



European Migration Network

Belgian Contact Point

Annual Policy Report 2009

Policy report regarding asylum and migration

Belgium

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The EMN Annual Policy Reports are aimed at reflecting the main political developments in the area of migration and asylum at Member State level. It will be the task of the (European) Synthesis Report to compare the findings in order to identify trends and monitor the political developments in the field of migration and asylum in a comparative perspective.

More information about the EMN will be available on:

<http://emn.sarenet.es/html/index.html>

The Belgian National Contact Point (NCP) is financed both by the Belgian Government and the European Commission. The Belgian NCP consists of four partners: the Immigration Office (as part of the Ministry of Interior), the Office of the Commissioner General on Refugees and Stateless Persons (CGRS), the Directorate-General Statistics and Economic Information (DG SEI) and the Centre for Equal Opportunities and Opposition to Racism (CEOOR). It can be contacted by e-mail (Benedikt.Vulsteke@dofi.fgov.be; Geert.Beirnaert@ibz.fgov.be; Severine.Depotter@cntr.be or Nicolas.Perrin@economie.fgov.be), by phone +32 (0)2 793.92.30 or by letter (address: Belgian Contact Point EMN, Dienst Vreemdelingenzaken, WTC II, Antwerpsesteenweg 59 B, 1000 Brussels).

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EXECUTIVE SUMMARY

This report – Belgian Policy Report on Asylum and Migration 2009 – gives an overview of developments and changes that have taken place in Belgium in the field of migration and asylum in the reference year. Every National Contact Point for the EMN provides for a national contribution. These national contributions will be clustered and compared in a European synthesis report. The 2009 Policy Report is the 6th Policy analysis report on migration and asylum that was drafted by the Belgian national contact point. With the signature of the European Pact on Immigration and Asylum, the structure of the 2009 report has been slightly modified to highlight developments relevant to the EU Pact on Immigration and Asylum. The national reports will be used by the European Commission for the tracking method (or “méthode de suivi”) of the Pact; the results of which will be presented to the European Council each year.

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

Migration and Asylum issues remained high on the political and media agenda in the whole course of 2009. Two issues in particular stood on the forefront of the public’s attention: the determination and further implementation of regularisation criteria; and the crisis of the reception capacity for asylum seekers. An agreement on the regularisation criteria between the coalition partners in power was only possible after the regional elections of June 7, 2009, which led to a re-shuffling of the ministerial mandates within the federal government, and after which the then Prime Minister committed himself to reach an agreement on Migration and Asylum rapidly. Since July 2009, the Prime Minister is in charge of the coordination of the Belgian Migration and Asylum Policy, whereas the operational competences with regard to migration and asylum are spread over 2 federal Secretaries of States and 2 supervising federal Ministers.

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

In addition to a strong increase in the number of asylum applications in 2009, other (provisory) indicators show that the number of migration applications either stayed stable in 2009, or slightly increased. A notable exception to that trend is the number of new labour migrants in 2009, which has clearly and seriously dropped. Unemployment figures for 2009 also show evidence of a strong impact of the crisis on some foreign workers and workers of foreign origin.

Besides the agreement on regularisation criteria of July 2009, the federal government also achieved important progress in October 2009, in agreeing on other packages of reforms with regard to migration and asylum: better tackling marriages of convenience; introduction of an income condition for family reunification with third-country nationals; reform of the Belgian Code of Nationality that will strengthen the rules to acquire the Belgian nationality and claim naturalisation.

Further widely discussed and debated issues are, like in the previous years, integration of foreign nationals and return policy. As to integration, while the issue is permanently discussed through media reports and public forums (headscarf issue, etc.), the Belgian institutions (Communities and Regions) in charge of integration of foreigners seem more and more inclined to consider integration policy as an important issue that needs new initiatives and reinforcement of existing measures. As to return policy,

detention centres, the living conditions in detention centres and the presence of children in those centres remain controversial issues. With regard to the issue of children in detention centres, the pilot project that started in 2008 has proven to be conclusive. After encouraging first results, the alternative of hosting illegally staying families in private housing units instead of detention centres will be extended to all families, with very few exceptions

Finally, Belgium strongly supports a Common European Asylum System. Therefore, in 2009, Belgium participated in the efforts of EU MS to resettle refugees from Iraq, and also actively supported pilot projects such as the Temporary Desk on Iraq.

Some asylum and migration figures (trends)

	2009	2008	2007	Diff. 2009-08
First asylum applications (January - December)	12.970	8.921	8.315	45,4
First and multiple asylum applications (January - December)	17.186	12.252	11.115	40,3
Issued long-term visa to non-EU citizens (January - September)				
Renumerated activities	2.181	3.119	2.613	-30,1
Other reasons	17.659	17.151	14.740	3,0
Forced removals (January - December)	3.443	3.644	4.311	-5,5
Voluntary returns (January - December)	2.659	2.669	2.593	0,0

1. General Structure of Political and Legal System in Belgium

1.1. General structure of the political system and institutional context

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

The **Federal State** retains powers in several areas, including foreign policy, national defence, justice, finance, social security and the bulk of public health and home affairs. Migration and asylum policies are federal competences. The language-based **Communities** are responsible for culture and issues directly related to individuals and their language, such as aid to people, health and education, integration of foreigners and emancipation of ethno-cultural minorities,¹ whereas the territory-oriented **Regions** are responsible for ‘territorial’ issues, such as farming, water policy, housing, public works, energy, transport, environment, land planning and town planning, rural development, nature conservation, economy & labour market management, the supervision of the provinces, municipalities and associations of local authorities and the issuance of work permit to foreigners.

Since July 2009, entry, residence, establishment and removal of foreign nationals are the responsibility of the federal Secretary of State for Migration and Asylum Policies and of the Director-General of the **Immigration Department** (ID). The latter administration is also in charge of applying the Dublin II Regulation and manages the asylum applicants' residence requirements throughout the asylum procedure. However, the **Office of the Commissioner General for Refugees and Stateless Persons** (CGRS), an independent body, has become more than ever the key-player in processing asylum applications, as a result of a legal reform in 2006. The federal Secretary of State for Migration and Asylum Policies acts under the supervision of the federal Minister of Employment and Equal Opportunities. The whole of Migration and Asylum Policies (which include reception of asylum seekers, cf. further) is coordinated by the Prime Minister at the level of the federal government.

Since 2006, the **Aliens Litigation Council** (ALC) has acted as an appeal court competent to hear appeals against decisions of the asylum agencies with regard to the granting of protection status, and against decisions of the Immigration Department (e.g. decisions on visas, residence permits, etc.).

Fedasil, an agency under the supervision of the federal Secretary of State of Social Integration, is the institution in charge of the reception of asylum seekers in Belgium. The federal Secretary of State of Social Integration acts under the supervision of the federal Minister of Public Health.

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

¹ The repartition of fields of competences is in reality far more complex since some competences have been transferred from one entity to another (e.g. integration was transferred from the French Community to the Walloon Region in Wallonia and to the COCOF in the Brussels-Capital Region).

1.2. General structure of the legal system in the area of asylum and migration

For the general structure of the legal system, we largely refer to the EMN study “Organisation of Asylum and Migration Policies,” which provides concise yet comprehensive general information.

The most relevant law regarding migration and asylum issues in Belgium is the **Law of 15 December 1980** on entry, stay, settlement and removal of foreign nationals² (further ‘Aliens Act’) which has been modified many times since its adoption. The latest major modifications took place in 2006, by the Law of 15 July 2006 and the Law of 25 April 2007. The law of 15 December 1980 also governs the asylum procedure and the competencies of the asylum institutions. The **Royal Decree of 8 October 1981** pertaining to entry, stay, settlement and removal of foreign nationals implements the law of 15 December 1980. It has recently been modified by the Royal Decree of 27 April 2007. In addition, many directives or internal regulations have been adopted by the administration for the implementation and the interpretation of the Aliens Act and of the Royal Decree of 1981. Other implementing decrees and circular letters organize other matters related to migration law, such as transporters’ sanctions, unaccompanied minors, victims of human trafficking, etc. Foreigners’ access to work is regulated by the **Law of 30 April 1999** and its implementation decree of 9 June 1999. Belgium is also a signatory party to the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Additional Protocol, as well as to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the 1954 Convention Relating to the Status of Stateless Persons and the United Nations Children’s Rights Convention.

The **Aliens Litigation Council**³ (ALC) is an administrative court responsible for individuals-related decisions made in application of the 1980 Aliens Act (administrative decisions related to the stay of foreigners and asylum-seekers). **In the field of asylum**, the ALC is the competent instance to confirm or reform the decisions of the CGRS. Lodging an appeal with the ALC will suspend the execution of the contested decision. That is why the asylum seeker cannot be removed before the Aliens Litigation Council has ruled over his/her case. **In non-asylum issues**, the ALC has more limited competences as it can only annul decisions of the Immigration Department (order to leave the territory, decisions of detention, refusal of family reunification, etc.) because of violation of the rules of procedure. The **Council of State**⁴ (CoS) can intervene in the last resort (cassation) against decisions of the ALC. Appeals before the Council of State have no suspensive effect. The law provides the Council of State with a screening procedure (leave to appeal) to stop dilatory annulment appeals aimed only at extending procedural time limits. In case the migrant/asylum-seeker is administratively detained, an appeal can be lodged with the **Tribunal of First Instance** and with the **Court of Appeal**, so that the judicial instance can order the immediate release of the detained foreign national, if needed. The **Court of Cassation** (*Hof van Cassatie/Cour de Cassation*) and the **Constitutional Court** are frequently called to rule in cases related to foreign nationals, e.g. cases of breach of the constitutional principle of equality of treatment.

