

## [OPEN Summary of EMN Ad-Hoc Query No. \[2021.20\]](#) Structure of national migration laws and terminology used

*Answered by AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HU, HR, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK.*

### BACKGROUND

In Belgium, the main legal provisions on migration and asylum are set out in the Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals. The act, commonly referred to as "Aliens Act" and translated in English as "Immigration Act", has been revised dozens of times ever since its adoption. According to experts, the multiple amendments have rendered the law overly complicated and unreadable.

The current federal government, in office since October 2020, announced that it would replace the Immigration Act by a new Migration Code. By means of this Code, the government intends to ensure greater clarity in Belgian asylum and migration law, to safeguard legal certainty and to avoid inconsistencies. The Code is currently being drafted by a committee of experts including academics, government officials, lawyers and practitioners.

In the context of these works, Belgium sought information about the structure of national migration laws of other Member States and the terminology used for migration policies, subjects and institutions.

#### Questions

The following questions were asked in this ad-hoc query:

1. What are the names of the major national laws on asylum and migration in your Member State? For each act, please provide the name in your national language(s) and a literal translation in English.
2. If some or all of these laws have been codified (merged into a single Code), please indicate the year of codification and the former names (in English) of the laws that have been codified.
3. How are the major national laws on migration referred to in Q1 structured? For each act, please provide the main titles/chapters (in English) and a link to its current version (if available).

4. Which term(s) and definition(s) does your national legislation use for a) a non-national in general (including both Union citizens and third-country nationals) and b) an undocumented migrant? For each term, please provide the name in your national language(s) and a literal translation in English.

5. What are the official names of a) the national immigration office(s) responsible for the entry, stay and/or return of non-nationals, b) the office(s) responsible for the examination of applications for international protection, c) the (administrative and/or judicial) appeal instance(s) in migration procedures and d) detention facilities? For each institution, please provide the word in your national language(s) and a literal translation in English.

6. Does the national legislation of your Member State provide for advisory (non-judicial) bodies or commissions that can/should be consulted for policy advice or decisions on residence or removal? If yes, please list these bodies, explain their role, and refer to the relevant legal provisions.

### INTRODUCTION

Like Belgium today, many Member States indicated that they have not yet codified their national laws on migration and asylum. Nonetheless, similarities can be drawn between groups of Member States' names of legislation and the structure of these legislations. Similarly, Member States' legislations have, generally speaking, a similar way of referring to a non-national ('foreigner' or 'alien') and most legislations do not have a specific term for an 'undocumented migrant'. The offices, officials and institutions that work with migrants have very different names, even though the emphasis in some countries, semantically, seems to lie more on 'foreigner', 'alien', or 'migration', while other countries have put more emphasis on 'police' and 'border'. Finally, many Member States have indicated to have advisory bodies on migration that not only include labour-oriented bodies, but also expert committees or special bodies that serve as an extra safeguard for vulnerable groups.

## MAIN FINDINGS

### *Names of the national laws on asylum and migration*

What are the names of the major national laws on asylum and migration in your Member State?

