigration Office, but this is however done in practice. The decision is also sent to the closed centre if the TCN in question is being detained.

In case of multiple asylum applications, negative decisions are also notified to the federal Police to avoid new late applications.

[\(Section 2 – Q7a of the EMN Questionnaire\)](#)

### **2.1.3. Negative decisions on an asylum application and the return decision**

Following a negative decision by the CGRS, the Immigration Office issues a return decision – on average – within a week. The time it takes to issue the return decision depends on the case (e.g. people in detention are issued a return decision as a priority).

[\(Section 2 – Q7b of the EMN Questionnaire\)](#)

### **2.1.4. Use of information from the asylum procedure in the framework of the return procedure**

Information obtained from the applicant in the course of the asylum procedure is regularly used for the purpose of facilitating return. The Immigration Office registers the asylum application of the foreign national. Upon registration of the application, the Immigration Office records the information provided by the applicant on his identity (such as his name, date of birth, or nationality), origin and itinerary. Furthermore, the applicant fills in a questionnaire at the Immigration Office, in which he provides information on the reasons why he has fled his country of origin and on the possibilities of return to the country of origin<sup>(23)</sup>. In principle, the applicant also has to hand over all the relevant documents he has with him to the Immigration Office.

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23 Article 51/10 of the Immigration Act.

During the registration procedure, the applicant is also required to have his photograph taken, have his fingerprints taken (for all asylum seekers who are 14 years old and older), and have an X-ray of his lungs taken (for all asylum seekers who are 6 years old and older).

The information contained in this asylum (registration) file can be used by the Immigration Office for identification and return purposes.

The Immigration Office sends this entire asylum (registration) file – with the exception of possible medical information which could violate the privacy of the individual and information related to the security of the State – to the Commissioner General for Refugees and Stateless Persons (CGRS), who will thoroughly examine it. The asylum applicant may also submit new information (that was not submitted during the registration of the asylum application) to the CGRS. Each applicant is at least invited once for an interview by the CGRS (in case of a first asylum application). The invitation for the interview addressed to the asylum seeker indicates that the applicant needs to provide any document that might support his asylum application, and any document that he has that may confirm his age, background, identity, nationality(ies), country(ies) or previous place(s) of residence, previous asylum applications, travel routes, identification and travel documents<sup>(24)</sup>.

The Immigration Office does not have access to the CGRS' file on the asylum applicant (e.g. the interview). However, the Immigration Office receives a copy of the CGRS' decision on the asylum application, which can make a reference to a or several document(s), such as court orders, acts of the Civil Registry, etc. In this case, the Immigration Office can request a copy of the mentioned document(s) for identification and return purposes.

[\(Section 2 – Q8 of the EMN Questionnaire\)](#)

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<sup>24</sup> Article 9 and 22 of the Royal Decree of 11 July 2003 defining the procedure before the Commissioner General for Refugees and Stateless Persons and its functioning, Belgian Official Gazette, 27 January 2004.

## 2.2 Immediate consequences for rejected asylum seekers required to return

### 2.2.1 Rights and services available to rejected asylum seekers

Table 1 : Rights and services available to rejected asylum seekers required to return

Accommodation	
Can the applicant stay in reception centres once rejected?	
... according to law	<p>Rejected asylum seekers cannot stay in the reception facilities following a negative appeal decision. They are transferred to specific ‘open return places’. However, do note that these open return places are located in ‘regular’ reception centres for asylum seekers managed by the reception agency, Fedasil.</p> <p><b><u>Right to material aid</u></b></p> <p>Asylum seekers have a right to material aid (which includes accommodation)<sup>(25)</sup> from the lodging of their application and during the entire asylum procedure (examination of application by CGRS, 30-day period for possible appeal before the CALL, examination of appeal and decision by CALL)<sup>(26)</sup>. In case of a negative appeal decision by the CALL, rejected asylum seekers are entitled to material aid until the order to leave the territory that has been issued to them has expired (usually a maximum of 30 days). The lodging of an appeal in cassation at the Council of State does not lead to a right to material aid. This right to material aid is only reactivated when the appeal has been declared admissible.</p> <p><b><u>Open return places</u></b></p> <p>Since September 2012, Fedasil organizes the so-called ‘open return places’, which are located in five federal reception centres for asylum seekers managed by the reception agency<sup>(27)</sup>. Rejected asylum seekers are transferred to these specific places – after a negative appeal decision by the CALL- where they receive the same material aid as during the asylum procedure and receive intensive return counselling for a maximum period of 30 days.</p> <p>After these 30 days, the rejected asylum seekers can no longer stay in these reception facilities unless they have signed up for voluntary return. In this case, they can stay in the open return places in the reception facilities until the moment of departure.</p>

25 Asylum seekers can be hosted in collective reception centres or in individual reception facilities (organized by the Public Centres for Social Welfare or NGOs).

26 Article 6 § 1 of the Law of 12 January 2007 on the reception of asylum seekers and other categories of foreigners, Belgian Official Gazette, 7 May 2007 (Hereafter: the Reception Act).

27 The reception centres are: Arendonk, Jodoigne, Poelkapelle, Saint-Trond, and Brussels (Petit-Château).

The right to material aid comes to an end when the deadline on the order to leave the territory expires. The rejected asylum seekers will have to leave the open return place and the Immigration Office can organize a forced return. No further accommodation is provided.

#### **Exceptions to the transfer to an open return place**

The transfer to an open return place is **postponed** for rejected asylum seekers who have a family member still in the asylum procedure (until the family member receives a negative decision on his asylum application).

Furthermore, the following categories of rejected asylum seekers are **exempt** from a transfer to an open return place<sup>(28)</sup>:

- ↘ Families with school-age children who attend school from 1 April to 30 June (so that the children can finish the school year in the same school);
- ↘ Ex-unaccompanied minors who attend school, who have come of age during the school year, from 1 April to 30 June (so that they can finish the school year in the same school);
- ↘ Residents with a medical contra-indication for a transfer<sup>(29)</sup> (e.g. hospitalisation) and their family members;
- ↘ Parents of a Belgian child and their family members;
- ↘ Residents who have already signed a request for voluntary return before a final decision in their asylum procedure and who have the necessary travel documents to organize the return.

Moreover, **unaccompanied minors** whose asylum applications have been rejected are not transferred to the open return places, they can remain in the reception facilities for minors. Unaccompanied minors can return voluntarily but no forced returns are carried out. They are allowed to stay in Belgium until they turn 18. The guardian of the unaccompanied minor can apply for an extension of the right to reception. A more permanent option is the search for a 'sustainable solution' by the guardian and the Immigration Office (e.g. family reunification, return to a third country, etc).

#### **Subsequent asylum applications**

Rejected asylum seekers who lodge a subsequent asylum application will in principle not receive a place in a reception facility. Fedasil can decide whether or not to provide material aid to the applicant during the period of time the admissibility of the application is examined (the applicant does however always have a right to medical assistance). Only when the CGRS or the CALL decides to take into consideration the subsequent application, will the applicant have a right to material aid – and thus a place in a reception facility<sup>(30)</sup>.

28 Fedasil, Instruction on the return path and the open return places for asylum seekers residing in Fedasil's reception network, 13 July 2012.

29 Note that if the medical contra-indication no longer exists, the rejected asylum seeker can be transferred to an open return place.

30 Article 4 of the Reception Act.

If a subsequent application – that was taken into consideration – is rejected by the CGRS after examination, the rejected asylum seeker residing in a reception facility follows the same procedure as for a first asylum application (see above).

**Possible extension of the right to material aid**

Rejected asylum seekers residing in a reception facility (both in case of a first and a subsequent application) may benefit from an extension of the right to material aid after receiving a negative decision at the end of the asylum procedure, in the following cases<sup>(31)</sup>:

- ↘ Rejected asylum seekers whose family member (spouse, partner, child, (grand)-parent or guardian) has a right to reception<sup>(32)</sup>.
- ↘ Rejected asylum seekers who need to finish the school year (in case of compulsory schooling only) and have applied for an extension of their order to leave the territory (request for extension lodged at the earliest three months before the end of the school year). The extension of the provision of material aid comes to an end when the extension of the order to leave the territory comes to an end or this extension is rejected.
- ↘ Rejected asylum seekers who are pregnant. The extension of material aid starts at the earliest from the seventh month of the pregnancy and ends at the latest two months after birth.
- ↘ Rejected asylum seekers who, for reasons beyond their control, cannot be returned to their country of origin or of habitual residence and who have applied for an extension of the order to leave the territory. The extension of the provision of material aid comes to an end when the extension of the order to leave the territory comes to an end or this extension is rejected.
- ↘ Rejected asylum seekers who are a parent of a Belgian child who have submitted an application for a residence permit (on the basis of Article 9bis of the Immigration Act). The extension of the provision of material aid comes to an end when a decision is made regarding the residence permit application.
- ↘ Rejected asylum seekers with medical problems (the rejected asylum seeker cannot leave the reception facilities and has submitted an application for a residence permit on the grounds of a serious medical condition on the basis of Article 9ter of the Immigration Act).

<sup>31</sup> Article 7 of the Reception Act.

<sup>32</sup> Extension of the right to material aid/reception is automatic in this case. In the other cases mentioned, the rejected asylum seeker needs to lodge a request for extension (as stipulated in Fedasil's Instruction of 15 October 2013).

	<p><b><u>Material aid for irregularly residing families with minor children</u></b></p> <p>Minor children of irregular migrants without any means of subsistence and their families can apply for material aid<sup>(33)</sup>. This material aid can be granted if the Public Social Welfare Centre established that the minor children and his parents are irregularly residing in Belgium and the children are in need because the parents are not able to comply with their obligation to support their children. In practice, they can be accommodated in a family living unit managed by the Immigration Office, or in an open return place managed by Fedasil.</p> <p><b><u>Social aid from a Public Social Welfare Centre</u></b></p> <p>In exceptional cases, an asylum applicant can benefit from social aid from a Public Social Welfare Centre (PSWC) during the asylum procedure<sup>(34)</sup>. If the rejected asylum seeker benefited from this social aid at the moment he is notified of an order to leave the territory, he can continue to benefit from it until the deadline indicated on the order has expired (also in case of extension of the order to leave the territory)<sup>(35)</sup>. If the order to leave the territory is notified to a rejected asylum seeker at a moment he did not benefit from this social aid, the law does not foresee a right to this aid from the PSWC, even if the order is extended. However, there exists jurisprudence from Labour Courts that grants the right to social aid when an order to leave the territory is extended, on the basis of 'force majeure'<sup>(36)</sup>. Moreover, the Circular of 26 April 2005<sup>(37)</sup> stipulates that social aid could be granted under certain conditions to irregular migrants who cannot return to their country of origin due to force majeure. However, this is usually not applied in practice<sup>(38)</sup>.</p>
<p><b>... as carried out in practice</b></p>	<p>See above.</p>
<p><b>Evidence to suggest this contributes to encouraging or deterring return</b></p>	<p>The open return places – to which rejected asylum seekers are assigned – form part of the 'return path' implemented in Belgium since 2012. The objective of these open return places is to encourage rejected asylum seekers to consider the option of a voluntary return as a possible and credible alternative for their future and – if necessary – to assist those who opt for a return.</p>

33 [Royal Decree of 24 June 2004 aiming at de termining the conditions and modalities for the granting of material aid to a minor foreign national who illegally resides in the Kingdom with his parents](#), Belgian Official Gazette, 1 July 2004.

34 For example: when an asylum seeker is not assigned a reception place due to a saturation of the reception network; or when an asylum seeker left the reception network as he received an income from a professional activity but loses his job later on, etc.

35 Art. 57, §2 of the Organic law of 8 July 1976 on the Public Social Welfare Centres, Belgian Official Gazette, 5 August 1976.

36 Source: Kruispunt Migratie – Integratie.

37 Federal Public Planning Service Social Integration, [Circular on the provision of social services to certain categories of people](#), 26 April 2005.

38 See: <http://www.kruispuntmi.be/thema/ocmw-steun/maatschappelijke-dienstverlening/heb-jij-recht-op-maatschappelijke-dienstverlening/je-verblijft-wettig-in-belgie#14>

In 2014, Fedasil conducted an evaluation of the 'return path', including the open return places. The evaluation identified a certain number of challenges regarding the open return places<sup>(39)</sup>:

- ↘ The negative image associated with these open return places in the reception network: they are relatively unknown among social workers in the network and residents have a negative image of the places (they are often perceived as 'detention' places).
- ↘ Not all rejected asylum seekers assigned to go to an open return place actually do so in practice. This is linked to the fact that many rejected asylum seekers do not want to return voluntarily and to the negative image of these places among the rest of the reception network.
- ↘ On the basis of a survey and interviews conducted among social workers, the evaluation showed that rejected asylum seekers usually chose to go to an open return place mainly out of fear of not having enough resources or accommodation after the rejection of their asylum application, and not because of the aim of these places (consider the option of a voluntary return). The report concludes that as a consequence, only a small number of the rejected asylum seekers accommodated in the open return places opt for a voluntary return. During the entire period studied in the framework of the evaluation, less than a quarter of the people who arrived at an open return place opted for voluntary return, which represents 6% of all the people designated to a return place.