² a consolidated version of this law can be found on the website of the Immigration Department : www.dofi.fgov.be/nl/1024/frame.htm

³ Raad voor Vreemdelingenbetwisting/ Conseil du Contentieux des Etrangers, www.rvv-ccce.be

⁴ www.raadvst-consetat.be

2. Political, Policy and legislative, and Institutional developments

2.1 General political developments

Together with the 2009 EU elections, regional elections took place on June 7, 2009. Due to the appointment of federal Ministers in regional governments, the federal government was reshuffled following the regional elections; and by mid-July the composition of the present federal government was made public.⁵ Former Minister of Migration and Asylum Policy, Annemie Turtelboom (Open-Vld), was appointed Minister of the Interior. The Secretary of State⁶ in charge of Family Policy, of the Federal Cultural Institutions and of the Budget, Melchior Wathelet (Cdh) is also competent for Migration and Asylum Policy, under the supervision of the Minister of Employment, Equal Opportunities and Migration and Asylum Policy, Joëlle Milquet (Cdh). The Prime Minister Herman Van Rompuy (CD&V) is responsible for policy aspects related to the co-ordination of the Migration and Asylum Policy. A new Secretary of State in charge of Social Integration and the Combat against Poverty was also appointed (Philippe Courard, PS), as a Deputy Minister to the Minister of Public Health and Social Integration, Laurette Onkelinx (PS). At regional level, the new Minister of Civic Integration in Flanders is Geert Bourgeois (NV-A); and in Wallonia, the regional Minister of Health, Social Action and Equal Opportunities, Eliane Tilieux, will be responsible for the Regional Integration Centres. In the French Community, Fadila Laanan is the new Minister for Equal Opportunities.

In late November 2009, the Prime Minister Herman Van Rompuy was appointed President of the EU Council, and replaced at the head of the federal government by Yves Leterme (CD&V). The two other Ministers and Secretaries of States dealing with migration remained unchanged.

2.2 General overview of the main policy and/or legislative debates

As in 2007 and in 2008, 2009 was marked by the debate on regularisation of irregular migrants for economic or humanitarian reasons. In the first semester of 2009, protest marches, hunger strikes and actions by activists supporting migrants followed one another. From July 2009, when the instruction to regularise migrants on the basis of a series of listed 'urgent humanitarian situations' was issued, discussions focused on the cost of regularised migrants for the Public Centers for Social Aid of large cities.⁷

As outlined above, the issue of regularisation of undocumented migrants for humanitarian reasons was settled by July 2009, through an agreement between the government's coalition partners. The consequences of the regularisation instructions of 19 July 2009 for the Belgian society, and for its Social Welfare System in particular, were heavily debated, besides the eventuality of fraudulent practices related to two temporary regularisation measures. In this public debate, opponents of the measures resorted mainly to social cohesion related arguments and economic arguments (pressure on the social welfare system, be it only temporary) while supporters resorted to humanitarian arguments as well as economic arguments (positive impact of migration on the size of the active population, contribution to the economy and to the social security of consuming and (self)-employed legalised

⁵ Cf. Moniteur Belge / Belgisch Staatsblad / Belgian Official Journal (2009) 17 juillet 2009. Arrêté royal. Gouvernement. Démissions. Nominations. Modifications / 17 juli 2009 Koninklijk Besluit. Regering. Ontslagen. Benoemingen. Wijzigingen, available at: <http://www.staatsbladclip.be/moniteur/lois/2009/07/17/loi-2009021076.html> (FR) / <http://www.staatsbladclip.be/staatsblad/wetten/2009/07/17/wet-2009021076.html> (NL)

⁶ In Belgium, 'Secretary of State' is the title given to deputy ministers.

⁷ Regularised migrants are entitled to welfare benefits from the moment they obtain a legal residence permit.

migrants).⁸ Another input in a wider public debate on the overall costs and benefits of migration was given by the President of political party Lijst Dedecker, with his book on migration, titled ‘Hoofddoek of blinddoek’ and published in October 2009.

The second heavily debated issue in 2009 was the so-called ‘crisis of the reception capacity of asylum seekers’: due to lack of available beds in open reception centers and local reception initiatives, emergency solutions were to be found, e.g. asylum seekers had to be accommodated in vacant public building, emergency shelters for people in need and hotel rooms. By October 2009, some people could not even be allocated a bed at all. The source of the problem consists in a combination of factors: an increase in the number of asylum seekers in 2009, high numbers of multiple asylum claims, difficulties to find affordable housing for recognized refugees and regularised asylum seekers accommodated in the reception centers, and high numbers of vulnerable residents who are not asylum seekers but who legally have the right to be accommodated in reception centers for asylum seekers (unaccompanied minors who do not claim asylum, irregular families with children without any means of subsistence, etc.). Fedasil and some Public Centers for Social Aid were condemned by the Labour Tribunal several times because they were found in breach of fulfilling their legal missions in individual cases. The federal government decided to give extra-funding to the reception of asylum seekers in 2009 and in 2010 in order to address the problem in a sustainable way (building of new facilities). In November 2009, the Secretary of State for Social Integration announced that several empty buildings owned by the federal authorities were to be equipped to accommodate asylum seekers, as an emergency solution to the saturation of the existing reception centres.

The third debate, even though less mediatised, relates to detention centers for illegal migrants. Several well-documented official reports (report of the ‘federal ombudsman’ and report of the Council of Europe Commissioner for Human Rights, cf. section 3.12.2) denounced a number of issues related to detention conditions in closed centers. Following a judgment of the Council of State on December 10, 2008, the Belgian government adapted the legislation on closed centers through two new Royal Decrees pertaining to the organisation of detention centers for irregular migrants.

By September 2009, two issues with regard to asylum and migration remained on the forefront of the political agenda: the saturation of the network of federal reception centers and the implementation of the set of reforms that were inscribed in the program of the government’s coalition of March 2008. The government’s declaration of March 2008 announced the main themes of the Belgian Asylum and Migration Policy, which were inspired by the EU Pact on Immigration and Asylum. Agreements between coalition partners were to be found on the following issues: marriages of convenience, family reunification and legislation change on naturalisation.

On 13 October, the Prime Minister presented the government’s declaration pertaining to its general policy orientation to the federal Parliament.⁹ As regards asylum, the Prime Minister confirmed that measures had to be taken to tackle the crisis in the reception centers, to improve the reception conditions of asylum seekers and at the same time to combat fraudulent practices and unjustified multiple asylum claims. The Prime Minister also confirmed that the recent agreement between coalition partners on regularisation issues was part of a broader set of reforms that will be implemented by the government during its term: 1) the conditions for acquiring the Belgian nationality¹⁰ and for applying for naturalisation will be modified; and loss of nationality will be

⁸ Cf. academic paper of economists from UCL university (<http://www.uclouvain.be/283373.html>); or the 2009 Human Development report of the PNUD (<http://un.op.org/node/2816>).

⁹ <http://www.premier.be/files/Déclarationgouvernementale.pdf>

¹⁰ A residence permit of unlimited duration and evidence that the foreigner has bonds with Belgium will be required to acquire the Belgian nationality. As regards naturalisation, the procedure before the Chamber of Representatives will also be adapted: the foreigner shall have a residence permit of unlimited duration, five years of effective permanent legal residence in the country (instead of three), knowledge of one of the three national official languages and shall show evidence of his/her active participation to the local community (at the level of the municipalities).

possible in case of serious crimes (sentence of at least five years imprisonment) 2) a condition of income will be introduced for family reunification¹¹ and a commitment to integrate in the host society could be required from the sponsored family member; 3) the combat against marriages of convenience will be intensified, through the creation of a federal database that will have to comply with strict privacy rules¹² and through the inscription in the Aliens Act of the concept of “legally registered partnership of convenience.”¹³

On 5.11.2009, the Secretary of State for Migration and Asylum Policy presented his General Policy Note¹⁴ to the federal Parliament. In this note, in addition to the set of reforms mentioned above, the Secretary of State for Migration and Asylum Policy stressed that 1) personnel is being recruited to guarantee a rapid treatment of all applications and appeals; 2) assisted voluntary return is a priority of the government; 3) solutions to improve the detention conditions in closed centers and alternatives to the detention of families are being sought; 4) mechanisms to grant a residence status to Stateless Persons are being examined.

Following the appointment of Herman Van Rompuy at a high-level position in the EU institutions in late November 2009, the new Prime Minister Yves Leterme took office on 25.11.2009. In his governmental declaration of 25.11.2009,¹⁵ Yves Leterme summarized the priorities of the federal government for the months to come in the field of asylum and migration: 1) successfully bring the regularisation operation to its end; 2) legislative work to modify the law on nationality, family reunification and marriages of convenience; 3) enlarge the capacity of the Belgian reception system in order to solve the problem of saturation of the reception centres.

¹¹ The sponsor shall show evidence that his/her income amounts to the level of social welfare benefits to which a head of family living with one family member is entitled (about 967 €). Employment income as well as unemployment benefits amongst others will be taken into account.

¹² As a standard rule, personal data will be kept for 3 years. The aldermen will have access to the database to verify what the history of the foreigner is with regards to civil unions in Belgium.

¹³ <http://www.premier.be/fr/nieuws/regroupement-familial-lutte-contre-les-mariages-de-complaisance-1%C3%A9gislation-sur-la-nationalit>

¹⁴ Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie- en Asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d’Asile. Doc 52 2225/09 (2009/2010).

¹⁵ Cf. <http://www.yvesleterme.be/sites/leterme/files/DéclarationgouvernementaleNF.pdf> (FR) / http://www.yvesleterme.be/sites/leterme/files/DéclarationgouvernementaleNF_0.pdf (NL)

3. Specific Developments in Asylum and Migration

3.1 Control and monitoring of immigration

3.1.1. European Pact on Immigration and Asylum

II(c) ensure that risks of irregular migration are prevented

SIS II – adaptation of the Belgian legislation

As the Regulation 187/2006 of 20.12.2006 on SIS II will not be operational by July 2010, Belgium will adapt its legislation in order to comply with its international obligations. A proposition of bill modifying the Aliens Act will be elaborated in order to give a legal ground to the introduction of individual data on third-country nationals, who are the subject of a restrictive measure, for the purpose of entry refusal or refusal of issuing a residence permit.