- ★ **BE, FR, HU, LT, NL and SE** indicated to have **one major national law**: 'Law on the Legal Status of Aliens' (**LT**), 'Aliens Act' (**NL and SE**), 'Law regarding the entry, residence, settlement and removal of aliens' (**BE**) and 'Code on Entry and Residence of Foreign Nationals and the Right of Asylum' (**FR**). **HU**'s legislation is called 'Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals 114/2007', which is implemented by several Government Decrees.
- ★ On the other hand, **CZ, CY, LV, MT and PT** indicated to have **two major laws**: one called 'migration' or 'alien' law or act and the other one called 'refugee'/'asylum'/'international protection' law or act.
- ★ **BG, EE, ES, HR, IT and PL** also refer to **different legal instruments**, but seem to categorise these legal instruments in a different way. More specifically, these Member States seem to have a legal instrument for (i) asylum/international protection law, (ii) migration law and (iii) EU citizens' law. Several countries also categorise their legal instruments, but seemingly in a slightly different way. **IT**, for example, implemented several **EU asylum and migration acquis instruments** in separate national legal instruments, regarding for instance the protection of unaccompanied foreign minors.
- ★ A fourth, heterogeneous, group of Member States (**AT, DE, LU, SI and SK**) refer to **several legal instruments** that regulate the domain of migration and/or asylum in their country, even though they have different names for them. The legislation that these Member States refer to, include a 'Residence Act' (**DE**), an 'Asylum Act 2005' (asylum) as well as a 'Settlement and Residence Act' and 'Aliens Police Act' (migration - **AT**), 'Reception law' (**LU**), and 'State Border Control' and 'Temporary Protection of Displaced Persons' Act (**SI**).
- ★ **FI** constitutes a **sui generis category**: it has one main 'Aliens Act', thus could pertain to the first-mentioned category, but on the other hand also takes on a more 'category-based approach' with legislative instruments such as, but not limited to: 'Act on the Reception of Persons Applying for International Protection and Assistance to Victims of Trafficking in Human Beings' and 'Act on the Treatment of Aliens Placed in Detention and Detention Units'. **FI** further indicated that it envisaged merging and revising their asylum and migration legislation in the future.

### *Codification*

- ★ Only two countries indicated that they had **merged their national laws into a (single) Code (AT and FR)**. **AT** codified the 'Asylum Act 2005', 'Aliens Police Act 2005' and 'Settlement and Residence Act'. Finally, **FR** recently codified its asylum and migration legislation into one Code: 'Code on Entry and Residence of Foreign nationals and the Right of Asylum' (CESEDA). **DE** indicated to have two important laws/codes: the 'Asylum Act' and 'Residence Act'.
- ★ **LT**'s 'Law on the Legal Status of Aliens' provides for a **sui generis kind of codification**, as codification is rare in LT, but the Law nonetheless integrates international and EU law and is amended regularly to incorporate new provisions or to remove ineffective ones.

### *Structure of main national laws*

See annexes.

### *Denomination of (a) non-nationals and (b) undocumented migrants*

- ★ **All Member States** use the term 'alien', 'foreigner', 'foreign national' or 'foreign citizen'.
- ★ **AT, BE, BG, EE, ES, FI, HR, HU, LU, NL, SE and SK** do not have a word for an 'undocumented migrant' in their legislation. **BE** does define 'illegal stay', similarly to **LU**, which only defines 'irregular stay' and **SK**, which defines 'unauthorised residence' as "a stay of a foreigner in the [...] territory in violation of an act, a special regulation or an international treaty".
- ★ **IT**'s legislation refers to 'undocumented migrant'.
- ★ Other countries use terms similar to 'undocumented migrant': 'migrants without travel documents' or 'irregular migrants' (**CY**), 'migrants in an irregular situation' (**ES**), 'foreign national in an irregular situation' (**FR**), 'foreigner staying illegally' (**LT, LV**), 'prohibited migrant' (**MT**), 'illegally staying TCN' and 'TCN in an irregular situation' (**PT**), 'illegally staying migrant' (**SI**). **LT** makes the difference between a 'foreigner who entered illegally' and a 'foreigner who stayed illegally'. Finally, **PL** uses 'migrant with an irregular status' or 'illegally staying third country national' in official texts, even though **PL**'s legislation does not define them.
- ★ **DE** does not have a legal term or definition but most commonly uses 'migrant without identification documents/papers' or 'undocumented migrants'.