But the open return places are only one part of the 'return path'. (Rejected) asylum seekers are informed about voluntary return during the entire asylum procedure. Furthermore, rejected asylum seekers outside of the reception network can still receive information on the possibilities for voluntary return (and apply for a voluntary return) via one of the five 'return desks', Fedasil's free hotline, or the network of NGOs in Belgium. Furthermore, it is also worth noting that the evaluation report presented a certain number of recommendations in order to address the above mentioned challenges. An Action Plan on voluntary return was prepared by Fedasil in 2015, which includes measures regarding the arrival rate at the open return places.

Overall, the combination of the entire return path for (rejected) asylum seekers and the other means to obtain information about voluntary return means that rejected asylum seekers are well informed about the possibilities for voluntary return.

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39 Fedasil, Return path in Belgium: evaluation and recommendations, January 2015.

	In terms of the number of voluntary returns, an increase was observed in 2013 following the introduction in 2012 of the return path, but there is no evidence to link this increase exclusively to the introduction of the new measures. There were also more potential candidates for voluntary return in Belgium in 2012 and 2013 following an increase in the number of asylum seekers in the previous years. Other factors include the countries of origin of the asylum seekers (i.e. important number of asylum seekers from countries for which the protection rate is low).
<b>If yes, for how long after receiving the return decision can they stay in the reception centre?</b>	
<b>... according to law</b>	n/a
<b>... as carried out in practice</b>	n/a
<b>Evidence to suggest this contributes to encouraging or deterring return</b>	n/a
<b>If no, are they accommodated elsewhere?</b>	
<b>... according to law</b>	<p>As described above, rejected asylum seekers are transferred to specific <b>'open return places'</b> following a negative appeal decision. These open return places are located in five 'regular' federal reception centres for asylum seekers managed by the reception agency, Fedasil. Asylum applicants whose asylum procedure is still ongoing and rejected asylum seekers thus live together in these reception centres. The rejected asylum seekers fall within the scope of the Reception Act, and all the rights and obligations defined in said Act apply to them. They receive the same material aid as during the asylum procedure.</p> <p>In these open return places, they also receive intensive return counselling. The rejected asylum seekers are individually assisted by return counsellors from Fedasil (responsible authority for voluntary return) and liaison officers from the Immigration Office (responsible for forced return). They are actively informed about the possibilities for voluntary return. Obstacles to voluntary return are identified and the return counsellor examines how they can be addressed. Furthermore, the rejected asylum seekers, the return counsellor and the liaison officer from the Immigration Office evaluate the return path. The goal is to determine whether voluntary return is realistic and whether the rejected asylum seekers are cooperating<sup>(40)</sup>.</p>

40 See Belgian Contact Point to the EMN, Disseminating information on voluntary return: how to reach irregular migrants not in contact with the authorities, August 2015.



	When the rejected asylum seekers cooperate for the voluntary return, the return counsellors will continue to actively support the rejected asylum seekers and assist them with taking the necessary steps to carry out the voluntary return. When the rejected asylum seekers do not cooperate, the focus shifts from voluntary return to forced return and the Immigration Office can take the necessary steps to organize a forced return.
<b>... as carried out in practice</b>	See above.
<b>Evidence to suggesting this contributes to encouraging or deterring return</b>	See above.
<b>Employment</b>	
<b>Are rejected applicants entitled to access / continue accessing the labour market? Yes/No</b>	
<b>... according to law</b>	<p>Rejected asylum seekers do not have access to /cannot continue to access the labour market.</p> <p>In Belgium, labour migration (including the issuance of work permits type C for asylum seekers) is a competence of the regional authorities (Flemish Region, Brussels-Capital Region, Walloon Region, and the German-speaking Community).</p> <p>A work permit type C can be granted to asylum seekers who – four months after having lodged their asylum application – have not yet received a decision on their application from the CGRS, and until the CGRS takes a decision or – in case of an appeal – until a decision is taken by the Council for Alien Law Litigation<sup>(41)</sup>.</p> <p>This work permit type C loses its validity when the permit holder loses his right of residence (i.e. when the asylum application is rejected)<sup>(42)</sup>. It is explicitly mentioned on the work permit type C that the ‘Immatriculation Certificate’ (<i>‘immatriculatie attest’</i> or <i>‘attestation d’immatriculation’</i>) – which is the temporary residence document provided to TCNs who have applied for asylum – must be valid for the work permit to be valid<sup>(43)</sup>. The employer – before hiring a TCN – must check whether the TCN has a valid residence permit and must keep a copy of the residence permit of his employee for the duration of the employment<sup>(44)</sup>.</p>

41 Art. 17 of the Royal Decree of 9 June 1999 executing the law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 26 June 1999.

42 Art. 4 §1 of the Royal Decree of 9 June 1999.

43 Art. 6 of the Royal Decree of 2 April 2003 determining the modalities to apply for and issue a work permit type C, Belgian Official Gazette, 9 April 2003.

44 Art. 4/1 of the Law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 21 May 1999.

<p><b>... as carried out in practice</b></p>	<p>When an asylum application is rejected, the work permit type C loses its validity and the rejected asylum seeker thus loses his right to work. Neither the employer nor the regional labour authorities are directly informed when an asylum application has been rejected. The regional migration services do have access to the Waiting Register and can check whether a TCN has lost his residence right. In practice, this is checked when an asylum seeker applies for a work permit type C, and during ad-hoc controls afterwards.</p> <p>The work permit type C has a validity period of 1 year, while the 'Immatriculation Certificate' has a validity of 1 to 3 months (extensions are possible as long as the asylum procedure is ongoing). Therefore, one could assume that some rejected asylum seekers continue to work following a negative decision, especially since neither the regional authorities nor the employer are automatically informed of the negative decision regarding the asylum application.</p> <p>In principle, there is a violation as soon as the rejected asylum seeker does not have a right of residence/ valid work permit. However, in practice, if a copy of the residence permit was kept by the employer and the residence right was terminated before the end of the validity date indicated on the residence permit, no judicial proceedings on illegal employment are started.</p> <p>It is worth noting that, on an annual basis, several thousand work permits type C<sup>(45)</sup> are issued to asylum seekers. However, the fact that a work permit has been issued, does not mean that the asylum seeker effectively found a job or works.</p>
<p><b>Evidence to suggest this contributes to encouraging or deterring return</b></p>	<p>In some cases, the rejected asylum applicant may continue to work, even if his work permit has lost its validity, when neither the employer nor the regional authorities are aware of the asylum application being rejected. In some individual cases, this may be deterrent for return, but – as we assume that these cases occur rather exceptionally – it is not considered as a real issue. Furthermore, the illegal employment (after the rejection of the asylum application) can only last for a maximum of 1 year, that is to say until the request for renewal of the work permit.</p>
<p><b>If yes, for how long after receiving the return decision they can continue to work?</b></p>	
<p><b>... according to law</b></p>	<p>n/a</p>
<p><b>... as carried out in practice</b></p>	<p>n/a</p>
<p><b>Evidence to suggest this contributes to encouraging or deterring return</b></p>	<p>n/a</p>

45 In 2015, around 3,500 work permits C were issued to asylum seekers: The Flemish Region issued 1,748 work permits C, the Walloon Region 1,440 and the Brussels Region 333 (Source: Regional Economic Migration Units).

<b>If yes, for how long after receiving the return decision they can continue to work?</b>	
... according to law	n/a
... as carried out in practice	n/a
Evidence to suggest this contributes to encouraging or deterring return	n/a
<b>If yes, what are the specific conditions attached to their employment?</b>	
... according to law	n/a
... as carried out in practice	n/a
Evidence to suggest this contributes to encouraging or deterring return	n/a
<b>Welfare</b>	
<b>Are rejected applicants entitled to receive any social benefits?</b>	
... according to law	Rejected asylum seekers are not entitled to receive social benefits.
... as carried out in practice	Practice according to law.
Evidence to suggest this contributes to encouraging or deterring return	No evidence to suggest this contributes to encouraging/ deterring return.
<b>If yes, what benefits are they entitled to?</b>	
... according to law	n/a
... as carried out in practice	n/a
Evidence to suggest this contributes to encouraging or deterring return	n/a
<b>If yes, for how long after receiving the return decision they can continue to receive the benefits?</b>	
... according to law	n/a
... as carried out in practice	n/a
Evidence to suggest this contributes to encouraging or deterring return	n/a

## Healthcare

### Are rejected applicants still entitled to healthcare?

... according to law

Rejected asylum seekers still have access to healthcare in Belgium.

**Rejected asylum seekers residing in open return places and rejected asylum seekers whose right to material aid was extended** and who reside in a reception facility are entitled to material aid, including medical assistance.

Rejected asylum seekers **in detention** also have access to healthcare. Medical staff is present in all the closed centres. Detainees can also have access to medical specialists outside of the detention centre if necessary<sup>(46)</sup>.

Other rejected asylum seekers – who are not hosted in a reception facility or a closed centre or unit – are entitled to **‘urgent medical assistance’** – as do all irregular TCNs in Belgium<sup>(47)</sup>. There is no precise definition of urgent medical assistance, but the royal decree of 12 December 1996<sup>(48)</sup> does specify that the assistance provided can only be medical in nature, and its urgency must be supported by a medical certificate. The assistance cannot be financial, housing, or any other social assistance in-kind. The urgent medical assistance can be both ambulatory or provided in a medical institution and it may both cover preventive and curative care. Urgent medical assistance is broader than ‘emergency healthcare’.

In order to benefit from the urgent medical assistance, irregular migrants must lodge a request at the Public Social Welfare Centre (PSWC). The latter will only grant an authorisation for urgent medical assistance when<sup>(49)</sup>:

- ↘ The PSWC is competent to examine the request when the applicant lives on the territory of the municipality;
- ↘ The applicant does not have the means to pay for the needed medical assistance himself (a ‘social enquiry’ is carried out);
- ↘ A health practitioner certifies that there is a need for urgent medical assistance (Urgent medical assistance certificate).

If these conditions are met, the PSWC provides the irregular migrant with an authorisation document (a ‘réquisitoire’), which specifies which health care and treatments are covered and which represents a guarantee for the healthcare provider that the costs will be paid. The PSWC can also deliver a ‘medical card’. Each PSWC decides the extent and the duration of the coverage of the health care<sup>(50)</sup>.

46 Art. 52 to 61 of the [Royal Decree of 2 August 2002 determining the regime and the rules applicable to the locations on the Belgian territory, managed by the Immigration Office, where a foreigner is detained, put at the disposal of the Government or held, in accordance with the provisions quoted in article 74/8, §1 of the Law of 15 December 1980 on the access, residence, settlement and removal of foreigners](#), Belgian Official Gazette, 12 September 2002.

47 Art. 57 §2 of the Organic law on the Public Social Welfare Centres, Belgian Official Gazette, 5 August 1976.

48 [Royal Decree of 12 December 1996 on the urgent medical assistance granted by the Public Social Welfare Centres to foreigners who reside illegally in the Kingdom](#), Belgian Official Gazette, 21 December 1996.

49 See [www.medimmigrant.be](http://www.medimmigrant.be)

50 Belgian Health Care Knowledge Centre, [What health care for undocumented migrants in Belgium?](#), KCE Report 257, 2015, p. 16.

<b>... as carried out in practice</b>	Regarding urgent medical assistance, the government has not specifically defined what kind of assistance irregular migrants are entitled to. The absence of specific definitions as well as the autonomy of the PSWCs in this regard lead – in practice – to variations in access to urgent medical assistance. For example, there are variations between PSWCs in the criteria for the ‘social enquiry’ they carry out; rejection rates of applications vary between PSWCs; the extent and length of the health care covered varies between PSWCs, etc <sup>(51)</sup> .
<b>Evidence to suggest this contributes to encouraging or deterring return</b>	Even if the provision of urgent medical care may be deterrent for return in some individual cases, the national approach seems logic and in line with fundamental rights based on international and national conventions.
<b>Does it include all healthcare or only emergency healthcare?</b>	
<b>... according to law</b>	In principle, it only includes emergency healthcare, but there are exceptions for rejected asylum seekers still residing in a reception facility (see above).
<b>... as carried out in practice</b>	See above.
<b>Evidence to suggest this contributes to encouraging or deterring return</b>	See above.
<b>Education</b>	
<b>Are rejected applicants still entitled to participate in educational programmes and/or training?</b>	
<b>... according to law</b>	Rejected asylum seekers can participate in some educational programmes. But there is a difference in the access to education for minors and adults. The right to education is established in different international treaties and the Belgian Constitution (article 24, § 3).  <b>Minors:</b> There is compulsory schooling of children in Belgium, for a period of 12 years – starting at the beginning of the school year during which the child turns 6 and ending at the end of the school year during which the child turns 18 <sup>(52)</sup> . This also applies to irregular migrants who are minors. They can register in a school in Belgium. The schools receive funds for all registered pupils, including irregular migrants.