II(h) an Expulsion Decision taken by one Member State (MS) should be applicable throughout the EU and entered into the SIS/ implementation of Directive 2001/40/EC

III(a) more effective control of the external land, sea and air borders:

Initiatives co-financed by the EU External borders Fund

At national level, the ID is responsible for the management of the EU External Borders Fund, whereas the annual program is established in collaboration with the Federal Public Service Foreign Affairs, the federal police and the FPS Home Affairs. Most projects are implemented by one of those partners. Current objectives of the national programme include: better coordination of information exchange (at national and EU level); better controls at border crossing points and better control of cross-border traffic; better equipment for common actions coordinated by Frontex (sea borders); intensification of the fight against abusive visa applications and pseudo-legal migration; accelerated visa issuance to bona fide travellers; benefit from scale effect in the processing and issuing of visas (consular cooperation); set up of the VIS; training, exchange of best practices and lessons learned.

III(b) generalise the issue of biometric visas, improve cooperation between MSs' consulates and set up joint consular services for visas:

VIS and VISA Code

As regards short stays (max. 90 days), Belgium fully supports an EU integrated policy and participates in the initiatives towards a common visa policy and the integration of the Schengen acquis. The European Regulation pertaining to the Visa Information System (VIS) was approved by all MS in June 2008. The implementation of the VIS is foreseen for 2010. It will be first implemented in North Africa before being extended to all other third-countries (Middle-East and Gulf countries in priority). The VIS will be an important issue for the Belgian Presidency of the EU. The proposition of Regulation modifying the Commons Consular Instructions in order to introduce biometric data and to adapt provisions for receiving and processing visa applications was also approved. Belgium initially supported the Council's proposition to take fingerprints of children younger than 12, although this eventually did not pass through the EU decision making process. These provisions will be evaluated within two years, and could possibly be revised. The VIS will be an important instrument to fight

illegal immigration and facilitate control of legal entries/exits in Belgium. Visa-shopping, exchange or abuses of identities will be in principle impossible under the new VIS system. In addition, the EU Regulation pertaining to the establishment of a Community code on Visas was adopted in 2009. The Visa code integrates in one common legal instrument the Schengen acquis and therefore impacts on the legal instruments already in place for taking decisions on visa applications. The fight against fraudulent visa applications is a priority for Belgium. The Belgian legislation pertaining to entry and short stays of foreigners will be adapted in order to allow the registration of biometric data (picture and fingerprints) and to organise the reception and treatment of visa application according to EU common rules. Biometric data, i.e. fingerprints and ID photograph, will be used in the first place to establish or verify the identity of a foreigner. Belgium will go beyond the EU regulations and will also register a 'live-picture' on the spot. An Action Plan is currently being elaborated. The implementation of the Visa code is planned for 05.04.2010. Where the EU Regulation is not directly enforceable, the Belgian legislation will be adapted in accordance with the EU rules and practices.¹⁶ Pending the coming into force of the VIS, and in the perspective of being fully operational when the VIS will be officially launched, Belgium has started the registration of biometric data at some of its consular posts abroad. The development of the system will comply with the introduction in phases decided at EU level. The posts in North Africa will be equipped first (2009), followed by posts located in the Middle East and the Gulf countries (first semester of 2010).

III(d) solidarity with MS subjected to disproportionate influxes of immigrants

III(e) deploy modern technological means for border control:

III(f) intensify cooperation with the countries of origin and of transit in order to strengthen border control

EU twinning project with Bulgaria

The ID has been selected as the best candidate for an EU Twinning project in Bulgaria. The ID will assist the Bulgarian Immigration Services during several years in the following fields: the implementation of the Admission and procedures directive, return practices and interception practices. From June 2009, a civil servant of the ID has been working in Sofia as "Resident Twinning Advisor." Other ID personnel will perform short missions in Bulgaria (organisation of seminars, help for interceptions and special flights, drafting internal instructions and training. Through this project, the ID contributes to the reinforcement of immigration services in new MS of the EU, and more particularly, in MS with external borders.

3.1.2. Additional/Complementary developments

Electronic residence documents for foreigners

From 05.11.2008, Belgian municipalities only deliver electronic ID cards and residence documents to foreigners aged 12+ who are staying legally in Belgium for longer than 3 months. Since the maximum validity period for the paper documents that were previously delivered, is 5 years, all paper documents will be completely replaced by electronic documents by 2013, at the latest. The documents delivered to children aged less than 12 will also be replaced by modern electronic documents. The digitalisation of residence documents issued to foreigners pursues three objectives: 1) tackle fraud and criminality; 2) equal treatment of foreigners and Belgian nationals who can already benefit from the advantages of

¹⁶ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en Asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

electronic ID cards; 3) issue documents that comply with Regulation n°1030/2002 as modified by Regulation n°380/2008 establishing a common model for residence documents. Belgium will have to adapt its current model of ID cards to the new technical specifications adopted by the EU Commission in relation with biometric data and security standards.

Creation of a database for sponsors

The government is currently examining the opportunity of creating a database centralising data on all individuals who have signed a sponsorship agreement in the sense of article 3bis (short stay, less than 90 days) or article 60 (stay for the purpose of studies) of the Belgian Aliens Act; and individuals who are sponsoring their partner in the framework of a stable and sustainable relation (legally registered partnership). The objective of such database is twofold: 1) identify abuses (e.g. use of false documents, multiple sponsorships by one individual) and 2) facilitate the reimbursement of costs caused by the sponsored foreigner, which have been supported by the Belgian State. This project is co-financed by the EU External Borders Fund. From 2010, 50,000 € (the first year) to 100,000 € (the following years) will be allocated to this project until 2013 included.¹⁷

Fraudulent practices and public order

In the framework of the National Security Plan 2008-2011 that was approved by the government on 01.02.2008, structured modalities for information exchange are being set up between the ID and the police services.¹⁸ Since both authorities are in charge of security matters, partnerships and information exchange should be reinforced, where it serves legal and proportional information goals. Therefore, specific civil servants within the ID will be given access to information on facts registered by the judicial police and to information on groups and individuals, registered in the 'General National Database.'¹⁹ A proposition of Royal Decree will first be drafted to provide a legal basis for that.

¹⁷ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

¹⁸ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

¹⁹ Database used in the framework of police missions, as defined in article 44/4 of the Law on police services.

3.2 Refugee Protection and Asylum

3.2.1. European Pact on Immigration and Asylum

European Pact on Immigration and Asylum

IV(c) solidarity with MS which are faced with specific and disproportionate pressures on their national asylum systems:

In his General Policy Note, the Secretary of State for Migration and Asylum Policy referred to solidarity with MS and mentioned the EU pilot project of relocation of refugees from Malta on the territory of other member States of the European Union.²⁰ The government has decided not to participate in the pilot project for the moment due to the reception crisis but solidarity could be expressed in the future through the rapid establishment of the European Asylum Support Office, which will coordinate expert teams sent to Member States under particular migratory pressure; through a flexible use of the European Refugee Fund and, on the long term, a profound revision of relocation as a solidarity tool.

In the framework of GDISC (General Director's Immigration Services Conference) Belgium is involved in the High Level Working Group on Particular Pressures. A GDISC Catalogue of Services was developed, which describes the different methods of practical support, both on the spot and from a distance, which members of this HLWG could offer to countries facing particular pressures.

IV(e) MS are invited to provide the personnel responsible for external border controls with training in the rights and obligations pertaining to international protection

The training of border guards (i.e. border police in the case of Belgium since the federal police perform the task of border control) was adapted to the EU-Frontex training programme for border guards. The Frontex programme stresses the importance of the fundamental rights of citizens in general and of minorities (including asylum seekers) in particular. Therefore, contact was taken with UNHCR (Belgian office) and a training programme was designed, which will be incorporated in the operational training of border guards in Belgium in the long term. Concretely, a UNHCR representative gives training on fundamental rights, within the general training programme. The roles of all institutions involved (EU, UN, national institutions and NGOs) are highlighted. The initiative is still a pilot project but will be incorporated in the training next year. In addition, Belgium participates in the Frontex project "Border guards and fundamental rights" and will implement its results in the concerned units of the federal police. Overall, the federal police give particular attention to the issue of rights and obligations related to international protection.

3.1.2. Additional/Complementary developments

Rise in number of asylum applications

²⁰ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010), p.9 / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010), p.9.

2009 was marked by a rise in the number of asylum applications. In 2008, a total of 12.252 asylum applications was introduced (or around 1.021 per month). In the first eleven months of 2009 the number of asylum applications was already at 15.163 (or an average of 1.378 per month). It can be observed that there is a substantive number of multiple applications (3.971, or around 25%). However, the rise in the number of asylum seekers is mainly explained by the increase in first applications, mainly from war-torn countries like Afghanistan, Iraq, but also from Kosovo, Russia and Guinea.

In order to address problems created by this increase of asylum claims, the government agreed in July 2009 to give extra-financial means to the institutions in charge of asylum for 2009 and 2010.

Minor adjustments to the Aliens Act

With the introduction of the new asylum procedure in 2007, the foundation was laid for an efficient and qualitative asylum procedure. Belgium has a balanced procedure of good quality that offers the asylum applicant a real chance of presenting all elements and that provides him/her with adequate means of appeal. Belgium has already put in place the 'unique procedure' whereby the application is first investigated in the light of the Geneva Convention and then in the light of Subsidiary Protection. This new procedure also allows treating the asylum cases within a short time limit. On average (i.e. since 1 June 2007) asylum cases are treated by the CGRS within 100 calendar days. More than 50% of all asylum applicants receive their decision within 3 months (at the level of the CGRS). The Aliens Litigation Council and the Council of State also treat appeals within the prescribed time, according to the new procedure. However, the CGRS and ALC still have a backlog of asylum files according to the old procedure.²¹ The government has the intention to deal with the backlog and envisages extra-funding. High quality standards in the processing of claims have to be maintained. The backlog will be monitored and extra measures will be taken if necessary.