## Official names of asylum and migration bodies

### a) the national immigration office(s) responsible for the entry, stay and/or return of non-nationals

- ★ Like **BE** ('Aliens Office'), many countries' immigration offices' names refer to '**aliens**', '**foreigners**' or '**migration**': **CY** ('Civil Registry and Migration Department'), **DE** ('Foreigners Office'), **FI** ('Immigration Service'), **MT** ('Office of the Principal Immigration Officer'), **PL** ('Office for Foreigners') and **SE** ('Migration Agency'). **CZ**'s Department for Asylum and Migration Policy is part of the Ministry of Interior, while in **SI** the Ministry of Interior is listed as responsible.
- ★ Another group of Member States refer to **police, public security** and/or **borders**: **EE** ('Police and Border Guard Board'), **IT** ('Police Headquarters and Offices'), **PT** ('Immigration and Borders Service') and **SK** ('Bureau of Border and Foreign Police of the Presidium of the Police Force').
- ★ In the case of **BG** ('Migration Directorate' and 'Border Police Chief Directorate'), **ES** ('Offices of Aliens' and 'General Directorate of Police') and **LT** ('Migration Department' and 'State Border Guard Service') the names of one of the two indicated competent offices refer to **border, police and/or protection**, while the other one refers to **migration**. **ES** added that the 'Ministry of Interior' is competent for the management of forced returns and the Spanish consulates for the management of visa.
- ★ Other Member States split up the competence for '**entry**', '**stay**' and/or '**return**': **AT** ('Officials of the Public Security Service', Governor of the province, 'Federal Office for Immigration and Asylum'), **HR** ('Border Police Directorate and 'Directorate for Immigration, Citizenship and Administrative Affairs'), **HU** ('National Directorate-General for Aliens Policing', Hungarian Police (implementation of returns), Asylum authority), **LV** ('State Border Guard' and the 'Office of Citizenship and Migration Affairs') and **NL** ('Immigration and Naturalisation Service', 'Repatriation and Departure Service' and 'Central Agency for the Reception of Asylum Seekers').
- ★ **LU**'s 'Directorate of Immigration, Foreigners Department and Return Department' is a component of the Ministry of Foreign and European Affairs.
- ★ Finally, **FR**'s system seems to decentralize these competences, with (i) **consulates** competent for the delivery of visa, (ii) the **French Office for Immigration and Integration** (OFII) competent for the

validation of the long-stay visa once arrived in France and the **Prefectures** competent for the issuance/renewal of the residence permit and for the refusal of residence permit and the decision to return

### b) the office(s) responsible for the examination of applications for international protection

- ★ **CZ, FI, LT, LV, PL, PT** and **SE** list **at least one of the institutions responsible under (a) as being responsible under (b)**. **EE** specifies that a subsection of the institution responsible for (a) is responsible for (b): the Police and Border Guard Board's 'North Prefecture/ Intelligence Bureau/ Citizenship and International Protection Service'.
- ★ In **CZ, LT, SI** ('International Protection Procedures Division') and **SK** ('Migration Office') this office is explicitly said to be part of the **Ministry of Interior**. In **BG** the responsible offices are the 'State Agency for Refugees' with 'the Council of Ministers'.
- ★ Most Member States use similar names, which refer to '**(im)migration**', '**refuge(e)**' and/or '**asylum**' or '**international protection**': **AT** ('Federal Office for Immigration and Asylum'), **CY** ('Asylum service'), **DE** ('Office for Migration and Refugees'), **ES** ('Office of Asylum and Refuge'), **HR** ('Service for International Protection'), **LU** ('Refugee Department'), **MT** ('International Protection Agency') and **NL** ('Immigration and Naturalisation Service'). **HU** lists the 'Asylum Authority' as being responsible for asylum applications, even though it depends on the 'National Directorate-General for Aliens Policing', which is responsible for the examination of applications for international protection.
- ★ **IT** seems to have a **sui generis system**: **IT** splits its offices up administrative-geographically ('National Commission' and 'Territorial Commissions').
- ★ Finally, **BE** ('Office of the Commissioner General for Refugees and Stateless Persons') and **FR** ('Office for the Protection of Refugees and Stateless Persons') not only refer to Refugees, but also to Stateless Persons.