51 Ibid, pp. 30-31.

52 Art. 1 of the Law of 29 June 1983 on compulsory schooling, Belgian Official Gazette, 6 July 1983.

The communities (Dutch-speaking, French-speaking and German-speaking Communities) are in charge of the schooling system in Belgium. They ensure the right to education to irregular migrants<sup>(53)</sup>. The communities also provide certain guarantees to school directors, such as: they will not be sanctioned for hosting pupils with irregular status; they are not obliged to inform the police about the administrative status of their pupils and/or their parents and; the irregular migrants attending their school may not be arrested at the school<sup>(54)</sup>.

**Adults:** Art. 24, §3 of the Belgian Constitution does not exclude adult irregular migrants. But access to education for adult irregular migrants – including rejected asylum seekers – is not guaranteed, as compulsory schooling does not apply to them.

Regarding higher education, adult irregular migrants may register at and attend a university if they meet the admission requirements for the chosen study. A residence permit is not an admission requirement, but it is often difficult for irregular migrants to meet the general admission requirements and register at a university.

Regarding professional training courses, irregular migrants are usually not allowed to participate. Furthermore, since 1 September 2011, irregular migrants are explicitly excluded from participating in Flemish adult education, that is to say they cannot register in a centre for basic education or in a centre for adult education<sup>(55)</sup>. Regarding the French-speaking Community, (irregularly staying) TCNs – including rejected asylum seekers – who applied for regularisation on the basis of article 9bis (humanitarian reasons) or article 9ter (medical reasons) of the Immigration Act are allowed to attend courses of the 'educational institutes of social promotion'<sup>(56)</sup>.

It is also worth noting that some basic training/education possibilities can be offered to irregular migrants – including rejected asylum seekers – in the closed centres (e.g. ICT, French-language classes...). The offer of activities differs per closed centre<sup>(57)</sup>.

53 See French-speaking Community, Decree of 30 June 1998, aiming at ensuring that all pupils have equal chances of social emancipation, including through positive discrimination measures, Belgian Official Gazette, 22 August 1998; and Flemish Community, Circular of 24 February 2003.

54 N. Perrin (Belgian Contact Point of the EMN), Practical measures for reducing irregular migration in Belgium, 2012, p. 15.

55 Art. IV.1, 3°, Flemish Community, Decree regarding education XXI of 1 July 2011, Belgian Official Gazette, 30 August 2011.

56 Federation Wallonia-Brussels, Circular N°4652, 5 December 2013.

57 The law does not define which trainings the migrants have a right to. The Royal Decree dd 2 August 2002 regarding the closed centres defines general rules on the nature of the activities that the migrants have a right to.

<b>... as carried out in practice</b>	See above.
<b>Evidence to suggest this contributes to encouraging or deterring return</b>	No evidence found that the current policy encourages or deters return.
<b>If yes, for how long after receiving the return decision they can continue to participate in educational activities?</b>	
<b>... according to law</b>	Until the return decision is enforced and the individual returns.
<b>... as carried out in practice</b>	Until the return decision is enforced and the individual returns.
<b>Evidence to suggest this contributes to encouraging or deterring return</b>	No evidence found that the current policy encourages or deters return.
<b>Other measures: Assistance to vulnerable migrants</b>	
<b>... according to law</b>	There are different projects implemented by Belgian national authorities, international organisations, NGOs that aim at assisting vulnerable migrants in the return process, including rejected asylum seekers.
<b>... as carried out in practice</b>	Assistance can be provided to certain vulnerable migrants (e.g. medical issues) by different actors (e.g. 'special needs' project of the Immigration Office <sup>(58)</sup> ).
<b>Evidence to suggest this contributes to encouraging or deterring return</b>	Although no specific evidence is available, we might assume that the current Belgian policy and practice encourages the return of some particular groups of vulnerable migrants.

(Section 2 – Q9 of the EMN Questionnaire)

<sup>58</sup> For further information on the 'special needs project', see Table 4 in Section 3.2.3 of this report.

## **2.2.2 Measures to enforce the return decision and prevent absconding**

Third country nationals who are issued an order to leave the territory are asked to leave the territory on their own initiative and either return to their country of origin or to a country where they are allowed to reside before the deadline specified on the order expires. They can either leave by their own means or request assistance in the framework of a voluntary return programme. During the time period during which a voluntary return can take place, no forced return can be carried out. If the TCN does not return voluntarily within the set time period, a removal can be organized and the TCN can be detained to this end. The law defines certain situations where the Immigration Office can decide to reduce the period for voluntary return (less than 7 days) or provide no period for voluntary return in the return decision<sup>(59)</sup>.

In order to ensure that rejected asylum seekers who have been issued a return decision do effectively leave the Belgian territory (voluntarily or forced), the Belgian authorities implement various measures.

### **Voluntary return within the framework of the return path (rejected asylum seekers residing in a reception facility)**

The Belgian return policy puts a specific focus on encouraging voluntary return. The Belgian law foresees voluntary return assistance specifically for (rejected) asylum seekers. The law of 19 January 2012 introduced the concept of 'return path' into the Reception Act. This return path is defined as an individual counselling path offered by the reception agency (Fedasil) in view of a return<sup>(60)</sup>. This return path is a step-by-step process of provision of information on voluntary return in the reception facilities managed by Fedasil and its reception partners, which starts at the moment an asylum application has been lodged.

The return path is divided into two main phases : (1) voluntary return counselling while the asylum procedure is still ongoing ; (2) after a negative (appeal) decision, the rejected asylum seeker is assigned an 'open return place' in a reception facility managed by Fedasil, where the voluntary return counselling is intensified and the staff has specific expertise on voluntary return. In this second phase, a cooperation scheme exists between Fedasil and the Immigration Office, the authority responsible for the removal of TCNs. When the period foreseen by the order to leave the country elapses and the return project is evaluated in a negative way (no willingness to voluntarily return), the Immigration Office can start the forced return procedure.

### **Follow-up on return decisions – the SEFOR project (TCNs outside of the reception network)**

In June 2011, the Immigration Office started the SEFOR Project ('Sensitization, Follow-up, and Return'), which aims at following up on all return decisions issued. The project includes the

59 According to article 74/4, §3 of the Immigration Act, there can be a reduced or no period for voluntary return in the following cases: There is a risk of absconding; The TCN did not comply with the imposed preventive measures; The TCN represents a threat to the public order or national security; The TCN did not comply with an earlier return decision within the set timeframe; The TCN's residence permit was withdrawn because the use of false elements, fraud or misleading information was decisive in obtaining it; The TCN lodged more than two asylum applications (unless new elements have been introduced).

60 Art. 2/12° of the Reception Act.



creation of a specific SEFOR office in the Immigration Office, as well as an information leaflet in several languages available on a specific website ([www.sefor.be](http://www.sefor.be)). A Circular Letter was also adopted on 10 June 2011<sup>(61)</sup>: it aims at ensuring a better collaboration between the different actors involved (Immigration Office, municipalities...) and stipulates which tasks the municipalities should fulfil when an order to leave the territory has been issued to a TCN. The procedure focuses on (assisted) voluntary return on the one hand and on the preparation of forced return (identification) on the other. It applies to all TCNs whose residence/asylum application procedure has led to a negative outcome, and who are not residing in a reception facility. SEFOR does thus not specifically target rejected asylum seekers, but it can concern them as well (i.e. rejected asylum seekers who do not reside in reception facilities).

The procedure is as follows: when an order to leave the territory is issued, the local authority asks the TCN to present himself before the local authority. The local authority notifies the migrant of the return decision, explains the decision and its implications, informs him/her of the possibilities of appeal and the possibilities of voluntary return. Furthermore, the municipality has to fill out and transfer an identification-form about the person concerned to the SEFOR office. The municipality also collects the information necessary for the return of the TCN (flight tickets, etc.) and transfers it to the SEFOR office. In case the TCN does not present himself at the local authority at a set date, a control of the residence of the TCN has to be carried out in order to determine why the TCN did not come.

When the deadline on the order to leave the territory has passed, the local authority (police) has to verify if the TCN has effectively left his place of residence. A report on this residence check has to be sent to the SEFOR office. If, following this residence check, the TCN is still present at his place of residence, his forced return can be organized. The SEFOR office can instruct the police to intercept the TCN and to notify the TCN of the decision to detain him in view of his removal. Following the notification of the decision, the police can bring the TCN to a closed centre for detention or to an assigned housing.

### **Preventive measures to avoid the risk of absconding**

A certain number of preventive measures can also be applied to prevent the absconding of TCNs – including rejected asylum seekers – who have been issued an order to leave the territory<sup>(62)</sup>. However, these measures are rarely applied in practice.

These preventive measures are defined by law<sup>(63)</sup> and include:

- Regular reporting by the TCN: this measure is applied in individual cases and in the framework of the SEFOR procedure.
- Payment of a financial guarantee by the TCN: this measure is not applied in practice, as it is difficult to implement (e.g. what should be the amount of the financial guarantee? Who

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61 Available in Dutch on: [https://dofi.ibz.be/sites/dvzoe/NL/Documents/20110610\\_n.pdf](https://dofi.ibz.be/sites/dvzoe/NL/Documents/20110610_n.pdf) and in French on: [https://dofi.ibz.be/sites/dvzoe/FR/.../20110610\\_f.pdf](https://dofi.ibz.be/sites/dvzoe/FR/.../20110610_f.pdf)

62 Article 74/14, §2 of the Immigration Act.

63 Article 110quaterdecies of the royal decree of 8 October 1981.

should pay this guarantee if the TCN has little financial means? How and when will the TCN get his money back?, etc.).

- Surrendering the copy of identity documents by the TCN: this measure is used in the framework of the SEFOR procedure. It is not used systematically.

If preventive measures are applied, they are detailed on the order to leave the territory issued to the rejected asylum seeker.

### **Possible detention of rejected asylum seekers**

The detention of rejected asylum seekers in a closed centre is also a possibility in Belgium. As stipulated in article 74/6 § 1 of the Immigration Act, rejected asylum applicants can be detained in a closed centre if this is necessary to guarantee the effective removal from the territory when the return decision becomes enforceable. The rejected asylum seeker can lodge an appeal against this decision of detention<sup>(64)</sup>.

When asylum applicants have been detained during the examination of their asylum application (as is possible in certain cases<sup>(65)</sup>) and receive a negative decision on their application, they are in principle detained further with a view to their removal, except in exceptional cases. When rejected asylum seekers have not been detained during the examination of their asylum procedure, they are in most cases not detained immediately following the rejection of their asylum application. In principle, they can reside in specific open return places to prepare for their voluntary return for a specific period of time (i.e. in the framework of the return path, see above). Once the deadline on the order to leave the territory has expired, they can be detained in view of their forced return<sup>(66)</sup>.

Regarding families with minor children, article 74/9 of the Immigration Act foresees the principle of non-detention for families with children, unless they can be detained as a last resort in detention facilities that are adapted to the needs of these families. In practice, families with minor children are not detained except for a short period of 48 hours after arrival at the border or 24 hours prior to removal.

Irregularly staying families with minor children can stay in the house where they are residing under certain conditions – pending their return. They can also be sent to open ‘family living

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64 A TCN can appeal against a detention decision before the Council Chamber (‘Chambre du Conseil’/ ‘Raadkamer’) of the Criminal Court. The Council Chamber will verify if the detention measure was taken in conformity with the law. Decisions of the Council Chamber (release or confirmation of the detention measure) are subject to an appeal before the Indictment Chamber of the Court of Appeal (‘Chambre des mises en accusation’ / ‘Kamer van Inbeschuldigingstelling’) and in last resort, before the Court of Cassation.

65 A person applying for asylum at the border can be detained (art. 74/5, §1, 2° of the Immigration Act). This usually happens in practice, except in exceptional circumstances or for particular categories (e.g. families with minor children). A person applying for asylum on the Belgian territory can also be detained after lodging an asylum application, but only in specific cases as described in article 74/6 § 1bis of the Immigration Act ( e.g. the asylum applicant has already introduced another asylum application or the asylum application was introduced to delay or prevent a removal). Applicants for international protection subject to Dublin procedures can also be detained, both during the examination of the application and during the organization of the transfer (art. art. 51/5 of the Immigration Act).

66 Belgian Contact Point to the EMN, The use of detention and alternatives to detention in the context of immigration policies in Belgium, June 2014, p. 16.

units', managed by the Immigration Office. The families residing in a family living unit or at home are assigned a personal coach by the Immigration Office, who assists them (e.g. informs them about the possibilities for voluntary return and helps them organise this return by themselves if their asylum application has been rejected).