In 2009, the Aliens Act was adapted on certain points²², i.a. to meet certain conditions set by a judgment of the Constitutional Court:²³

- some technical adjustments: i.a. the prolongation of the period to introduce an appeal with the ALC from 15 to 30 days
- the provisions on the accelerated procedure for certain asylum cases (as described in article 52 of the Aliens Act) have been adapted: certain technical grounds for refusal have been abolished.

Furthermore, the Secretary of State for Integration announced that a proposition of modification of the Law of 12.01.2007 on the reception conditions of asylum seekers should be soon put forward to Parliament. The proposition seeks to limit the right to benefit from a place in a reception centre at the third or more asylum application lodged by the same asylum seekers if the application is not considered admissible by the Immigration Department.. The reform has been proposed in order to address the issue of lack of available places in the reception centres.

Fund for family reunification with recognised refugees

The Belgian Committee for aid to Refugees (BCGV-CBAR) has started up the Family Reunification Fund that will provide low-cost loans to refugees allowing them to sustain the financial costs of family reunification (DNA tests and travel).²⁴

Resettlement

²¹ About 6,977 dossiers at the ALC and about 2,700 dossiers at the CGRS. Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010), p.5 / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010), p.5.

²² Wetten van 6 mei 2009 ter wijziging van de Vreemdelingenwet (BS 19/05/2009)

²³ Cf. 2008 Policy Report, p. 37.

²⁴ www.cbar-bchv.be/introEN.htm

Belgium has no structural resettlement program. However, it has organised ad hoc resettlement initiatives in the past, e.g. Bosnia (1992); Kosovo (1999). Confronted with the situation of war in Iraq and the subsequent refugee influx to the neighboring countries Syria and Jordan, the European Council has called upon the EU Member States to resettle 10.000 Iraqi refugees. The Belgian government has responded positively to this call and decided on 13 February 2009 to launch a Belgian pilot project for the resettlement of refugees from Iraq, with the perspective of possibly developing a national policy on resettlement in the long term.

It was decided that Belgium would resettle around 50 Iraqi refugees, thereby concentrating on two specific groups. (1) Women at risk. These are Iraqi single women with or without children that find themselves in a particular vulnerable situation in Jordan and Syria. (2) Palestinian refugees (families) from Iraq from the An-Talf refugee camp at the Iraqi border.²⁵ The selection of the refugees took place on basis of files handed over by the UNHCR. Case workers from the Office of the Commissioner General for Refugees and Stateless Persons and of Fedasil undertook a selection mission to Syria and Jordan in May 2009. Finally, 47 people were selected and arrived in Belgium in September 2009. Fedasil is responsible for their reception and integration in Belgium, in partnership with Vluchtelingenwerk Vlaanderen and other specialised NGOs.

The costs of this project are co-financed by the European Refugee Fund, within the framework of the Temporary Desk on Iraq (TDI).²⁶ After a thorough evaluation of this pilot project, the Belgian government will investigate whether Belgium can develop a resettlement policy, as already exists in other countries. Belgium considers resettlement as a type of initiative based on a more global vision of the refugee issue.²⁷

Stateless persons

As was mentioned in the government agreement of 2008, the federal government will present a proposition of law during 2010 that will regulate the procedure of recognition and the status of 'stateless persons' and will determine the rights that will be granted to people meeting these criteria.

Belgian involvement in projects of practical cooperation

- the European Country of Origin Sponsorship

The European Country of Origin Sponsorship (ECS) was set up about two years ago and is supported by the EU Refugees Fund. EU Country of Origin experts of 12 different nationalities try to enhance collaboration in the field of Country of Origin information. The Research Department of the CGVS, Cedoca,²⁸ one of the initiators of the project, participated in the latest conference in Ljubljana where all participants in the ECS project were invited. The conference should be followed by the production of guidelines related to fact finding missions, and by the organisation of a dozen of bilateral meetings between Country of Origin experts.

- the European Asylum Curriculum (EAC)

The EAC project aims at developing a number of training modules in the field of asylum and put them at the disposal of the asylum authorities in the different member states. The aim of this common training programme is to enhance the practical cooperation that could lead to more harmonisation in the field of asylum on the European level.

The Office of the Commissioner-general for Refugees and Stateless Persons (CGRS) was specifically involved in the development of the following modules: Inclusion, Evidence Assessment and Interview

²⁵ For more information: <http://www.reinstallation.be/apps-local/resettlement.nsf/index.htm> (08.10.2009)

²⁶ www.gdisc.org/uploads/tx_gdiscdb/Temporary_Desk_on_Iraq_TDI_update.pdf

²⁷ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010), p.8 / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010), p.8.

²⁸ Cedoca shares its expertise on Algeria and D.R.Congo, amongst others, with other MS.

Techniques for Children. The CGRS foresees to use these different modules in their internal training programme in the near future.

Temporary Desk on Iraq (TDI)

The TDI is a GDISC Project established for 18 months, from May 2009 to October 2010. The Desk is hosted by the Belgian Asylum and Immigration Departments in Brussels (ID and CGRS). TDI partner States are Belgium, Germany, the Netherlands and the United Kingdom. In close cooperation with interested Member States, the European Commission, IOM, UNHCR and States in the region, the TDI's remit is to determine how asylum and immigration services can improve their practical cooperation on protection, resettlement and return with regard to the Iraqi caseload and develop generic tools and mechanisms for dealing with other caseloads. The TDI is a good example of practical cooperation in the EU on protection, resettlement and return with regard to the Iraqi caseload. Specific objectives of TDI for 2009 include: set up parameters to identify and monitor differences in data related to Iraqi asylum applications; better understand the reasons for the differences in asylum data, applications and decisions; develop tools to assist States who are faced with particular pressures; promote joint missions and good practices in the field of resettlement; facilitate the sharing of experiences and practices on return to Iraq; enable the development of a model AVRVP to Iraq and model MOU on Readmission.

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

At the moment, it is not possible anymore for asylum seekers whose claim is being examined to apply for a work permit C. Only asylum seekers who applied for asylum before 01.06.2007, in accordance with the rules of the previous procedure in two phases (assessment by the ID of admissibility of the claim, definitive decision by the CGVS), and whose claim is still pending, have acquired the right to work in Belgium. The federal government approved a proposition of Royal Decree²⁹ regulating the access of asylum seekers to the Belgian labour market on 03.04.2009. When this decree will come into force, it will transpose article 11 of the Directive 2003/9/EC³⁰ pertaining to employment of asylum seekers who have not yet received a first instance decision on their claim after a long period of time. Asylum seekers who have applied for asylum after 31.05.2007 and who have not received a negative decision in their asylum case 6 months after lodging their asylum application, will be entitled to apply for a work permit C. The work permit C is valid for any kind of employment, with any employer; its validity and duration is directly dependent on the validity and duration of the residence permit of the worker. The proposition of Royal Decree foresees that the work permit C delivered to asylum seekers whose claim is pending, will be valid until a decision is taken by CGRS or until a decision in appeal is taken by the ALC. Since all asylum seekers in procedure have the right to material aid (accommodation in reception centers, health care, etc.), including during appeal procedures, the conditions for receiving material aid will have to be adapted to take into account those who have professional income. The Law pertaining to reception conditions (*Opvangwet*) will have to be amended.

Reception crisis

The saturation of the reception centers for asylum seekers that started in 2008, continued and even aggravated throughout 2009. At a certain moment there were no more places available, new arrivals had to be offered a hotel room or to spend the night outside.³¹ On 09 July 2009, Fedasil was sentenced

²⁹ It modifies article 17 of the Royal Decree of 09.06.1999 implementing the Law of 30.04.1999 pertaining to the employment of foreign workers.

³⁰ Directive européenne 2003/9 du Conseil du 27 janvier 2003 sur les normes minimales pour l'accueil des demandeurs d'asile dans les Etats membres

³¹ In May 2009, the occupation rate of the reception centres was close to 103% (16 500 people for 16 441 beds). In April 30, 2009 Fedasil accommodated for the first time 12 asylum seekers in hotels instead of in reception centers. Early July 2009 about 700 asylum seekers were accommodated in hotels and a temporary peak was reached on August 25, 2009 when Fedasil declared that on that day 1.055 asylum seekers were accommodated in hotels, partly in precarious circumstances. The access to an adequate support by social assistants or health care is

by the Labour Tribunal of Brussels to pay a 500€/day penalty per asylum seeker if it failed to provide accommodation and appropriate reception conditions as guaranteed by law. The judge decision was the result of legal action by 38 asylum seekers. Because the dispatching service of Fedasil closed on 8 and 9 July 2009, these asylum seekers could not be offered a bed in reception centers. Fedasil had unfruitfully invoked in this case the material impossibility to accommodate more people. In October 2009, Fedasil was again condemned by the Labour Tribunal to pay a 250€/day penalty per asylum seeker, following legal action of about 55 asylum seekers. Other legal actions followed.

The causes of the lack of places in reception centers for asylum seekers are manifold and are not directly related to variations in the in-flows of asylum seekers. The saturation of the reception network is a structural problem of under-capacity, as there are not enough places for all the persons entitled to reception under the Reception Act of 2007. More than 17.000 people are accommodated by Fedasil. Firstly, there is a rise in the number of asylum applications. Secondly, the change in the asylum procedure in 2007 made that all asylum applicants stay in the reception centre for the whole duration of the procedure (it used to be only in the admissibility phase in the past). And thirdly, there are not only asylum seekers in the reception centers in Belgium, because the Reception Act stipulates that several groups of foreign nationals have the right to reception and are therefore accommodated in the reception centers under the responsibility of Fedasil:

- asylum seekers still in the asylum procedure (first instance and appeal) : 56%
- asylum seekers that received a negative decision of the ALC and started an appeal procedure with the Council of State: 15%
- people that received a residence permit (recognised refugees, subsidiary protection, regularisation), can still stay for a maximum of two months: 7%
- people that received a negative decision on their asylum case, but had their residence prolonged due to medical reasons or due to their application for voluntary return: 9%
- children with their parents who are in an illegal residence situation and where it is proven that the parents cannot support themselves:³² 5%
- unaccompanied minors that have not applied for asylum: 1%
- Persons whose asylum application has been rejected but who have right to accommodation during a transition period : 7%

Different solutions have been combined so far.