### c) the (administrative and/or judicial) appeal instance(s) in migration procedures

- ★ Many Member States indicate that migration and/or asylum procedures fall under the jurisdiction of the **administrative tribunal** (**AT, BG, CY, DE, EE, FI, HR, LT, LU, LV, PL, PT** and **SI**), albeit in **CY** this is limited to cases regarding residence permits, while in **PL** the District Court is competent for detention appeals and in **SI** the Ministry of the Interior, 'Migration Directorate', has certain appeal

competences. The decisions by these tribunals can then be appealed before a Supreme Administrative Court (as indicated by **BG, CY, DE, LT, PL** and **SI**), Administrative Court (**LU**) or – under some circumstances - Constitutional Court (**DE**).

- ★ In **ES** decisions on aliens are subject to administrative appeals, in accordance with the Spanish legislation on Administrative Procedures. In judicial proceedings, appeals must be lodged with the courts of contentious-administrative jurisdiction. In **NL** it is indicated that appeals go to the Aliens section of a court, while the subsequent appeal is treated by the Council of State. Finally, in **IT** the special 'migration' section of the 'ordinary' tribunal has jurisdiction and appeals against its decisions go to the Court of Cassation.
- ★ **BE** (Council for Alien Law Litigation), **CY** (International Protection Administrative Court), **FR** (National Court for Right of Asylum), **MT** (Immigration Appeals Board) and **SE** (Migration Court) have **specialised instances**.
- ★ **CZ** and **SK** have a **special (administrative) appeal procedure** for residence-related questions, for which the 'Unit of Foreign Police of the Police Force' and 'Directorate of the Border and Foreign Police' (**SK**) and the 'Commission for Decision-Making in Foreign Affairs' (**CZ**) are competent. In other matters, the Regional Court and Supreme (Administrative) Court have jurisdiction.
- ★ In **PL** the **administrative appeal is split** between two institutions depending on the migrant's status: the 'Office for Foreigners' is competent for appeals in cases of legal migration and the 'Refugee Council' in cases of refugees.
- ★ In **FR**, (i) the foreign national can lodge a legal appeal against the detention order with the judge on liberties and detention. The (ii) Administrative Court remains competent for controlling the legality of the detention order and for appeals against refusal of residence permits.
- ★ Finally, in **HU** a legal remedy is available for all the **decisions** taken by the 'Aliens Policing Authority', excluding the ones the law lists. The first instance 'Aliens Policing Authority' submits the appeal that it received to the second instance authority, unless it corrects, supplements, amends or withdraws the contested decision in accordance with the appeal, or rejects the appeal without examining the merits, or if the appeal was withdrawn, before it was submitted. In **migration procedures** it is possible to appeal a decision made by the migration authorities. In case of

decisions on **detention or the implementation of a removal decision**, the person concerned can 'object' before a single judge at the district court of the place of detention. The decision on **refusing an application** can only be appealed in an administrative litigation process (at first instance at the tribunals or the Curia), with an additional appeal level at the Curia.

#### d) detention facilities?

- ★ '**Detention**' is the key word in the detention facilities of **CY** ('Area for Detention of Prohibited Immigrants'), **DE** ('Detention facilities'), **FI** ('Detention unit'), **FR** ('Administrative detention center' (CRA) and 'Administrative detention unit' (LRA)), **LU** ('Luxembourg Detention Center') and **SE** ('detention' or 'detention units'), while **HU** refers to 'facilities for implementing detention and guarded accommodation' and **NL** to 'Custodial Institutions Agency'. **AT** ('Police Detention Center') and **SK** ('Police Detention Centre for Foreigners') refer to both 'police' and 'detention'.
- ★ Other countries' answers refer to the **border**: **LT** ('Foreigners Registration Centre of the State Border Guard Service'), **LV** ('State Border Guard Temporary Holding Room or Accommodation Centre') and **PT** ('Immigration and Borders Service'). In **EE**, the detention facility is called 'Detention Center', which falls under a separate unit within the Police and Border Guard organization.
- ★ Finally, some countries seem to put the emphasis on '**foreigners**', '**aliens**' or '**refugees**': **BG** ('Special Homes for Temporary Accommodation of Foreigners'), **CZ** ('Refugee Facilities Administration'), **ES** ('Aliens Internement Center'), **HR** ('Reception Centers for Foreigners') and **SI** ('Aliens Center').
- ★ Finally, **IT** makes reference to '**return**'.