If the family does not cooperate, it can in principle – as a last resort – be transferred and detained in a closed centre. But there are no detention facilities in Belgium yet that are adapted to the specific needs of families. However, the State Secretary for Asylum Policy and Migration has announced that family units in a closed environment will be set up in the vicinity of the closed centre 127bis<sup>(67)</sup>. With these closed family units, absconding families or families who do not respect the rules when staying in their own house or in a family living unit, could be detained for a short period of time in view of their return<sup>(68)</sup>.

Furthermore, if the family does not cooperate, one family member can be detained in a closed centre while the rest of the family resides in a family living unit. This is currently only foreseen in specific circumstances: when a parent does not respect the conditions of the alternative to detention (absconding); when there is no cooperation in the return process; when there is intra-familial violence; when there are public order issues or when there is a fear for the well-being of the residents and the coaches or the overall functioning of the family units could be in danger. This separation should be as short as possible and the detained person should be allowed to get visits of the other family members. The family unity for the actual removal should be preserved whenever possible.

As for unaccompanied minors, they cannot be detained in a closed centre in order to be removed<sup>(69)</sup>. Since 7 May 2007, only persons who arrive at the border and for whom there is a serious doubt about them being minors, can be detained in a closed centre, pending the determination of their age by the Guardianship Service of the Justice Department. The TCN can be detained during the age determination test, for a maximum of 3 working days – which can be extended by 3 days. If the TCN is identified as an unaccompanied minor, he will be transferred within 24 hours after notification of the results of the examination to a dedicated observation and orientation centre<sup>(70)</sup>. If he is identified as an adult, he will remain in detention.

(Section 2 – Q10 of the EMN Questionnaire)

### **2.3 Possibilities for appealing a return decision**

Asylum seekers who have received an enforceable return decision can lodge an appeal on the decision before being returned. There are several possibilities.

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67 Belgian House of Representatives, General Policy Note on Asylum and Migration, 3 November 2015, DOC 54 1428/029, p. 19.

68 Belgian House of Representatives, Question from the MP Monica De Coninck of 19 March 2015 to the State Secretary for Asylum Policy and Migration, 27 April 2015, QRVA 54 022, pp. 184-185.

69 Art. 74/19 of the Immigration Act.

70 Art. 41 of the law of 12 January 2007.

## **Appeal for annulment and request for suspension before the Council for Alien Law Litigation (CALL)<sup>(71)</sup>**

An appeal for annulment can be brought before the CALL against a return decision<sup>(72)</sup>. The CALL limits its examination of the appeal to the legality of the decision taken. A decision can be annulled but it does not lead to a right of residence for the applicant.

This appeal is not automatically suspensive, but it can be lodged together with a request for suspension<sup>(73)</sup>. A request for suspension can either be lodged following the 'ordinary' procedure or it can be lodged in case of 'extremely urgent necessity'. The 'ordinary' request for suspension always needs to be lodged at the same time as the appeal for annulment. The appeal for annulment (and the 'ordinary' request for suspension) must be lodged within 30 days after the TCN was notified of the return decision. If the TCN is detained in a closed centre, the appeal must be lodged within 15 days.

A suspension of the implementation of the return decision can be granted when there are serious reasons justifying the annulment of the contested decision and the immediate implementation of the decision could cause serious harm that would be difficult to repair<sup>(74)</sup>.

The CALL can either process the appeal for annulment and the ordinary request for suspension jointly or separately.

### **Request for suspension in case of extremely urgent necessity before the CALL**

When the removal of a rejected asylum applicant is imminent, particularly when he is being detained, and he has not yet lodged an 'ordinary' request for suspension, he can lodge a request for suspension in case of extremely urgent necessity before the CALL<sup>(75)</sup>.

A request for suspension in case of extremely urgent necessity must be lodged within 10 days following the notification of a first return decision and within 5 days following subsequent return decisions. This procedure has an automatic suspensive effect: no forced return can take place during the time period during which the request can be lodged and during the processing time of the request, until the decision of the CALL on the request for suspension in case of extremely urgent necessity. Only when the CALL has rejected the request can a forced return be carried out<sup>(76)</sup>.

In certain cases, such an appeal in case of extremely urgent necessity is lodged after the deadline has passed. A late appeal is in principle inadmissible, but the CALL can ask the Immigration Office to wait with the removal until the CALL has examined the application. Removal is not possible until a decision has been taken.

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71 As an illustration, 812 appeals were lodged in 2015 by rejected asylum applicants against a return decision (the so-called 'annex 13quinquies' – an order to leave the territory issued to rejected asylum seekers). 100 appeals led to an annulment (judgement) and in 526 cases, the appeal was rejected. Source: Immigration Office.

72 Art. 39/2, §2 of the Immigration Act.

73 Art. 39/82 of the Immigration Act.

74 Ibid.

75 Art. 39/82, §4 of the Immigration Act.

76 Art. 39/83 of the Immigration Act.

A suspension of the implementation of the return decision can be granted when there is a situation of 'urgency', when there are serious reasons justifying the annulment of the contested decision and the immediate implementation of the decision could cause serious harm that would be difficult to repair.

The CALL takes a decision on a request of suspension in case of extremely urgent necessity within 48h after the reception of the request (exceptionally, within 72 hours), or 24 hours after reception of the request (when the request is manifestly late), or 5 days (when the removal of the TCN is planned more than 8 days after reception of the request)<sup>(77)</sup>.

If the request for suspension in case of extremely urgent necessity is granted by the CALL, an appeal for annulment still needs to be lodged within the set deadlines. When the request for suspension in case of extremely urgent necessity is rejected due a lack of urgency, the applicant can still lodge an 'ordinary' request for suspension with an appeal for annulment (within the set deadlines for the appeal)<sup>(78)</sup>.

### **Request for temporary measures before the CALL**

If the rejected asylum seeker has already lodged an appeal for annulment and an 'ordinary' request for suspension, but the removal has become imminent, particularly when he is being detained, and the judgement on the 'ordinary' suspension request would come too late, the applicant can request the CALL – as a temporary measure of extreme urgency – to process its 'ordinary' request for suspension as quickly as possible<sup>(79)</sup>.

The procedure for a request of temporary measures is similar to the procedure for a request of suspension in case of extremely urgent necessity.

### **Appeal against detention before the Council Chamber ('Chambre du Conseil' / 'Raadkamer') of the Criminal Court**

When a rejected asylum seeker is detained, he can – when lodging a request for release before the Council Chamber – mention the illegality of the return decision. Even if the CALL rejected the request for suspension of the return decision, the Council Chamber must verify if the detention measure was taken in conformity with the law.

A request for release can be lodged as soon as possible after the detention, and can be repeated each month. The Council Chamber must take a decision within 5 days following the lodging of the request. Decisions of the Council Chamber (release or confirmation of the detention measure) are subject to an appeal before the Indictment Chamber of the Court of Appeal ('Chambre des mises en accusation' / 'Kamer van Inbeschuldigingstelling'). An appeal can be lodged by the TCN, by the Immigration Office, or by the public prosecutor. In the last resort, an appeal can be lodged before the Court of Cassation.

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77 Art. 39/82, §4 of the Immigration Act.

78 Art. 39/82, §1 of the Immigration Act.

79 Art. 39/85 of the Immigration Act.

A request for release does not have a suspensive effect for the removal order<sup>(80)</sup>.

### **Request before the President of the Court of First Instance**

In urgent cases, the rejected asylum seeker can lodge a request before the President of the Court of First Instance of his place of residence to temporarily suspend the removal (on the basis of article 584 of the Judicial Code). This is possible even if the rejected asylum seeker did not lodge an appeal before the CALL or if the CALL rejected the appeal for annulment and the request for suspension.

(Section 2 – Q11 of the EMN Questionnaire)

An appeal on the return decision prevents the return of the rejected asylum seeker in some cases. Rejected asylum seekers appealing their return do not have a better chance of a positive decision on their return appeal than other third-country nationals appealing a return decision. These decisions are made on a case-by-case basis.

(Section 2 – Q12 of the EMN Questionnaire)

## **2.4 Possibilities for lodging subsequent asylum applications**

Asylum seekers who have received a return decision can lodge a subsequent asylum application.

### **Registration of the application at the Immigration Office**

As with first asylum applications, the Immigration Office is competent to register subsequent applications. The applicant completes a questionnaire, in which he explains the new elements justifying a subsequent application, and explains why he has not mentioned these new elements before. The Immigration Office then sends the subsequent application to the CGRS.

### **Decision whether or not to take into consideration the subsequent application**

Since 2013, the CGRS (and no longer the Immigration Office) can decide to take a subsequent application into consideration or not. This depends on the presence or absence of new elements in the application (or if the first application had been refused for technical reasons). The CGRS takes a decision on the admissibility of a subsequent application within 8 working days following the transfer of the application by the Immigration Office (2 working days in case of detention). There are several possibilities<sup>(81)</sup>:

- There are no elements that can lead to a positive decision: the CGRS refuses to take the asylum application into consideration and the applicant is not invited for an interview.
- There are new elements that can lead to a positive decision: the CGRS takes the asylum application into consideration, processes the asylum application and invites the applicant for an interview.

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80 Ciré, Kit Transit: Kit d'information sur les centres fermés et les droits des personnes qui y sont détenues, January 2016, p. 19.

81 See the website of the CGRS, <http://www.cgra.be/en/international-protection/accelerated-procedures/subsequent-applications>

- It is not clear from the questionnaire filled in by the applicant if the new elements can lead to a positive decision. The protection officer can invite the applicant for an interview to get more information about the new elements in his subsequent application. The CGRS then decides whether to take the asylum application into consideration or not.

### **Examination of the subsequent application**

If the CGRS decides to take a subsequent application into consideration, it will process the asylum application according to the normal procedure. If – at the end of this procedure – the subsequent asylum application is rejected, the appeal procedure follows the normal procedure in full jurisdiction before the CALL.

### **Appeal against a decision not to take into consideration a subsequent application before the Council for Alien Law Litigation (CALL)**

If the CGRS decides not to take into consideration a subsequent application, the applicant can lodge a full jurisdictional appeal before the CALL. The appeal must be submitted within 15 days, or within 10 days in case of detention, or within 5 days from the second inadmissibility decision onwards in case of detention. The CALL will examine the appeal in a shorter time frame.

The appeal is – in principle – automatically suspensive. It is non-suspensive in the following cases: the return decision does not lead to a risk of direct or indirect refoulement and (i) the applicant lodged a first subsequent asylum application within 48 hours before the removal in order to delay or prevent it; or (ii) the applicant lodged a new subsequent asylum application following a final decision on a previous subsequent asylum application<sup>(82)</sup>.

### **Data on subsequent asylum applications in Belgium**

Between 2012 and 2015, the number of subsequent asylum applications in Belgium was as follows :

- 2012 : 6,257 (29.2 % of the total number of registered asylum applications)
- 2013 : 5,647 (35.7 % of the total number of registered asylum applications)
- 2014 : 6,238 (36.5 % of the total number of registered asylum applications)<sup>(83)</sup>
- 2015 : 4,191 (11.8 % of the total number of registered asylum applications)<sup>(84)</sup>

For the period from 1 September 2013 to May 2015, the CGRS decided to take into consideration around 42% of these subsequent asylum applications. An average of 36.7% of the subsequent asylum applications taken into consideration led to a protection status being granted by the CGRS following an examination on the merits<sup>(85)</sup>. Regarding third asylum applications and more, around 19.6% of all the decisions taken in case of subsequent asylum applications (including

82 Art. 39/70 of the Immigration Act.

83 Data from 2012 to 2014 : Belgian House of Representatives, Question from the MP Benoît Hellings of 22 May 2015 to the State Secretary for Asylum Policy and Migration, 29 June 2015, QRVA 54 031, pp. 403-406.

84 Commissioner General for Refugees and Stateless Persons, Monthly Statistical Report – December 2015, 7 January 2016.

85 Belgian House of Representatives, Question from the MP Benoît Hellings of 22 May 2015 to the State Secretary for Asylum Policy and Migration, 29 June 2015, QRVA 54 031, pp. 403-406.

refusals to take into consideration a subsequent asylum application) between 1 September 2013 and 31 August 2015 led to a positive result (international protection status granted)<sup>(86)</sup>.

A recent parliamentary question sheds some light on the reasons for the CGRS to either decide to take into consideration a subsequent asylum application or not<sup>(87)</sup>. In a large amount of cases, a subsequent asylum application is not taken into consideration as no new elements were introduced by the applicant. Moreover, it is also worth noting that a certain number of decisions to take into consideration a subsequent application do not concern 'real' subsequent asylum applications, as the decision to take them into consideration is based on 'technical' reasons (e.g. because the previous asylum application was closed as the asylum applicant did not present himself for the interview, or as the applicant was sent to another Member State on the basis of the Dublin regulation).