- Asylum seekers that have introduced an application before June 2007 were referred to the Public Centers for Social Aid in order to be provided with financial aid and leave the reception centers.
- Some new arrivals have been accommodated in hotels in Brussels (more than 1000 persons in august 2009).
- New EU-citizens (except Bulgaria and Romania) with children no longer have the right to material aid meant for irregular families with children. As the new EU citizens have access to the Belgian labour market from 1 May 2009 onwards, they can no longer be considered as “illegal” residents and therefore no longer have the right to a reception place. They can start the procedure for residence as EU-job-seeker or EU worker.
- The government also decided on 18 September to create an extra 1.200 reception places and therefore to raise the budget allocated to the reception of asylum seekers.³³
- The government also proposed to deal with the problem of multiple asylum applications. Asylum seekers who introduce an asylum application for the third time and more, if the

not warranted in the case of accommodation in a hotel. NGOs repeatedly reported that individual asylum seekers did no receive any accommodation at all.

³² On 14.05.2009 and on 15.05.2009, Fedasil had already been condemned by the Labour Tribunal of Brussels. Because Fedasil did not provide a bed in reception centres to illegal families with children that had the right to a reception place (on the ground of the Law of 12.01.2007, the Royal Decree of 24.06.2004 and article 3 of ECHR), the President of the tribunal decided that Fedasil would have to pay 250€/day for each complainant who could not be accommodated.

³³ The federal government decided to provide extra budget of 9.5millions €in 2009, and 76 millions €in 2010.

application is not considered admissible by the Immigration Department, would no longer be entitled to a place in a reception centre.³⁴ The legislation on reception will have to be adapted.

- The Secretary of State for Social Integration announced in November 2009 that, as an emergency solution, more empty buildings owned by the federal State will be rapidly equipped to accommodate asylum seekers.

Belgian Presidency of the EU

During its Presidency of the EU in the second semester of 2010, the harmonisation of EU Asylum policy will be an important issue on the agenda. Belgium will therefore support the European Commission's program of July 2008 for the harmonisation of Asylum policy. Such policy should be based on a global vision and international protection should remain its main objective.³⁵ Important measures will have to be implemented in the short term: creation of the European Asylum Support Office, which is fully supported by Belgium; further legislative initiatives; reinforcement of the external dimension of Asylum policy through solidarity with other MS and with countries of origin.

³⁴ http://www.fedasil.be/home/nieuws_detail/i/17466/

³⁵ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

3.3 Unaccompanied Minors (and other vulnerable groups)

Rights of the child anchored in the Constitution

At the end of December 2008 the Constitution (art22bis) was slightly modified i.a. to incorporate some important rights of the child.³⁶ From now on the Constitution is also a source of law for these rights, next to the International Convention of the Rights of the Child. These rights are important, not the least when it comes to the residence status of children in Belgium, considering that:

- every child has the right to express his/her opinion in all matters concerning its person;
- every child has the right to measures and services that enhance its development;
- the best interest of the child is the first consideration in every decision regarding the child.

Task Force Minors

A task force « Minors travelling alone » was created in 2009 in order to implement some of the recommendations of the study realised by Child Focus, the King Baudouin Foundation and the federal police of the Brussels-National Airport (Zaventem).³⁷ The task force will put an end to its activities on 30.06.2010. Two objectives are currently being worked upon. Firstly, all federal and Community actors that have a specific role or mission regarding minors travelling alone will have to be mapped. This mapping will facilitate flows and exchange of information. Secondly, all first-line services in airports and all stakeholders will be the target of awareness-raising actions about i.a. the right of the child and signs to detect potential victims of Human Trafficking.

European UMs

In addition, regarding vulnerable EU non-accompanied minors, the circular letter of 2.08.2007 pertaining to EU unaccompanied minors is currently being evaluated by the ID and the Guardianship Service. The profile of these UMs should be better understood in order to determine which measures will be taken to protect them, taking into account their own best interest.

UMs on the agenda of BE Presidency

Belgium envisages to develop special contacts with the Swedish and the Spanish Presidencies in order to organise together the necessary initiatives for finding common standards on age determination, family tracing, and return in the country of origin.

Lack of available places in Observation and Orientation Centers for unaccompanied minors

The two specialised reception centers for unaccompanied minors (Neder-Over-Heembeek and Steenokkerzeel) have experienced a lack of available reception places in 2009 and have been unable to address the number of demands. Unaccompanied minors have been put on a waiting list. All minors for whom no place was available in the specialised centers have been re-directed and temporarily accommodated in the so-called 'open centers' – i.e. the reception centers for asylum seekers.³⁸ Adapted reception conditions cannot be guaranteed in those reception centers.

Children and families in administrative detention centers

³⁶ Modification of the Belgian Constitution of 22 December 2008, published in the Belgian Official Journal 29 December 2008.

³⁷ Child Focus. De luchthaven, een veilige plek voor alleenreizende minderjarigen ? Verkennend onderzoek naar het risico op slachtofferschap en misbruik op Brussels Airport. November 2007.

³⁸ Vandemeulebroeck, M., Le Soir, 27.08.2009, « les jeunes demandeurs d'asile laissés à leur sort », p.9. On 24-25 October 2009, Fedasil announced that it would not accommodate unaccompanied minors who do not claim asylum, because of lack of available beds. The Secretary of State for Social Integration and several NGOs immediately demanded that Fedasil retrieve its decision or legal action would be taken. Fedasil complied, but the problem of lack of available beds is not solved, which means that Fedasil sometimes gives priority to vulnerable minors over others in the allocation of places. Cf. Vandemeulebroeck, M., Le Soir 26.10.2009, p.4.

Since October 2008, intercepted undocumented families with children are sent to family housing units, pending their return, instead of closed centers. The capacity of the new facilities will be extended in the future. In late 2009, the ID managed 8 housing units (3 houses in Zulte and 5 flats in Tubize).³⁹ These private homes are specially equipped for families. Members of the family are free to go as long as one adult remains at home; children can go to school and the rights to privacy and to family life are respected (e.g. private visits and correspondence are admitted, coaches do not enter the house between 20 p.m and 7 a.m). Coaches systematically inform the families about the possibility to benefit from the AVR (Assisted Voluntary Return) program run by IOM, before seeking their cooperation to prepare their forced return. Only families that refuse to cooperate to their return despite the assistance provided (e.g. absconding from the housing unit) could be then subjected to a detention measure. The house rules and the procedures applicable to the housing units have been given a legal basis in 2009, with the Royal Decree of 14.05.2009.⁴⁰

Concomitantly the Secretary of State for Migration and Asylum Policy is preparing an agreement protocol with the Secretary of State for Social Integration (in charge of reception conditions) on collaboration modalities regarding irregular families accommodated in the federal reception centers for asylum seekers. The objective is to find a sustainable solution for these families, through fixed series of steps: from envisaging regularisation or asylum, to AVR and, if no other sustainable solution is found, envisage their transfer to the above mentioned housing units pending their forced return.⁴¹

Until October 2009, families with children that were refused entry at the border were detained in two closed centers at the border: the '127' and the '127bis' in Steenokkerzeel. The Secretary of State for Migration and Asylum Policy decided in October 2009 that alternatives to their detention should be developed. The Secretary of State currently examines how families who are refused entry to the Belgian territory could also benefit from private housing units pending their return, in accordance with the requirements of the Chicago Convention and of other international obligations of Belgium.⁴² When the new measures will be fully enforced, the general rule in Belgium will be that there are no children in detention centers.. Families with children could still be detained in closed centers after failure of alternative measures (absconding from the controlled housing unit and second interception), in which case detention times would be strongly limited.

Rights of victims without legal residence

The Minister of Justice has been working on a bill that would allow irregular migrants to receive damages from the public Victim's Funds.⁴³ The proposition of bill was motivated by events dating back to 2006. The relatives of Oulematou – a Malian nanny who was shot dead in Antwerp in 2006 by an 18-year old – were granted damages by a civil court in 2008. Since the killer had no financial capacity of his own, the Victims' Funds was resorted to. Unfortunately, as Oulematou had no valid residence permit at the time of the killings, the victim's relatives are not entitled to receive damages through the Victims' Fund. After public outcry, the Minister of Justice proposed to adapt the

³⁹ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

⁴⁰ Arrêté royal du 14 mai 2009 fixant le régime et les règles de fonctionnement applicables aux lieux d'hébergement au sens de l'article 74/8, §2, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (M.B.27/05/2009)

⁴¹ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

⁴² Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

⁴³ Cf. <http://www.stefaandeclerck.be/nl/ook-illegalen-krijgen-geld-uit-slachtofferfonds/213>

legislation in order to include illegal migrants amongst the beneficiaries of the Victims' Funds, if they are the victims of serious violent crimes. The bill should be soon passed by Parliament.

3.4 Economic Migration

3.4.1. European Pact on Immigration and Asylum

I(a) Implement policies for labour migration

From 01.05.2009, the last remaining restrictions to free movement of workers from 8 new MS that joined the EU on 01.05.2004 (Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and the Slovak Republic) have been lifted. The nationals of these MS do not need to apply for a work permit any more to be employed in Belgium. This constitutes an important step for Belgium towards free movement of people and workers within the EU.