#### Advisory boards

- ★ **15 Member States** indicated to have advisory bodies or committees for policy advice and/or decisions on residence or removal.
- ★ **DE, ES, FI, NL** and **SK** have expert bodies that **support/coordinate asylum and/or migration policy-making and give advice on particular topics**. **DE** has a 'Commissioner for Migration, Refugees and Integration' and an 'Expert Forum on Asylum and Migration', while the **NL** also has an 'Advisory Committee on Migration Affairs' and **ES**'s institutional landscape includes several 'Inter-Ministerial Commissions' competent for policy advice on asylum and migration related matters. **SK** has a Steering Board for Migration and Integration of Foreigners (SB MIF) and Inter-Ministerial Expert Commission for Labour Migration and Integration of Foreigners (MEKOMIC).

policy of an EMN NCPs' Member State. The responses are interpreted by EMN Belgium to write this summary.

- ★ **AT, EE, FI, HR** and **LU** indicated to have advisory bodies related to **labour migration**. **AT, HR** (employment), **EE** (start-ups), and **LU** (salaried and independent workers) indicated to have bodies that are involved in the decision-making process on individual applications, while **FI** indicated to have institutionalised the advice on **labour migration policy by labour market organisations**. Additionally, an Advisory Board supervises the **terms of employment of foreign workers**.
- ★ **AT, DE, HR, LT** and **LU** created advisory group for **'vulnerable' categories**, such as a 'hardship commission' in **DE** and an 'advisory commission for people requiring emergency care' in **LT**. **AT, HR, LT** and **LU** created specific mechanisms for minors such as a 'Child Welfare Commission' (**AT**), an intergovernmental committee for the oversight of all UAM-related procedures (**HR**) and an advisory body for UAM in the context of return (**LU**).
- ★ In **LT** (by NGO's and IO's) and **LV** (by the Ombudsman) the explicit monitoring or observance of the removal/return process is permitted.
- ★ In **FR** the 'Residence Permit Commission' is consulted for the withdrawal of certain Residence Permits.
- ★ **CY** indicated that UNHCR could sometimes be consulted and called as an observer for asylum interviews and as a consultant to the competent Asylum Service. Finally, **HU** makes use of an 'authority' that issues expert opinions in asylum procedures at the aliens policing authority. These opinions can be appealed at the same time as a decision. Similarly, in **LT**, the Migration Department may invite external experts or specialists if it is necessary for the review of applications for asylum.

**EMN NCPs PARTICIPATING** Responses from Austria (AT), Belgium (BE), Bulgaria (BG) Croatia (HR), Cyprus (CY), Czech Republic (CZ), Estonia (EE), Spain (ES), Finland (FI) France (FR), Germany (DE), Hungary (HU), Italy (IT), Latvia (LV), Lithuania (LT), Luxembourg (LU), Malta (MT), Netherlands (NL), Poland (PL), Portugal (PT), Slovakia (SK), Slovenia (SI), Sweden (SE), 23 in total.

**DISCLAIMER** The responses of the Member States regarding this ad-hoc query have been provided primarily for the purpose of information exchange among the EMN National Contact Points (NCPs) in the framework of the EMN. The contributing EMN NCPs have provided information that is to the best of their knowledge up-to-date, objective and reliable. However, the information provided in the present summary is produced under the exclusive responsibility of EMN Belgium and does not necessarily represent the official