[\(Section 2 – Q13 of the EMN Questionnaire\)](#)

### **Return decisions and the assessment of subsequent asylum applications**

If subsequent asylum applications are submitted without introducing new elements, or if the subsequent application seems to be introduced merely to hamper the return process, this will obviously limit the chances of a successful outcome of the asylum application.

However, the key question in assessing an asylum application – irrespective of the fact whether it concerns a subsequent application or a first application – is always whether the person is at risk of persecution or at risk of serious harm in his country of origin. If this is the case, the (subsequent) applicant will be granted protection and cannot be returned.

[\(Section 2 – Q14 of the EMN Questionnaire\)](#)

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86 Belgian House of Representatives, [Question n° 352 from the MP Olivier Chastel to the State Secretary for Asylum Policy and Migration](#), 14 December 2015, QRVA 54 054, pp. 376-378.

87 Belgian House of Representatives, [Question from the MP Benoît Hellings of 22 May 2015 to the State Secretary for Asylum Policy and Migration](#), 29 June 2015, QRVA 54 031, pp. 403-406.





# 3 Challenges to the return of rejected asylum seekers and policies to manage these

## 3.1 Challenges to return (of rejected asylum seekers)

Table 2: Main challenges to return in Belgium

Challenge	Description of how this impedes return	Is the challenge general to return/more common to the return of rejected asylum seekers/ exclusive to the return of asylum seekers?
<b>Resistance of the third-country national to return</b>	Some TCNs do not cooperate to prevent/hinder their return (e.g. withholding or destroying identity documents, etc.).	General to return
<b>Refusal by the authorities in countries of return to readmit their citizens / accept JROs or charter flights</b>	Authorities of some countries of return do not readmit their citizens, accept JROs or charter flights (e.g. some third countries do not accept charter flights for forced return).	General to return
<b>Refusal by the authorities in countries of return to issue travel documents</b>	Some consular authorities do not issue travel documents for returnable migrants – or only for voluntary returns.	General to return
<b>Refusal by the authorities in countries of return to issue identity documents</b>	Authorities of some countries of return do not issue identity documents to the TCN, thereby preventing the return.	General to return
<b>Problems in the acquisition of travel documents</b>	Problems can arise to acquire travel documents for a TCN – especially when no copies of the originals are available or when citizenship is complex.	General to return

<b>Administrative and organisational challenges (e.g. due to a lack of Member State diplomatic representation in the country of return)</b>	Administrative and organisational challenges can arise, and prevent/hinder the return of TCNs.	General to return
<b>Refusal of airline companies to accept removals or refusal of captains of air carriers to board returnees</b>	Some airline companies will not accept forced returns with their carriers (in principle or in specific cases), or only in very limited numbers. Captains of air carriers may refuse to board TCNs (unescorted or escorted).	General to return
<b>Medical reasons</b>	A TCN may have medical problems rendering travel difficult or impossible.	General to return
<b>Psychological reasons</b>	A TCN may have psychological problems rendering return difficult or impossible.	General to return
<b>Other humanitarian reasons</b>	Other humanitarian reasons can hinder return, such as age or the family situation (e.g. parent to a Belgian child, etc.).	General to return
<b>Asylum applications rejected on basis of article 1F of the 1951 Refugee Convention</b>	Return is often impossible for rejected asylum applicants on the basis of article 1F of the Refugee Convention (in accordance with art. 3 ECHR). There are however few cases in Belgium.	Exclusive to the return of asylum seekers
<b>Pressure from civil society /organisations/media</b>	It occurs that there is pressure in individual cases from civil society, organisations or the media not to remove or detain certain individuals or families.	General to return
<b>Implementation issues for alternatives to detention</b>	There are difficulties associated with the implementation of alternatives to detention as foreseen in law. For example, the payment of a financial guarantee is not applied in practice. Regarding regular reporting, there is not enough staff in the municipalities to ensure the overall control of the convocations; and questions exist as to the frequency of the reporting. The system of regular reporting is already used in individual cases and in the framework of the SEFOR procedure. However, people do not always report as required and therefore do not provide information on their preparations for return.	General to return

<p><b>Absconding of irregularly staying TCNs</b></p>	<p>As previously explained (see section 2.2.2), the Immigration Act foresees the principle of non-detention for families with children, unless they can be detained (as a last resort) in detention facilities that are adapted to the needs of these families.</p> <p>Families with minor children can stay in the house in which they reside – under certain conditions – or can be sent to open ‘family living units’, managed by the Immigration Office, pending their return. In practice, a certain number of families abscond from the family living units (in an EMN report of 2014, it was mentioned that the absconding rate from the family living units is approximately 25%<sup>(88)</sup>).</p>	<p>General to return</p>
<p><b>Misuses of principle of non-detention/ return of unaccompanied minors</b></p>	<p>Unaccompanied minors are never detained in order to be removed, as foreseen by Law. They can only be detained if there is a serious doubt about them being minors, pending the determination of their age by the Guardianship Service of the Justice Department (see section 2.2.2). Misuses can happen, with TCNs pretending to be underage in order not to be detained / returned.</p>	<p>General to return</p>
<p><b>Late appeals by TCNs before the Council for Alien Law Litigation (CALL)</b></p>	<p>Specific deadlines apply to appeals, but it occurs that the CALL accepts to examine appeals – that is to say requests of suspension in case of extremely urgent necessity – that have been lodged when the deadlines have already passed or just before the planned removal, which can hinder the return procedure.</p>	<p>General to return</p>

88 EMN study on Belgian Contact Point to the EMN, The use of detention and alternatives to detention in the context of immigration policies in Belgium, June 2014, p. 35.

<b>Repetitive procedures</b>	Parallel and/or repetitive procedures are sometimes launched by TCNs in order to postpone or avoid a forced return.	General to return
<b>Insufficient information provided by the TCN</b>	Some TCNs do not provide enough information in order for the Immigration Office to make an assessment on the basis of art. 3 and 8 of the European Convention on Human Rights in the framework of the issuing of a return decision. However, they can give more information in an appeal procedure, which may lead to a suspension or an annulment of the return decision.	General to return
<b>Insufficient resources and infrastructure</b>	The detention and alternatives to detention infrastructure can be considered as insufficient to meet the government's objective of organizing more returns. The Belgian government recently decided to increase the capacity of the closed centres, as well as the staff of the Immigration Office <sup>(89)</sup> . This was not the case for all services involved in forced returns (e.g. the federal police, who carries out forced returns with escorts, has not yet received additional human resources).	General to return

(Section 3 – Q15 of the EMN Questionnaire)

As indicated in the table above, there are – in general – no challenges that affect the return of rejected asylum seekers more greatly than other TCNs.

However, one issue that can be mentioned is the return of rejected asylum seekers who have been excluded from refugee status and subsidiary protection status on the basis of **article 1F of the 1951 Refugee Convention**<sup>(90)</sup>. Return is often impossible for these rejected asylum applicants, in accordance with the 'refoulement' prohibition on the basis of article 3 of the European Convention on Human Rights, which stipulates that 'no one shall be subject to torture or to inhuman or degrading treatment or punishment'. Furthermore, these rejected asylum applicants are not granted a status in Belgium. When they cannot be returned, they thus often remain in a limbo situation in Belgium.

89 Nieuw-Vlaamse Alliantie (N-VA), Theo Francken: meer budget voor meer terugkeer, 20 May 2016, <https://www.n-va.be/nieuws/theo-francken-meer-budget-voor-meer-terugkeer>.

90 Article 1F of the Refugee Convention stipulates that the provisions of the Convention 'shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations'.

It is worth noting that there are few cases of exclusion on the basis of article 1F in Belgium. According to a study published in 2015, 118 asylum applicants were excluded on the basis of article 1F by the CGRS from 2007 to 2014. The applicants mostly came from Afghanistan, Iraq, Rwanda and Sierra Leone<sup>(91)</sup>.

(Section 3 – Q17 and Q20 of the EMN Questionnaire)

## 3.2 Managing challenges to return

### 3.2.1. Measures implemented to manage challenges to implementing return

Table 3: Measures implemented in Belgium to manage challenges to return

Challenges to return	Measures to manage challenges	Implemented?	Does the measure specifically target the return of rejected asylum seekers?
Resistance of the returnee to return	Development AVRR programmes	Yes	No
	Detaining rejected asylum seekers to prevent absconding	Yes	No
	Physical force	No But coercion may be used in case of resistance.	n/a
	Surprise raids to enforce removal	No No surprise controls, but targeted controls may take place for specific cases ('pinpointed address controls'). It is worth noting that direct removals are not possible following the notification of an order to leave the territory to a TCN, a forced return can only be carried out after a specific time limit (minimum 5 days). Once this time-period has passed, return is possible.	n/a
	Delay or cancellation of the return procedure	Yes	No
	Other? Special needs project <sup>(92)</sup>	Yes	No

91 M. Bolhuis and J. Van Wijk, Study on the exchange of information between European countries regarding persons excluded from refugee status in accordance with Article 1F Refugee Convention, Vrije Universiteit Amsterdam and Norwegian Directorate of Immigration, December 2015.

92 For further information on the 'special needs project', see Table 4 in Section 3.2.3 of this report.

Refusal of authorities in countries of return to readmit citizens Refusal by the authorities in countries of return to issue travel documents Refusal by the authorities in countries of return to issue identity documents	Readmission Agreements (EU and/or national)	Yes	No
	Bilateral cooperation with third countries/ establishment of diplomatic relations	Yes	No
	Establishment of representations in third countries	Yes	No
	Offering positive incentives, e.g. aid packages, to third countries' authorities	Yes	No
	Applying political pressure on third countries' authorities	Yes	No
	Delay or cancellation of the return procedure	Yes	No
	Other? MoUs with third countries	Yes	No
	Other? Meetings, networking with representatives of third countries	Yes	No
	Other? Videoconferencing pilot- project <sup>(93)</sup>	Yes	No
Problems in the acquisition of travel documents	Repeating fingerprint capture attempts/using special software to capture damaged fingerprints	No (Belgium does not have special software to capture damaged fingerprints)	No
	Using interpreters to detect cases of assumed nationalities	Yes	No
	Detention	Yes	No
	Offering positive incentives, e.g. aid packages to third countries' authorities	Yes	No
	Applying political pressure on third countries' authorities	Yes	No
	Delay or cancellation of the return procedure	Yes	No
	Other? MoUs with third countries	Yes	No
	Other? Meetings, networking with representatives of third countries	Yes	No

93 For more information on the 'video-conferencing' pilot-project, see Table 4 in Section 3.2.3 of this report.

<b>Administrative/organisational challenges</b>	<b>Budget flexibility</b>	Yes An increase of the budget can always be requested.	No
	<b>Coordination arrangements between authorities</b>	Yes	No
	<b>Designation of a Service Provider in third countries</b>	Yes (e.g. ILOs, EURLOs, in the framework of the ERIN project, bilateral, etc.)	No
	<b>Establishment of a diplomatic representation in third countries</b>	Yes	No
	<b>Delay or cancellation of the return procedure</b>	Yes	No
	<b>Other? MoUs with third countries</b>	Yes	No
	<b>Other? Meetings, networking with representatives of third countries</b>	Yes	No
<b>Medical reasons</b>	<b>Organising medical transfer</b>	Yes	No
	<b>Facilitating medical support in the country of destination</b>	Yes	No
	<b>Medical supervision during travel</b>	Yes	No
	<b>Delay or cancellation of the return procedure</b>	Yes	No
	<b>Other? Special needs project<sup>(94)</sup> and MEDCOI-project<sup>(95)</sup></b>	Yes	No
<b>Other challenges?</b>			
Psychological reasons	Special needs project	Yes	No
Other humanitarian reasons			

(Section 3 – Q16 of the EMN Questionnaire)

94 For further information on the ‘special needs project’, see Table 4 in Section 3.2.3 of this report.

95 The MedCOI project (“Medical Country of Origin Information”) aims at researching and sharing information on medical treatments in countries of origin between the 14 participating European countries. This information focuses on the availability of medical treatment in the countries of origin and access to the medical treatments.

96 For further information on the ‘special needs project’, see Table 4 in Section 3.2.3 of this report.



### **3.2.2. Recent measures and policies implemented in Belgium to ensure the return of TCNs**

As previously mentioned, the return of irregular third-country nationals is a priority of the Belgian government. Several measures have recently been implemented or are planned in order to ensure the return of TCNs, including rejected asylum seekers.

#### **Increase of resources and capacity of the closed centres**

At the end of 2015, in the framework of the important inflow of asylum seekers over the last months and the high numbers of rejected asylum seekers, the Belgian government announced a series of measures to strengthen the return services of the Immigration Office and ensure the efficient return of rejected asylum seekers.

One of the measures is the increase of the capacity of the closed detention centres for irregular migrants and rejected asylum seekers. The aim is to increase the capacity of 452 places (in November 2015) to over 600 places in 2016. Within this perspective, the staff of the closed centres will also be increased<sup>(97)</sup>. Efforts to increase the capacity and the staff of the closed centres were started at the end of 2015 and continued in 2016.