Creation of the Economic Migration Service

From 15.09.2008, the service 'Economic Migration' is operational within the ID. The objective of the new department is 1) facilitate and speed up procedures for foreigners whose project is economically interesting, and 2) avoid that foreign workers are hampered in the execution of their professional activities by administrative slow down for which they are not responsible. In addition, all actors involved in the reception of foreigners who want to invest or start a profitable activity in Belgium now have one common interlocutor. In practice, the Belgian diplomatic posts maintain their competence to deliver visas without consulting the ID, if all required conditions are met. However, prior consultation of the economic migration department is required if the diplomatic post cannot deliver the visa or if all conditions for receiving the visa are not satisfied. The economic migration service processes these applications in a pro-active way. In addition, under the Belgian immigration legislation, certain categories of foreign workers can benefit from a simplified procedure as regards their residence permit. The applications that do not meet all the procedural requirements are also transferred from the diplomatic posts to the economic migration service, which processes them in a pro-active manner. The Service for economic migration will be the interface between foreign investors and foreign workers on the one hand; and the federal authorities (FPS Foreign Affairs, FPS Employment, and FPS Economy), the regional authorities, the diplomatic and consular posts abroad, the municipal authorities and the Belgian companies and employers on the other hand.

Circular Migration

Under Belgian legislation, multiple entry visas can be delivered to certain categories of migrants in a more flexible way. In addition, legal provisions exist that allow foreigners that return to their country of origin during a certain period of time, to come back to Belgium without losing their legal residence. Belgium contributes to the "MIDA Grands Lacs" programme that allows members of the Central-African diaspora to return temporarily to their country of origin, for periods from 6 weeks to 1 year, in order to participate in development projects. Next to the MIDA programme, the MIDMA programme (migration for the development of Morocco) is a similar development programme seeking to mobilise the expertise and the resources of the Moroccan diaspora living in Belgium. Besides these existing provisions, the Belgian government is currently reflecting on the possibility to create new mechanisms for circular migration.

Family members of labour migrants

Within the Belgian migration policy, legal procedures through which (temporary) labour migrants can be joined by their family are given particular attention.

I(b) increase the attractiveness of the EU for highly qualified workers and further facilitate the reception of students and researchers:

Highly qualified third-country workers

The Royal Decree of 28.05.2009⁴⁴ adapts the categories of foreign workers who are exempted of work permit by extending the exemption of senior staff members to « members of the direction». In the definition of “senior staff members” (*cadres/kaderleden*) previously mentioned in the Royal Decree of 09.06.1999 pertaining to the employment of foreign workers, CEOs were excluded from that category, which was contrary to the rationale of the Royal Decree.⁴⁵ In order to simplify administrative procedures, the Royal Decree was adapted in order to include CEOs.

As regards the « Blue Card Directive », the FPS Employment is involved in the process of transposing Directive 2009/50 in Belgian law. The transposition process just started at the end of 2009 and is under the coordination of the FPS Employment and the Immigration Office.

Third-country Researchers

The Belgium diplomatic and consular posts abroad are already competent to deliver residence permits valid for more than 3 months to foreign workers who are granted certain types of work permits or professional cards (self-employed workers). From 15.09.2009, the Belgium diplomatic and consular posts abroad are also entitled to deliver such types of residence permits to workers who are exempted from applying for a work permit as a researcher or as a senior member of staff.⁴⁶

Third-country Students

As outlined in section 3.6.2, provisions of the Aliens Act on the stay of students will be modified and amended in order to transpose Directive 2004/114/EC. A first proposition of bill has been drafted to transpose the provisions pertaining to the stay for purpose of studies (higher education). The proposition was discussed in a technical work group comprising the federal authorities and the Community authorities. The objective is that all definitions and concepts related to the stay of students are coherent with the reality of the education system in Belgium so that the objectives of the Directive 2001/114/EC are reached, in accordance with the repartition of competences between federal authorities and the Community authorities. The proposition also translates in legal terms the political will to modernise the student status and allow mobility inside the EU on the one hand, and to combat abuses of the student status and the utilisation of false or falsified documents on the other hand.

Other measures increasing the attractiveness of the EU for highly qualified workers include the creation of the Economic Migration Service within the ID (cf. above).

3.4.2. Additional/Complementary developments

Impact of the current economic crisis on the number of work permits issued to foreigners

After several years of sharp increase,⁴⁷ the number of work permit B (valid 1 year, renewable) issued by the Regional administrations to foreigners coming to or living in Belgium for the purpose of employment started to decrease at the beginning of 2009 (about a third less).⁴⁸ Any decrease in the

⁴⁴ L'arrêté royal du 28 mai 2009 modifiant l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers

⁴⁵ Press Release of Joelle Milquet, federal Minister of Employment, 05.06.2009.

⁴⁶ Article 2, 26° and 33° of the Royal Decree of 9.06.1999 pertaining to the implementation of the Law of 30.04.1999 on employment of foreign workers.

⁴⁷ About 47,000 in 2006; 65,000 in 2007 and 76,000 in 2008

⁴⁸ De Morgen (09.09.2009) “Crisis doet stroom buitenlandse werknemers naar België stilvallen”, p.2.

number of work permit B issued could also be due to the lifting of all restrictions for EU workers from 8 new MS that joined the EU in 2004. From 01.05.2009, they do not have to apply for a work permit B anymore.

Impact of the current economic crisis on unemployment

By July 2009, 550,000 workers were unemployed in Belgium.⁴⁹ The highest increases of unemployment rates were observed for men, qualified workers (finished secondary education but no higher education degree) and workers in the service industry. In its report titled 'Recent evolutions and perspectives on the labour market'⁵⁰ dating from June 2009, the federal *Hoge Raad van de Werkgelegenheid / Conseil supérieur de l'emploi* [High Council for employment] analyses the impact of the crisis on unemployment rates. With regard to unemployment rates broken down by nationality, the data show that compared to May 2008, unemployment rates of non-Belgian EU citizens have increased with 13% by May 2009, whereas unemployment rates of Belgian nationals have increased with 12% and unemployment rates of third country nationals have increased with 10%. When looking at the regional level rather than the federal, the discrepancy between unemployment rates of nationality groups shows similar evolution in Flanders and in the Brussels-Capital Region: unemployment rates of Belgian nationals (+ 7.3% in Brussels and + 22.7% in Flanders) have risen much more than those of third country nationals (+4.3% in Brussels and + 19.8% in Flanders) but much less than those of EU nationals (+ 14.3% in Brussels and + 37.2% in Flanders). In Wallonia, the evolution is different: the smallest increase in unemployment is observed amongst EU nationals (+ 3.7%) and the sharpest increase concerns third-country nationals (+6.2% - as compared to + 5.7% for Belgians). However the results have to be interpreted carefully, as the structure of the unemployed population by nationality varies strongly by Region: more third-country nationals in Flanders but more EU nationals in Wallonia, while the highest proportion of unemployed foreigners is in Brussels.

However, according to figures of the VDAB (Flemish Office for Employment)⁵¹ that includes non-EU/EFTA migrants who have acquired the Belgian nationality, unemployment rates of native Belgians have risen less (+15.7%) than unemployment rates of people with a non-EU/EFTA minority ethnic background (+24.5%)⁵² between March 2008 and March 2009. This could indicate – in Flanders at least – that newly arrived non-EU migrants who have not acquired the Belgian nationality – are doing better on the labour market than non-EU people who have settled in Belgium since years.⁵³ More difficult to interpret is the sharp increase (about +30%) of unemployment rates among people of EU origin, especially people of Polish, Dutch, Spanish and Italian origin.

Regularisation

On 19.07.2009, the Secretary of State for Migration and Asylum policy announced that case-by-case regularisation of undocumented migrants for reasons of employment was made possible from 15.09.2009 to 15.12.2009. Regularisation could be granted (cf. section 3.9.1) on the basis of art. 9bis (previously art. 9.3) of the Aliens Act as well as other criteria. One of the criteria concerned is social inclusion through an employment contract. In this case, applicants shall have resided on the Belgian territory without interruption from 31.03.2007; they have an employment contract and the regional

⁴⁹ The Eurostat harmonised unemployment rate in Belgium was 7.5% in April 2009 (+ 0.8 % as compared to April 2008).

⁵⁰ Hoge Raad van de Werkgelegenheid / Conseil supérieur de l'emploi (2009) *Recente evoluties en vooruitzichten van de arbeidsmarkt*, p. 48

⁵¹ Cf. <http://arvastat.vdab.be/nwwz/index.htm>. Similar data were made public by the 'Minority Forum' [*Minderhedenforum*] on May 14, 2009. The organisation urged the social partners in Flanders to implement an action plan to counter the tendency. Cf. <http://www.minderhedenforum.be/2pers/200905stijgendewerkloosheid.htm>, last accessed 01.10.2009; Cf. data of VDAB in details, edited by 'Minority Centre' at: http://www.minderhedenforum.be/2pers/documents/Werkzoekendenenwerkenden-bijlage_000.pdf, last accessed 01.10.2009

⁵² A particular high increase of unemployment rates is observed among people with Moroccan roots: + 31.2%

⁵³ It is the case for instance for the Turkish unemployed workers: according to the VDAB data, unemployment amongst people of Turkish origin rises more than among Turkish nationals.

authorities agree to deliver a work permit B. The deliverance of a work permit by regional authorities in those specific cases has been given a legal basis through a Royal Decree of 07.10.2009 (published in the Official Journal on 14.10.2009). Regularisation applications on the ground of social inclusion through employment can only be lodged from 15.09.2009 to 15.12.2009.

Directive « Employers' Sanction »

The FPS Employment, together with other FPS, collaborates to the transposition process of Directive 2009/52/EC, which started in 2009.