The State Secretary for Asylum Policy and Migration also announced that family units in a closed environment will be set up in the vicinity of the closed centre 127bis<sup>(98)</sup>. With these closed family units, absconding families or families who do not respect the rules when staying in their own house or in a family living unit, could be detained for a short period of time in view of their return.

#### **The return of irregular migrants representing a threat to the public order**

The apprehension and return of irregularly staying TCNs who represent a threat to the public order or national security is a priority of the Belgian government<sup>(99)</sup>. A number of measures were taken recently in order to ensure the return of these TCNs. These measures do not target rejected asylum seekers specifically, but could concern them as well. For example, four 'Gaudi'<sup>(100)</sup> operations took place in Belgium in 2015 and 2016. The Gaudi operations – organized over a short period of time – aim at arresting irregular migrants who commit an offence against the public order (such as shoplifting or pickpocketing) by increasing police controls, and at organizing their swift return to their countries of origin when possible<sup>(101)</sup>.

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97 Belgian House of Representatives, *General Policy Note on Asylum and Migration*, 3 November 2015, DOC 54 1428/019, pp. 19-20.

98 Ibid, p. 19.

99 Ibid, p. 4.

100 'Gaudi' comes from the contraction of 'gauw dief', which means 'pickpocket' in Dutch.

101 Belgian House of Representatives, *General Policy Note on Asylum and Migration*, 3 November 2015, DOC 54 1428/019, pp. 18-19.

Furthermore, changes made to the Belgian criminal law<sup>(102)</sup> at the beginning of 2016 made it possible to remove TCNs who committed crimes to their country of origin within six months before the end of their sentence as well as six months before they can be anticipatively released. Furthermore, all TCNs who committed crimes will have to prove their willingness to cooperate to their return in order to be anticipatively released; if they do not want to cooperate they will serve the full sentence.

### **Information about the possibilities for voluntary return**

Encouraging voluntary return, including of rejected asylum seekers, is also an objective of the Belgian government. Several measures have recently been taken in this regard. In a context of a decreasing number of voluntary returns at the beginning of 2015, an Action Plan on voluntary return was prepared by the Reception Agency, Fedasil, and presented by the State Secretary for Asylum Policy and Migration in July 2015. The Action Plan has three main goals: (i) Embed and strengthen the 'return path', which targets rejected asylum seekers; (ii) Improve access to the voluntary return programme; (iii) Inform irregular migrants outside of the reception system about voluntary return (both directly and indirectly) via their formal and informal representatives.

Regarding the strengthening of the 'return path' for (rejected) asylum seekers, the Action Plan put a specific focus on voluntary return in the framework of the open return places. The objective was to increase the arrival percentage at the open return places and lower the differences in arrival percentages between the different reception partners (different partners provide reception for asylum seekers in Belgium). In this framework, Fedasil published a new Instruction in October 2015 on the return path and the open return places. Furthermore, as the location of the open return places could also have an impact on the arrival percentage, open return places were created in 2015 in the federal reception centre 'Petit Château', which is located in Brussels. The other four centres with open return places remained operational. Fedasil also reworked its information document on the return path, to make it simpler and more useful for social workers during their discussions with migrants. The document – available in 11 languages – provides information on voluntary return, the different stages of the return path and staying in an open return place.

In order to improve access to the voluntary return programme, two regional return desks – where migrants can receive tailored information and submit an application for voluntary return – were opened in 2015 (in Liege and in Antwerp). A return desk was also opened in Charleroi in October 2016. With the return desks in Brussels and Gent, there currently is a total of five return desks in Belgium.

Furthermore, in order to inform irregular migrants outside of the reception system about voluntary return, different measures were defined in the Action Plan and have been implemented: information activities targeting local authorities, civil society organisations, consulates/embassies, and diaspora organisations; closer cooperation with local authorities;

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<sup>102</sup> Law of 5 February 2016 modifying the penal code and the penal procedure and containing various provisions regarding Justice, Belgian Official Gazette, 19 February 2016.

specific assistance to migrants who have been issued an order to leave the territory by 'native counsellors'; and specific reintegration strategies for certain countries of origin.

### **Specific voluntary return approaches for certain groups**

Fedasil developed specific approaches to voluntary return for certain target groups. This was the case for Iraqi citizens. Information sessions on voluntary return were organized for Iraqi nationals in different reception centres in Belgium, in collaboration with IOM Iraq. Fedasil also strived to improve case management on voluntary return for this target group (e.g. through the employment of temporary Arabic interpreters at the return desk in Brussels). Furthermore, in the framework of the high number of requests for voluntary return to Iraq, Fedasil organized – in cooperation with IOM – a charter flight for voluntary return towards Iraq on 1 February 2016. 106 persons returned via this flight (most of them were asylum seekers who had not yet received a decision in the framework of their asylum application).

Furthermore – at the initiative of the State Secretary for Asylum Policy and Migration – temporary changes were made to the return packages that can be given to certain groups of asylum seekers. This was the case for Iraqi asylum seekers (who had arrived in Belgium before 2016): if they chose to voluntarily return to their country of origin between May and September 2016, they could benefit from a higher in-cash departure premium<sup>(103)</sup>. Moreover – from 15 June 2016 until at least the end of the year 2016 – Afghan asylum seekers who opt for a voluntary return can also benefit from a higher departure premium (when their asylum application has been lodged before 1 June).

Starting on 15 June 2016, Fedasil and IOM also offer Afghan nationals specific reintegration assistance. In addition to the regular assistance provided, this specific assistance includes – inter alia – temporary accommodation upon arrival or transportation to another town. Information activities about voluntary return and reintegration in Afghanistan were organised in several reception centres, in collaboration with IOM Afghanistan<sup>(104)</sup>.

[\(Section 3 – Q18 of the EMN Questionnaire\)](#)

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103 See: <http://www.retourvolontaire.be/partners/news/retours-en-irak-prime-de-depart-doublee>

104 See: <http://www.retourvolontaire.be/partners/news/prime-de-depart-doublee-pour-les-afghans>

### 3.2.3. Good practices to overcome challenges to the return of rejected asylum seekers

Table 4: Good practices to overcome challenges to the return of rejected asylum seekers in Belgium

Measure	Evidence of effectiveness / why the measure can be considered a 'good practice'	State whether the measure is effective in supporting the return of <u>rejected asylum seekers</u>
The return path for (rejected) asylum seekers – since 2012	Fedasil carried out an evaluation of the return path in 2014. It showed that, despite some challenges, rejected asylum seekers leave the reception facilities well informed about the option of a voluntary return (for further information on the evaluation of the return path, see Section 2.2.1, Table 1).	The return path targets (rejected) asylum seekers specifically.
Differentiated return packages <sup>(105)</sup>	Persons whose asylum application has been taken into consideration by the Commissioner General for Refugees and Stateless Persons and who opt for (assisted) voluntary return during the asylum procedure or within the period during which they can voluntarily leave the territory (in case of rejection of the application), are in principle eligible for a higher re-integration package than those who opt for voluntary return after the expiry of the order to leave the territory or those that have never asked for asylum in Belgium <sup>(106)</sup> . These criteria align with the several steps described in the return path and the SEFOR procedure. Citizens of visa-exempt countries can in principle receive a plane ticket, but no additional support (in cash or in-kind). Exceptions can be made for vulnerable groups.	TCNs whose asylum application is still ongoing and rejected asylum seekers (within the deadline stipulated on their order to leave the territory) can in principle receive a higher reintegration package. Although there is no concrete evidence available, we suggest that this incentive supports the voluntary return of rejected asylum seekers.

<sup>105</sup> <http://fedasil.be/en/content/aid-reintegration>

<sup>106</sup> See details for 2015 : [https://5042.fedimbo.belgium.be/sites/5042.fedimbo.belgium.be/files/explorer/Programme\\_de\\_retour\\_et\\_de\\_reintegration\\_tableau\\_2015.pdf](https://5042.fedimbo.belgium.be/sites/5042.fedimbo.belgium.be/files/explorer/Programme_de_retour_et_de_reintegration_tableau_2015.pdf)

<p>The 'Special Needs' project for the return of vulnerable people (since 2009)</p>	<p>The 'Special Needs' project is implemented by the Immigration Office in cooperation with local partners in the countries of origin.</p> <p>It aims at humanising the forced return of vulnerable persons with special needs (e.g. people with specific psychological or physical needs, pregnant women, etc.) who are being detained pending their removal. These persons are provided with tailored support before their return (e.g. purchase of medication or other necessities), during their return (tailored medical/social escort) and after their forced return (possible reintegration assistance and monitoring).</p>	<p>This project does not specifically target rejected asylum seekers, but it can concern them as well.</p>
<p>Videoconferencing pilot-project (since 2014)</p>	<p>The "video-conferencing" pilot-project started in June 2014, and aims at testing the use of videoconferencing tools for the identification of irregular migrants by the authorities of the countries of origin. Belgium, Poland and Luxembourg participate in this pilot project. The Netherlands and the United Kingdom are associated partners. Videoconferencing tools can be installed according to three possible configurations: (i) Intra EU Member States (Identification interviews from detention centres to the consular representation in the Member State or to the headquarters of the immigration service); (ii) Inter EU Member States (Identification interviews from Member States to the consular representation of third countries located in another Member State); (iii) EU Member State to Country of Origin (Identification procedure from the Member State to the Country of Origin through the national embassy or directly). The tools of this project can thus be efficient in overcoming certain challenges to return.</p>	<p>This project does not specifically target rejected asylum seekers, but it can concern them as well.</p>

(Section 3 – Q19 of the EMN Questionnaire)

## 4 What happens when return is not immediately possible?

### 4.1 Status of rejected asylum seekers who cannot immediately return/be returned

Belgian authorities do not officially acknowledge that a rejected asylum seeker cannot return or be returned, that is to say, no official or specific status is granted to them. However, in certain cases, a TCN cannot return or be returned to his country of origin for a limited period of time (e.g. a few months) due to specific circumstances. The order to leave the territory can then be extended by the Immigration Office, at the request of the TCN<sup>(107)</sup>.

These circumstances include: TCNs who have a clear intention to leave voluntarily but whose return could not be executed in the given period; women during the last weeks of a pregnancy; families with children who attend school (so they can finish the school year); TCNs with medical issues (doctor certificate is necessary). The return decision can also be extended when the removal must be delayed<sup>(108)</sup>.

In 2015, 271 orders to leave the territory were extended by the Immigration Office, for different reasons (please note that the statistics presented below include all irregular TCNs, as the breakdown between rejected asylum applicants and other irregular migrants is not available).

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<sup>107</sup> [Art. 74/14 of the Immigration Act.](#)

<sup>108</sup> EMN study on Belgian Contact Point to the EMN, [The use of detention and alternatives to detention in the context of immigration policies in Belgium](#), June 2014.

**Table 5: Extension of orders to leave the territory in 2015, by reason<sup>(109)</sup>**

<b>Families with school-going children</b>	17
<b>Illness</b>	54
<b>Pregnancy</b>	49
<b>Births</b>	51
<b>Voluntary return (IOM)</b>	18
<b>Weddings</b>	20
<b>Legal cohabitation</b>	21
<b>Family unity</b>	9
<b>Humanitarian reasons</b>	18
<b>Other reasons</b>	14
<b>TOTAL</b>	<b>271</b>

Some TCNs cannot return to their country of origin due to no fault of their own (e.g. the authorities of their country of origin do not provide them with the necessary travel documents; stateless people, etc.). These so called ‘no-fault’ rejected asylum seekers can apply for regularisation on humanitarian grounds (article 9bis of the Immigration Act). The decision making on such applications by the Belgian authorities is discretionary. It is important to stress that regularisation for these ‘no-fault’ cases happens relatively rarely, and only after the person concerned proved that he did everything in his power to return.

Finally, although it happens relatively rarely, the Commissioner General for Refugees and Stateless Persons (CGRS) can also issue a (non-binding) opinion on the return of a rejected asylum seeker when issuing certain decisions in the framework of the asylum procedure (*‘clause de non reconduite’/ ‘niet-terugleidingsclausule’*). This clause is mostly applicable in cases of exclusion from or withdrawal of the refugee status, but it can also be applied in other cases. This opinion issued by the CGRS generally relates to possible violations of the European Convention on Human Rights in case of a forced return of the rejected asylum seeker.

[\(Section 4 – Q21, Q22a, Q22b and Q22c of the EMN Questionnaire\)](#)

## **4.2 Rights of rejected asylum seekers who cannot immediately return/ be returned**

Regarding the rights of rejected asylum seekers who cannot immediately return or be returned, see Table 1 in Section 2.2.1 of this study.

[\(Section 4 – Q23 of the EMN Questionnaire\)](#)

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<sup>109</sup> Source: Immigration Office.