Case widely reported by the media

At the beginning of April 2009, the social inspection services controlled a company of *titre service / dienstencheques* [cheques to buy domestic services] 'Cleanse Brasileiro,' and found out that it employed about 450 irregular migrants, in whole Belgium, sometimes for more than a year. They were employed without authorization of the regional employment authorities and without residence permits. By exploiting rumours of a regularisation campaign and announced measures of regularisation through work, the boss of the company had told the irregular migrants that they would make more chance to be regularised if they worked legally, which he claimed he could arrange for them if they were employed through his company. Many of them succumbed to these false hopes and asked the families and individuals that employed them irregularly to engage them through that company. However, none of the promises made by Cleanse Brasileiro to these workers were realised. The socialist and the Christian-democrat Trade Unions (ABVV-FGTB and ACV-CSC), as well as the non-profit organisations CIRE and Abraço, lodged a formal complaint with the Labour Tribunal, and will be the civil party in this case.⁵⁴

⁵⁴ Cf. joint press release http://www.orcasite.be/userfiles/file/2009-06-03-communique_brasileuro_et_regularisationnl_doc.pdf

3.5 Family Reunification

3.5.1. European Pact on Immigration and Asylum

I(d) To regulate family migration more effectively

Legislation and policy development regarding family reunification in the sense of Directive 2003/86/EC

A third-country national who wants to let his/her spouse, legal partner or children come to Belgium for family formation or reunion, has to prove that he/she has sufficient and adequate housing to accommodate the family members and that he/she has a health insurance covering the risks of the family members in Belgium. It has appeared over time that in practice, the ID and the local authorities cannot verify these conditions although they were meant to prevent abuse. Instead or in addition to these conditions, a condition of sufficient, stable and regular income for the sponsor will be incorporated in the Belgian legislation.⁵⁵ The new measure was agreed between the coalition partners in power on 09.10.2009; a bill will soon be put forward in Parliament. In the transposition of directive 2003/86/EC, Belgium did not initially choose to apply the condition of regular and stable income to all candidates to family reunification. Only for specific categories of foreigners did Belgium require evidence of regular and sufficient income of the sponsor: for family members of student with temporary residence permits (article 10bis of Aliens Act), and for a major disabled child (article 10 and 10bis of Aliens Act). However, experience taught that other categories of sponsored family members did become dependent on social benefits. With the planned modification, the condition of regular and sufficient income will be extended to spouses and legal partners of third-country nationals. Only for a couple of specific categories of foreigners (e.g. refugees), exceptions or adaptations could still be made. Together with the introduction of the income condition, the federal government also decided to envisage the introduction of an integration condition. Belgium has not yet made use of the possibility to impose an integration condition in the sense of article 7.2 of Directive 2003/86/EC. Integration is a competence of the Communities and not of the federal authorities. Steps are being undertaken to negotiate agreement protocols with the Communities, i.e. the entities competent for the integration of foreign nationals.

The combat against marriages (and partnerships) of convenience

There have been more investigations into potential cases of marriages of convenience in 2009 than in the previous years. The percentage of the cases that effectively lead to a refusal of marriage is not known – it varies from jurisdiction to jurisdiction.⁵⁶ As reported last year, the combat against marriages of convenience has been a priority of the federal government and will probably remain so in the forthcoming years. Two specific legal instruments already exist to combat abuses: the Law of 12.01.2006 that criminalises contracting a marriage for the sole objective of obtaining a residence permit, and the Circular Letter of 13.06.2005 on exchange of information between the municipal civil servants in charge of marriages and the ID. A multidisciplinary workgroup produced a road book on marriages of convenience in October 2009, targeting all official authorities involved in the issue (ID, municipalities, the judiciary). Also, a Circular Letter of the college of the Procurators-General issued to all Offices of the Public Prosecutor in Belgium (27 jurisdictions) and entering into force on 15 October 2009, will contribute to harmonise the practices of the local judicial authorities on this issue. In their October agreement on Asylum & Migration, the coalition partners in the federal government agreed on the creation of a federal database to be used by different authorities (civil servants in charge

⁵⁵ The level of regular and stable income required will be equivalent to the “social integration income” (i.e. State benefits that citizens without income are entitled to receive) of one individual who is in charge of one family member.

⁵⁶ De Morgen (22.10.2009) Steeds meer onderzoeken naar schijnhuwelijken, p. 8

of marriages, ID, consular posts abroad, Public Prosecutor's). It will contain data from these different authorities (the ID, the consular posts abroad, the municipalities and the Public Prosecutor's Offices) and will make possible the sharing of important information on people suspected of having been/being involved in a marriage of convenience. All exchange of information will have to comply with very strict guidelines that can guarantee the right to privacy. On the preventive side, the Minister of Justice will make a proposal for a legal basis that will allow municipal civil servants in charge of marriages to request the advice of a Belgian diplomatic post abroad when the legality of a foreign judicial decision or official act is to be assessed. The long-term objective is to increase legal security and harmonise practices on recognition of foreign official acts. Moreover, the government also agreed on tackling abuses of the procedure of 'registered partnership.' A sustainable relation that is legally registered with the municipal authorities gives exactly the same rights in terms of family formation and residence permits as a recognized act of marriage. However, the municipal civil servant in charge of marriages is entitled to investigate planned marriages if he/she has doubts on the intentions of the future spouses. This type of preventive control does not exist for couples that want to legally register their partnership. Therefore the government is examining different means to avoid abuses in this procedure. If needed, the legislative provisions that provides for the retrieval of the residence permit delivered on the basis of article 40 of the Aliens Act will be adapted. Benchmarks for proving the stable and sustainable nature of a relation will also have to be introduced in the legislation.⁵⁷

3.5.2. Additional/Complementary developments

DNA tests in the framework of family reunification

As reported in the 2008 Policy Report,⁵⁸ the Belgian legislation stipulates that a third-country national can resort to a DNA test if there is no other means to prove the family relationship between the legally residing third-country national and his/her family members. The DNA test is always a possibility offered to the sponsor; it is never mandatory and is always used as a last resort solution, e.g. when produced documents cannot be considered evidence or when official registers have been destroyed. The secured procedure that has been set up in collaboration with Belgian diplomatic and consular posts abroad is extending year by year. In 2009, DNA tests could be performed from 33 diplomatic or consular posts abroad.⁵⁹

3.6 Other legal migration

3.6.1. European Pact on Immigration and Asylum

I(f) Improve information on the possibilities and conditions of legal migration

Measures relating to circular migration, the job market, highly qualified workers, researchers and students are described in section 3.4.1.

3.6.2. Additional/Complementary developments

⁵⁷ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en Asielbeleid. Doc 52 2225/009 (2009/2010), pp 14-15 / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010), pp 14-15.

⁵⁸ 2008 Policy Report, p.14.

⁵⁹ Abidjan, Addis Abeba, Islamabad, Kinshasa, Lubumbashi, New Delhi, Pékin, Shanghai, Kigali, Nairobi, Dakar, Bangkok, Manille, Kampala, Bujumbura, Yaoundé, Caracas, Téhéran, Cotonou, Canton ; and Abuja, Bogota, Kinston, Johannesburg, Damas, Amman, Conakry, Ouagadougou, Bamako, Brazzaville, Luanda, Dar es Salam, Riyad.

Circular Letter pertaining to Long Term Resident status

A series of recent laws and royal decrees fully transpose the Council Directive 2003/109/CE on the status of third-country nationals who are Long Term Residents.⁶⁰ In order to help municipalities to apply these legal provisions new, the Minister of Home Affairs issued a Circular Letter pertaining to the status of Long Term Resident (LTR), on 14 July 2009.⁶¹ This circular letter will be evaluated on 31 October 2010.⁶² As to access of LTR to the Belgian labour market, they can obtain a work permit B for the so-called bottleneck occupations through a simplified procedure (same provisions as for Bulgarian and Romanian nationals) from 01.01.2009. After one year employment in Belgium, LTR are authorised to be employed in any occupation, without restrictions. When transition measures applying to the access of Bulgarian and Romanian nationals to the Belgian labour market will be lifted (at the latest 31.12.2011), no restrictions will apply anymore to the access of LTR to the Belgian labour market upon their first entry in Belgium.⁶³

Legal stay for the purpose of studies

Directive 2004/114/CE gives the possibility to a third-country national studying in one MS (in the sense of the Directive) to go to another MS to pursue his/her studies, under certain conditions. This means that a third-country student with a residence permit in one MS should be able to apply for a residence permit in Belgium in order to pursue part of his/her studies or to complement his/her studies by a related programme. In order to transpose these provisions in Belgian law, a proposition of bill modifying the Aliens Act has been discussed with the Community authorities responsible for higher education in Belgium. The proposition is currently being redrafted following the recommendations of this technical workgroup.⁶⁴

The case Rudi Nzimo

A Cameroonian last-year student of Applied Sciences at ULB (Free University Brussels – Polytechnique) was arrested on 6.04.2009 by the Immigration Department when returning to Belgium after a trip to Cameroon. The student was found in possession of false ID documents, although his student residence permit was genuine and valid. Although the judicial authorities had ruled against a detention measure, he was maintained in a detention centre; until the *Chambre des mises en accusation* of the Tribunal of Brussels ruled that the student had to be released. The student was eventually released on 07.05.2009, with a removal order. A lot of media attention was given to his case; his professors of ULB demanded that the student be set free on time to take the final exams before graduation.⁶⁵

⁶⁰ Law of 25.04.2007, modifying the law of 15.12.1980; Royal Decree of 22.07.2008 modifying the royal decree of 08.10.1981; royal decree implementing certain provisions of the law of 15.12.1980; royal decree of 23.12.2008 modifying the royal decree of 09.06.1999 implementing the law of 30.04.2008 pertaining to the employment of migrant workers. Cf. 2007 Policy Report and 2008 Policy Report.

⁶¹ Omzendbrief van 14 Juli 2009 betreffende de status van langdurig ingezetene B.S.11/08/2009 http://www.dofi.fgov.be/fr/reglementering/belgische/overige/omzendbrieven/2009/11082009_f.pdf / Circulaire du 14 juillet 2009 relative au statut de résident de longue durée (M.B. 11/08/2009) http://www.dofi.fgov.be/fr/reglementering/belgische/overige/omzendbrieven/2009/11082009_f.pdf

⁶² Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

⁶³ Cf. http://www.werk.be/wg/werknemers_buitenlandse_nationaliteit/bijzondere_categorieen_arbeidskaart-b/langdurig_ingezetenen.htm?SMSESSION=NO

⁶⁴ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010).