No distinction is made in Belgium in terms of status between rejected asylum seekers who cannot return or be returned through no fault of their own (the so-called 'no-fault cases') and those who are considered to have hampered their own return. Neither are granted a status in Belgium. However, 'no-fault' TCNs may apply for regularisation on humanitarian grounds (article 9bis of the Immigration Act), but this is an exceptional procedure.

(Section 4 – Q24 of the EMN Questionnaire)

### 4.3 Possibilities for the regularisation of irregular migrants

TCNs who are not immediately returnable can – in some cases – be eligible for regularisations in Belgium. There are mainly two possibilities for regularisation for irregular migrants residing in Belgium – including rejected asylum seekers: regularisation on humanitarian grounds (art. 9bis of the Immigration Act) or regularisation on medical grounds (art. 9ter of the Immigration Act).

**The humanitarian regularisation procedure (art. 9bis)** is an exceptional procedure. To be admissible, the foreign national must show that 'exceptional circumstances' exist which do not allow him to file the residency application with the relevant diplomatic post abroad, as is the general rule. There is no binding list of eligibility criteria and every case is treated on a case by case basis. However, a Circular from 2009 describes certain urgent humanitarian situations that could be considered as 'exceptional circumstances' in the framework of a 9bis procedure<sup>(110)</sup>: (i) an unreasonably long asylum procedure (3 years for families with school-going children – from 6 to 18 years- and 4 years for the other cases), and (ii) other urgent humanitarian situations (a situation that could violate international treaties on children's rights or human rights if the removal would be executed).

To obtain the regularisation, the TCN must then provide evidence of the existence of humanitarian reasons which allow him to reside in Belgium. The applicant does not receive any residency rights while the application is pending. If the application is approved, the Immigration Office can grant the TCN either a residence permit for an indefinite or limited duration. The decision on the duration of the residency rights depends on the discretion of the authorities.

**A request for regularisation for medical reasons (art. 9ter)** is a residency application on the basis of serious medical reasons. The applicant's medical condition or illness must represent a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment when no adequate treatment is available in his country of origin or his country of residence. The request for medical regularisation can be submitted in Belgium, even if the applicant has no residence permit. If the application is filed correctly and is considered admissible, the applicant receives a temporary residence card to cover his stay on the territory while the application is pending. If the application is approved, the Immigration Office grants the TCN a temporary residence permit valid for one year (renewable).

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<sup>110</sup> Circular regarding the application of old article 9.3 and article 9bis of the Immigration Law, 19 July 2009.



Regarding **the number of rejected asylum seekers who apply for a regularisation**, analyses were carried out by the Immigration Office a few years ago. In the framework of an increase in the number of regularisation applications on humanitarian and medical grounds at the beginning of 2013, the Immigration Office carried out an in-house analysis of the phenomenon of ‘procedure shopping’, that is to say the simultaneous, parallel or successive introduction of several similar or different procedures (asylum, humanitarian regularisation and medical regularisation). The administrative path of 86,238 people was analysed. The analysis showed that – on average – each person introduced an application 1.55 times between 1 January 2010 and 31 December 2012. If we take into account all applications of these persons (including those introduced before 1 January 2010) each person applied in average 3.48 times. Regarding the link between asylum and regularization, the analysis showed that 45.5% of people applying for regularisation on humanitarian or medical grounds in 2012 had previously lodged an asylum application. The number of applications on medical grounds in parallel or following an asylum application was more important than the number of applications on humanitarian grounds. The research project concluded that 77.2% of the applicants for regularisation from 2012 already applied for another procedure (9bis, 9ter or asylum) that was still pending or finalized. This was 72.1% in 2011.

At the beginning of 2014, this analysis of ‘procedure shopping’ was continued. It showed that in 2013, 45.1% of applications on the basis of articles 9bis or 9ter were preceded by an asylum application. The research project concluded that 77.2% of the applicants for regularisation from 2013 already applied for another procedure (9bis, 9ter or asylum) that was still pending or that was finalized.

[\(Section 4 – Q25 of the EMN Questionnaire\)](#)

## 4.4 Assessing the possibilities for return

The possibilities of return for rejected asylum seekers who could not be immediately returned or be returned, are regularly assessed by the Immigration Office. This assessment is done in the framework of an extension of an order to leave the territory. The frequency of this assessment therefore depends on the length of the order to leave the territory issued to the rejected asylum seeker (monthly, every 3 months, every 6 months, etc.), and is carried out on a case-by-case basis. The assessment covers the persons who could not immediately return and requested an extension of their order to leave the territory (e.g. persons with medical issues, pregnant women, families with children attending school, etc.).

Furthermore, it is worth mentioning that rejected asylum seekers may apply for a regularisation on medical or humanitarian grounds. This is decided on a case-by-case basis, following an individual assessment.

[\(Section 4 – Q26 and Q27 of the EMN Questionnaire\)](#)

### 5.1 Policies and measures to ensure that unfounded claims lead to a swift return

#### 5.1.1 Accelerated asylum procedures

Belgian legislation does not set out different types of first instance procedures, but not all applications for international protection are processed within the same time frame.

In case of a regular (non-accelerated) asylum procedure, there is no maximum period of time defined by law for the CGRS to take the first instance decision. The Immigration Act foresees specific situations when the examination of an asylum procedure needs to be 'prioritised' (articles 52 and 52/2 of the Immigration Act). The table below provides details on these situations.

Furthermore, even though no specific admissibility procedure exists in Belgium, it is possible for the CGRS to take a decision 'not to take an asylum application into consideration'. This does not mean that the application will not be assessed on its merits, but the examination procedures are accelerated. Specific time-limits apply (see table below). This can be the case when:

- The applicant is from a 'safe country of origin' (art. 57/6/1);
- The applicant is an EU citizen or an EU accession country national (art. 57/6, 2°);
- The applicant has obtained refugee status in an EU Member State (art. 57/6/3);
- The applicant lodged a subsequent application (in detention or not) without new elements (art. 57/6/2). This is the only situation where the CGRS needs to take a decision on admissibility. Positive decisions on admissibility of subsequent applications result in a further examination of the asylum application by the CGRS as a normal asylum application.

It should be noted that the CGRS can also opt to process these type of applications as a normal asylum procedure within the regular time-limits. No sanctions are foreseen should these decision times not be respected by the CGRS.

**Table 7: Policy and practice regarding accelerated asylum procedures**

Grounds for accelerating the examination procedure	Is it policy accelerate the examination procedure when the application presents these characteristics?	If yes, is the policy applied in practice to date?	How often does this happen in practice?	Has the acceleration of the examination procedure helped to ensure swift removal?
<b>Applicant only raised issues not relevant to the examination</b>	No	n/a	n/a	n/a
<b>Applicant is from a safe country of origin</b>	Yes First instance decision within 15 working days. (art. 57/6/1 of the Immigration Act)	Yes	Most cases	n/i
<b>Applicant can return / be returned to a safe third country in line with Art. 38 of the Asylum Procedures Directive or equivalent national law</b>	No	n/a	n/a	n/a
<b>Applicant misled the authorities by presenting false documents/ information, withholding of info/docs</b>	Yes First instance decision within 2 months (when applicant is not in detention) or 15 days (when the applicant is in detention) (art 52/2 of the Immigration Act)	Yes	Some cases (in many cases, this is only determined by the CGRS during the processing of the application within a 'regular' procedure)	n/i
<b>Applicant destroyed documents intentionally to make assessment difficult</b>	Yes First instance decision within 2 months (when applicant is not in detention) or 15 days (when the applicant is in detention) (art 52/2 of the Immigration Act)	Yes	Some cases (in many cases, this is only determined by the CGRS during the processing of the application within a 'regular' procedure)	n/i
<b>Applicant made inconsistent, contradictory, false representations which contradict country of origin information (COI)</b>	No	n/a	n/a	n/a
<b>Applicant lodged an inadmissible subsequent application</b>	Yes First instance decision within 8 working days (or 2 working days when the person is in detention) (art. 57/6/2 of the Immigration Act)	Yes	Most cases	n/i

<b>Applicant lodged an application to delay or frustrate enforcement of removal</b>	Yes First instance decision within 2 months (when applicant is not in detention) or 15 days (when the applicant is in detention) (art 52/2 of the Immigration Act)	Yes	Most cases	n/i
<b>Applicant irregularly entered the territory and did not present him/herself to the authorities</b>	No	n/a	n/a	n/a
<b>Applicant refuses to comply with the obligation to have his/ her fingerprints taken</b>	Yes First instance decision within 2 months (when applicant is not in detention) or 15 days (when the applicant is in detention) (art 52/2 of the Immigration Act)	Yes	Most cases	n/i
<b>Applicant poses danger to national security or public order</b>	Yes First instance decision within 15 days (art 52/2, §2 of the Immigration Act)	Yes	Most cases	n/i
<b>Other?</b>				
<b>The applicant did not apply for asylum when the border police enquired about the purpose of his journey</b>	First instance decision within 2 months (when applicant is not in detention) or 15 days (when the applicant is in detention) (art 52/2 of the Immigration Act)	Yes	Most cases	n/i
<b>The applicant has already lodged a previous application</b>	First instance decision within 2 months (when applicant is not in detention) or 15 days (when the applicant is in detention) (art 52/2 of the Immigration Act)	Yes	Most cases	n/i
<b>The applicant fails to reveal that he has already made an application in another EU Member State</b>	First instance decision within 2 months (when applicant is not in detention) or 15 days (when the applicant is in detention) (art 52/2 of the Immigration Act)	Yes	Most cases	n/i

<b>The applicant refuses to make the declarations required at the registration phase / to complete the CGRS questionnaire</b>	First instance decision within 2 months (when applicant is not in detention) or 15 days (when the applicant is in detention) (art 52/2 of the Immigration Act)	Yes	Most cases	n/i
<b>The Minister requests priority treatment for an application by the CGRS.</b>	First instance decision within 15 days (art 52/2, §2 of the Immigration Act)	Yes	Most cases	n/i
<b>The applicant is an EU-national</b>	First instance decision within 5 working days (art. 57/6, 2° of the Immigration Act)	Yes	Most cases	n/i
<b>The applicant has obtained refugee status in another EU Member State that still effectively protects them</b>	First instance decision within 15 working days (art. 57/6/3 of the Immigration Act)	Yes	Most cases	n/i
<b>Application based on reasons unrelated to asylum (fraudulent or manifestly unfounded)</b>	First instance decision within 2 months (art. 52 of the Immigration Act)	No	n/a	n/i
<b>Applicant voluntarily withdrew from the asylum procedure started at the border</b>	First instance decision within 2 months (art. 52 of the Immigration Act)	No	n/a	n/i
<b>The applicant does not present himself before the authorities at the set date and does not provide an explanation within the 15 days following this date</b>	First instance decision within 2 months (art. 52 of the Immigration Act)	Yes	Most cases (a 'technical refusal' can be issued to the applicant in this case - 15 days after the date set for the interview)	n/i
<b>The applicant does not provide the information requested by the CGRS</b>	First instance decision within 2 months (art. 52 of the Immigration Act)	Yes	Most cases (a 'technical refusal' can be issued to the applicant in this case - 1 month after the request for information)	n/i

(Section 5 – Q28 of the EMN Questionnaire)

## **5.1.2 National list of safe countries of origin**

The concept of 'safe countries of origin' was introduced in the Belgian Immigration Act by the **law of 19 January 2012** and the royal decree implementing this concept came into force on 1 June 2012. A country is considered as a 'safe country of origin' when the legal situation, the application of the law and the general political circumstances, allow to conclude that – in a general and durable manner – there is no real risk of persecution or serious harm for the asylum seeker<sup>(111)</sup>.

Following an advice from the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), the State Secretary for Asylum Policy and Migration and the Minister for Foreign Affairs submit a list of safe countries of origin to the government for its consideration. This list must be reviewed at least once a year. If necessary, it can be reviewed more frequently.

The list was last updated by the Royal Decree of 3 August 2016. It contains **eight countries**, that is to say the same seven countries that have been included on the list since 2012 (Albania, Bosnia and Herzegovina, Macedonia (FYROM), Kosovo, Montenegro, Serbia and India) as well as – for the first time – Georgia. It is worth mentioning that the Royal Decrees of 26 May 2012, 7 May 2013, 24 April 2014 and 11 May 2015 (which defined the list of safe countries of origin) were all annulled by the Belgian Council of State as far as the inclusion of Albania on said list was concerned. The Council considered that the recognition rate of asylum seekers from Albania is high, and that the country should therefore not be included on the list of safe countries of origin.

Individual treatment by the CGRS of the asylum application of nationals of these 'safe countries of origin' is guaranteed, but it will be subject to an accelerated procedure. The CGRS first examines whether to take the application into consideration. When the CGRS decides not to take into consideration the asylum application, the applicant has 15 days after he has been notified of the decision to submit an appeal before the CALL. The appeal is automatically suspensive. There are shorter deadlines for the processing of the appeal by the CALL.

[\(Section 5 – Q29 of the EMN Questionnaire\)](#)

## **5.1.3 Other measures to ensure that unfounded claims lead to a swift return**

Belgium also implements other measures to ensure unfounded asylum claims lead to the swift removal of the concerned TCNs. These include:

### **Return flights**

The Belgian government organizes flights for the return of irregular migrants – including rejected asylum seekers – to their country of origin. Belgium also organizes or participates in joint return operations (JRO) or collecting joint return operations (CJRO) in the framework of Frontex, in collaboration with other Member States.

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<sup>111</sup> Art. 57/6/1 of the Immigration Act.

In 2015, Belgium organized 13 national return flights, and organized/participated in 12 Joint Return Operations (JRO) and Collecting Joint Return Operations (CJRO), accounting for a total of 154 returnees. The main countries of destination were Albania, DRC and Serbia.

### **Buses for the (voluntary) return of migrants (in the past)**

At the end of 2011, the Immigration Office started organizing bus connections to the Balkan countries, in order to counter the migration influx from this region. These voluntary returns by bus were accompanied by other measures such as the organization of prevention or information campaigns targeting citizens of these countries and the organization of forced returns. The campaign lasted until the beginning of 2013 and targeted mainly (but not exclusively) rejected asylum seekers.

[\(Section 5 – Q30 and Q31 of the EMN Questionnaire\)](#)

## **5.2 Preparing asylum seekers for return**

### **5.2.1 Policies and measures to prepare asylum seekers for return during asylum procedure**

It is part of Belgium's policy on return to prepare asylum seekers for return early on and throughout the different stages of the asylum procedure, including after a rejection of the asylum application. This policy is formalized in law (Reception Act of 12 January 2007 and Law of 19 January 2012) and official communications (e.g. Fedasil's Instructions, Circular Letter of 10 June 2011 for the SEFOR procedure).

#### **Access of asylum seekers to voluntary return**

The Reception Act of 12 January 2007, which regulates the reception of asylum seekers in Belgium, stipulates that access to a voluntary return programme is part of the aid in-kind that asylum seekers and other beneficiaries of reception are entitled to. Moreover, the reception agency, Fedasil, has to ensure that the beneficiary of reception has access to a voluntary return programme to his country of origin or a third country.

Regarding preparing the asylum seekers for return, the Reception Act stipulates that the beneficiary of reception has a right to individualized and permanent social guidance during his stay in a reception facility. This social guidance includes information on the content and the importance of the voluntary return programmes.

#### **The return path (asylum seekers and rejected asylum seekers in a reception facility)<sup>(112)</sup>**

The Reception Act was amended by the law of 19 January 2012. This law introduced the concept of the 'return path', which is defined as the individual support offered by Fedasil with a view

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<sup>112</sup> For more information, see: Belgian Contact Point to the EMN, Dissemination of information on voluntary return: how to reach irregular migrants who are not in contact with the authorities, August 2015.

to return<sup>(113)</sup>. This return path is a step-by-step process of provision of information on voluntary return in the reception facilities managed by Fedasil and its reception partners. From the moment an asylum application has been lodged, return counselling becomes an integral part of the guidance offered to asylum seekers in all reception facilities. The return path is divided into two main phases: (1) voluntary return counselling while the asylum procedure is still ongoing and (2) following a negative (appeal) decision, intensified voluntary return counselling in a return facility (open return place) where the staff has specific expertise on voluntary return. In this second phase, a cooperation scheme exists between Fedasil and the Immigration Office, the authority responsible for the removal of foreigners.

The Reception Act provides that the return path becomes formally mandatory at the latest 5 days after a negative decision by the Commissioner General for Refugees and Stateless Persons (CGRS) was taken.

The Reception Act, several instructions by Fedasil<sup>(114)</sup> and Fedasil's Guide on Voluntary Return<sup>(115)</sup> specifically stipulate the moments at which (rejected) asylum seekers and other beneficiaries of reception should be provided with information on voluntary return.

This return path is coupled with other means of information on voluntary return: a rejected asylum seeker outside of a reception facility can always receive information (and apply for a voluntary return) via one of the five 'return desks', Fedasil's free hotline, or the network of NGOs in Belgium.

### **The SEFOR procedure (TCNs – including rejected asylum seekers outside of the reception network)**

The Belgian Immigration Office implements the 'SEFOR project' ('Sensitization, Follow-up, and Return') since 2011. SEFOR's objective is to follow-up on the orders to leave the territory issued by the Immigration Office. The SEFOR procedure focuses on (assisted) voluntary return on the one hand and on the preparation of forced return (identification) on the other. The procedure applies to all foreigners whose residence/asylum application procedure has led to a negative outcome and who are not residing in a reception facility (see section 2.2.2 for further information).

[\(Section 5 – Q32 of the EMN Questionnaire\)](#)

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<sup>113</sup> Art. 2/12° of the Reception Act.

<sup>114</sup> Instruction of 13 July 2012 on the return path; Addendum of 30 August 2012 to the instruction of 13 July 2012 concerning medical exceptions; and the instruction of 23 September 2013.

<sup>115</sup> Fedasil, Guide on Voluntary Return: the use of information carriers, May 2015.



## **5.2.2 Recent changes regarding the preparation of asylum seekers for return during the asylum procedure**

Several measures were recently taken or announced in order to prepare and inform asylum seekers during the asylum procedure about return. These measures largely focused on providing (rejected) asylum seekers with information on the possibilities for voluntary return.

### **Action Plan on voluntary return**

An Action Plan on return was developed by Fedasil and presented in July 2015 by the State Secretary, in order to give new impetus to voluntary return. See section 3.2.2 of this report.

### **Specific voluntary return approaches for certain groups**

Specific approaches to voluntary return (and reintegration) were developed for certain target groups, including Afghan and Iraqi asylum seekers. See section 3.2.2 of this report.

### **Information letters sent to certain asylum seekers in Belgium**

Another recent measure that can be mentioned is the sending of letters from the State Secretary for Asylum Policy and Migration to certain groups of asylum seekers in Belgium, which contained – inter alia – information on return. For example, in May 2016, a letter was sent to Iraqi asylum seekers in Belgium. This letter informed them – inter alia – about the delays in the examination of the asylum applications, the recognition rate for Iraqis, or the fact that refugees are now granted a temporary residence permit for 5 years. It also informed them about the possibilities for voluntary return. This letter was coupled with a higher in-cash departure premium provided to Iraqi asylum seekers who decide to voluntarily return to their country of origin<sup>(116)</sup>.

(Section 5 – Q33a of the EMN Questionnaire)

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<sup>116</sup> See for example: 'Francken verdubbelt vertrekpremie voor Irakezen: 'Geen willekeurig oorlogsgeweld in Bagdad'', Knack, 4 May 2016.

## 6.1 Tailoring the return policy to (rejected) asylum seekers

Certain elements of the Belgian return policy target (rejected) asylum seekers specifically. This is the case of the policy on voluntary return. The 'return path' – introduced in 2012 – is specifically tailored to (rejected) asylum seekers: it is a step-by-step individual counselling path offered to (rejected) asylum seekers in the reception facilities managed by the reception agency (Fedasil) and its partners in view of a voluntary return to the country of origin.

Furthermore, the differentiated voluntary return packages also target (rejected) asylum seekers: persons whose asylum application has been taken into consideration by the CGRS and who opt for (assisted) voluntary return during the asylum procedure or within the period during which they can voluntarily leave the territory (in case of rejection of the application), are in principle eligible for a higher re-integration package than those who opt for voluntary return after the expiry of the order to leave the territory or those that have never asked for asylum in Belgium. Moreover, in 2016, at the initiative of the State Secretary for Asylum Policy and Migration, certain groups of (rejected) asylum seekers (Afghan and Iraqi nationals) could – under certain conditions – benefit from a higher in-cash voluntary departure premium.

Finally, it is also worth mentioning that the Belgian authorities introduced measures (regarding asylum/appeal procedures and reception) over the last years in order to deter unfounded subsequent asylum applications.

[\(Section 6 – Q35 of the EMN Questionnaire\)](#)

## 6.2 Good practices regarding the return of rejected asylum seekers

### **Information about the possibilities for voluntary return for (rejected) asylum seekers**

It is part of Belgium's policy on return to prepare asylum seekers for return early on and throughout the different stages of the asylum procedure, including after a rejection of the asylum application. Information on voluntary return is provided in the framework of the 'return

path'. As highlighted by a 2014 evaluation of the return path, this policy ensures that asylum seekers leave the reception facilities being well informed about the option of voluntary return. Moreover, this return path is coupled with other means of information on voluntary return: a rejected asylum seeker outside of a reception facility can always receive information (and apply for a voluntary return) via one of the five 'return desks' in Belgium, Fedasil's free hotline, or the network of NGOs in Belgium.

### **Differentiated voluntary return packages**

Different incentives for voluntary return are offered to (rejected) asylum seekers and other TCNs. Persons whose asylum application has been taken into consideration by the CGRS and who opt for (assisted) voluntary return during the asylum procedure or within the period during which they can voluntarily leave the territory (in case of rejection of the application), are in principle eligible for a higher re-integration package than those who opt for voluntary return after the expiry of the order to leave the territory or those that have never asked for asylum in Belgium.

### **Follow-up on return decisions – the SEFOR project**

The SEFOR project aims at following up on all return decisions issued. The SEFOR procedure focuses on (assisted) voluntary return on the one hand and on the preparation of forced return (identification) on the other. The effectiveness of this procedure is based on close cooperation between the different actors involved, including the Immigration Office, the municipalities and the Police.

### **Coordination and communication between the different authorities involved in the asylum and return procedures**

Different authorities are involved in the asylum procedure and the return procedure. Efficient cooperation and coordination between these different authorities is essential to ensure that asylum decisions trigger the return procedure at the right time. This coordination has improved over the last decade.

### **The legal framework – deterring abusive subsequent asylum applications**

The Belgian legal framework aims at the swift processing of subsequent asylum applications and – when applicable – a swift return. The Belgian authorities have tried to limit abusive subsequent asylum applications by processing them within an accelerated procedure, imposing shorter deadlines on the appeal procedures, and limiting the suspensive effect of the appeal procedure in certain cases.

[\(Section 6 – Q36 of the EMN Questionnaire\)](#)

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- Kruispunt Migratie- Integratie (<http://www.kruispuntmi.be/>)
- ADDE – Association pour le droit des étrangers (<http://www.adde.be/>)
- Medimmigrant (<http://www.medimmigrant.be>)

## Information provided (by phone, email or during an interview) by:

- Immigration Office
- Fedasil
- Office of the Commissioner General for Refugees and Stateless Persons
- Flemish Government (Employment and Social Economy Department)
- Brussels Regional Public Service (Employment Department)
- Kruispunt Migratie-Integratie



## Annex 1: Statistics

### Key data on rejected asylum seekers and return in Belgium, 2011 – 2015

	2011	2012	2013	2014	2015
Total number of rejected asylum seekers (first instance decisions)	14.735	18.940	15.110	12.290	8.945
Total number of rejected asylum seekers (last instance decisions)	3.935	12.160	11.060	7.480	7.260
Total number of return decisions issued to rejected asylum seekers	8.770	17.221	16.912	8.525	5.738
Total number of rejected asylum seekers returned	1.604 **	3.258 **	3.332 **	1.921 **	1.977 **
> Of which returned voluntarily *	1.415 **	2.822 **	2.412 **	1.281 **	1.554 **
> Of which returned through forced return	189 **	436 **	920 **	640 **	423 **

\* including assisted voluntary return

\*\* estimates

Sources: Immigration Office and Fedasil



## Annex 2: Definitions

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v3.0<sup>(117)</sup> unless specified otherwise.

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

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

**Assisted voluntary return:** is defined as “the assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee with the component of financial support to a foreigner”.

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

**Compulsory return:** in the EU context, is defined as “the process of going back – whether in voluntary or enforced compliance with an obligation to return– to:  
one’s country of origin; or

- a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or
- another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

Synonym: Forced return

**Final decision:** is defined as “a decision on whether the third-country national or stateless person be granted refugee status or subsidiary protection status by virtue of Directive 2011/95/EU (Recast Qualification Directive) and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome”.

**Forced return:** is defined as “the enforcement of the obligation to return, namely the physical transportation out of the country” (Source: definition of ‘removal’ in Article 3(5) of the Return Directive).

Synonym: Removal

**Irregular stay:** is defined as “the presence on the territory of a Member State, of a third-country

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<sup>117</sup> Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/docs/emn-glossary-en-version.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf)

national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State”.

**Regularisation:** is defined as “in the EU context, state procedure by which illegally staying third-country nationals are awarded a legal status” (Source: ICMPD: Study on Regularisations in Europe, 2009).

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

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

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

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

**Subsequent application for international protection:** is defined as “a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn their application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Art. 28 (1) of Directive 2013/32/EU.”

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

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

**Voluntary return:** is defined as “the assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee”

**Vulnerable person:** is defined as “minors, unaccompanied minors disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation”.