⁶⁵ Cf. http://www.airbr.be/netcursus/local/detail_page_perso.asp?id=190; <http://www.bea-ulb.be/spip.php?article506;> <http://www.lalibre.be/actu/belgique/article/500793/liberation-de-l-etudiant-camerounais-rudy-nzimo.html>

Regularisation on medical grounds

Individuals who are staying irregularly on the territory but cannot be returned to their home country because they are seriously ill can claim a residence permit on the ground of article 9ter of the Aliens Act (medical regularisation). The ground of the claim is assessed by independent medical doctors. The latter could resort to medical experts for complementary opinion since May 2009.⁶⁶

⁶⁶ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en Asielbeleid. Doc 52 2225/009 (2009/2010), p. 13 / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010), p.13.

3.7 Integration

3.7.1. European Pact on Immigration and Asylum

I(g) Promote harmonious integration in line with the common basic principles

The decree of 28 April 1998 pertaining to the Flemish policy with regard to ethno-cultural minorities was modified by a new Decree that was passed by the Flemish Parliament on 22.04.2009.⁶⁷ With this decree the policy on minorities changes into a policy of integration. The new ‘integration decree’ stresses the necessity of living together in diversity; it concerns all Flemish people – whatever their origin may be – and more specifically immigrants of the first and second generation. In Flanders, the different centres and services dealing with integration will be coordinated by the Flemish centre of expertise on migration and integration (VLEMI - *Vlaams Expertisecentrum Migratie en Integratie*). The Flemish Minority Forum will continue to support the empowerment and advocacy of minority organisations. At local level the integration policy will be steered and coordinated by local authorities. The decree also foresees in a structural funding of social interpretation and translation services.

In Wallonia, the decree of 04.07.1996 pertaining to the integration of foreigners or people of foreign origin was modified by the Decree of 30.04.2009.⁶⁸ The modified decree includes a legal basis for local integration plans. The local integration plans aim at promoting the integration of people of foreign origin through local strategies developed on a given territory by each existing Walloon Regional Integration Centre (7 in total). Regional Integration Centres are also encouraged to find synergies with the local Social Cohesion Plans. Besides providing funding for local initiatives related to integration, social participation and anti-discrimination, the decree also re-defines the missions of the Regional integration centres: supporting local initiatives; coordinating the local integration plans; promoting social cultural, political and economic participation of minorities, coordinating the reception, assistance and integration of newly arrived migrants; training of integration experts and field workers; collecting statistics; etc.

A lot of progress was made in 2008-2009 with respect to the transposition of the Racial Equality Directive and the Employment Directive at regional and community levels and to the development of regional anti-discrimination policies. In February 2009, the Centre for Equal Opportunities and Opposition to Racism (CEOOR) signed two collaboration agreements, one with the authorities of the French Community and one with the Walloon regional authorities. In the framework of the application of anti-discrimination decrees passed by the two regional entities in November and December 2008 and within their specific fields of competence,⁶⁹ the CEOOR, which is the federal equality body, is now entitled to provide information to victims of discrimination (on racial and non-racial grounds), to do mediation to settle conflicts, to give advice and recommendations to the Walloon Region and the French Community authorities, to organise awareness-raising campaigns and to exchange information with the authorities in relation to discrimination. In Flanders, the Flemish Minister of Equal Opportunities announced in 2008 that 13 anti-discrimination bureaus (*meldpunten*) would be created

⁶⁷ Decreet van 30 april 2009 tot wijziging van het decreet van 28 april 1998 inzake het Vlaamse beleid ten aanzien van etnisch-culturele minderheden, available at: <http://reflex.raadvst-consetat.be/refLex/index.reflex?docid=113529&lang=fr> (17.09.2009)

⁶⁸ Décret wallon du 30 avril 2009 modifiant le décret du 4 juillet 1996 relatif à l'intégration des personnes étrangères ou d'origine étrangère, available at: <http://wallex.wallonie.be/index.php?doc=14418&rev=14995-8406> (17.09.2009)

⁶⁹ The decree of 06.11.2008 pertaining to the combat against discrimination in employment and occupational training (Walloon Region); the decree of 12.12.2008 pertaining to the combat against certain forms of discrimination (French Community); the decrees of 04.09.2008 pertaining to the combat against discrimination in public and private employment (Region of Brussels-Capital) and the decree of 22.03.2008 pertaining to the combat against discrimination in occupational training (Region of Brussels-Capital)

in the long term. 9 of them are already active: they provide information and support to victims of discrimination and advise local and regional authorities about structural problems and policy measures to be taken.⁷⁰

The European Fund for integration was launched in Belgium two years ago and is coordinated by the Programmatory Federal Public Service Social Integration. The multi-annual program for Belgium was finalised by the end of 2008. It includes a federal part, a Flemish part and a French-speaking part. Types of projects supported include language courses, courses on the host society and other forms of assistance to newly arrived third-country nationals.⁷¹

With regard to integration of asylum seekers and illegal families with children in reception centers, language courses are organised in some federal reception centers, whereas non-profit organisations and adult education institutions can enroll asylum seekers and sometimes undocumented migrants to their courses, including language or literacy courses. Schooling is mandatory for all children under 18. Classes with adapted curriculum and teaching methods, called the “bridging classes” (French Community) or the “reception classes” (Flemish Community), are organised for children of newly arrived migrants and asylum seekers. Those children are later integrated in regular classes, when their language and learning skills allow them to keep the pace of the class. In reception centers for asylum seekers, all residents can take part in activities that encourage integration and knowledge of the host country. These activities can range from cooking classes with neighbours, to visits of the federal Parliament. In 2009, the programme “neighbourhood initiatives” funded about 200 activities in federal reception centers, out of which two thirds involved at least one local partner (sport club, municipality, school, etc.). Three categories of neighbourhood initiatives can receive funding: activities of a reception centre in which asylum seekers and another public mingle; projects of local partners in which asylum seekers are involved; activities to inform the public about the reception centers and asylum seekers.

I(h) Promote information exchange on best practices in terms of reception and integration

With regard to the availability of information on line, the Belgian National Contact Point on Integration contributed to the collection of the relevant integration related information that can be seen on the European Web Site on Integration of the European Commission since 2009.

A national conference on integration “Pas de Deux” organised by the Centre for Equal Opportunities and Opposition to Racism took place in December 2008. The conference was a unique exchange platform between the Regions and Communities in Belgium, which are in charge of integration, in full independence from the federal government.⁷²

The so-called ‘Assises de l’interculturalité / Ronde tafels van de interculturaliteit’⁷³ [Round Tables of Interculturality] took place in various locations in Belgium in September-December 2009. The organisation of the Assises by the federal Minister of Equal Opportunities was inscribed in the government’s program of March 2008. In order to “enhance the respect for democratic values,” each event that was organised in the framework of the Assises was free of access and aimed at “producing recommendations in order to reinforce the success of a society based on diversity, respect of cultural minorities, non-discrimination and the sharing of common values.” Events supported in the framework of the Assises included a launching conference on September 21, 2009, a ‘Week of interculturality’,

⁷⁰ <http://www.gelijkekansen.be/meldpunten.html> (5.11.2009)

⁷¹ More information on the ongoing projects available at http://www.mis.be/be_fr/04/Europees%20Integratiefonds/index.html (5.11.2009)

⁷² <http://www.diversite.be/> The report of the conference should be published by the end of 2009.

⁷³ <http://www.interculturalite.be/> or <http://www.interculturaliteit.be/>

diverse conferences, round tables and activities from September to December. About 100 projects were selected in the open call for projects launched in May 2009 at the occasion of the Assises. A concluding report of all those events will be presented at the closing ceremony of the Assises in March (or June) 2010. The events are funded by the federal Minister of Equal Opportunities but they are all organised in cooperation with civil society organisations (over 50 non-profit organisations, various individuals and private organisations), the Belgian federal equality body, and the Federal Public Service Employment and Social dialogue.

With regard to integration and reception of asylum seekers, the federal agency for the reception of asylum seekers (Fedasil) holds a permanent dialogue with its partner organisations for the reception of asylum seekers, through the “Reception Round Tables” (TRAC – *ronde tafels opvang / table ronde accueil*). Fedasil also organises ad hoc initiatives with partner organisations and experts, e.g. meetings on schooling of illegal children and children of asylum seekers, or dialogues with field workers.

3.7.2. Additional/Complementary developments

Following the regional elections of June 2009, the project of political declaration of the new Walloon government⁷⁴ and the political declaration of the new government of the French Community⁷⁵ both contain an important novelty with regard to integration policies in French-speaking Belgium. Both governments announce that a genuine reception and integration program for newly arrived migrants will be set up, with the long term objective of helping migrants get by autonomously in the host society. In theory, this integration program will combine a French language course (or a literacy course), classes of initiation to citizenship and daily life in Belgium, and classes of vocational and social orientation. Participation of immigrants will be voluntary. The program should be organised jointly by the Walloon Region and the “Federation Wallonia-Brussels” (project of closer cooperation between the governments of the French Community, the Walloon Region and the French-speaking Community Commission in the Brussels Capital-Region) and will be carried out with the participation of local partners.

In the Flemish regional government’s agreement,⁷⁶ two significant new initiatives will be carried out during the next government’s term in the field of integration: 1) the introduction of an evaluation test at the end of the social orientation classes and the issuance of a certificate⁷⁷ to people showing good performances; 2) the project of offering free Flemish civic integration program for those who wish to take the course in the country of origin on a voluntary basis (and without any consequences on the issuance of a residence permit).⁷⁸

In addition, the Centre for Equal Opportunities has published in 2009 the first results of its ‘Diversity Barometer’ (i.e. a survey on racist and xenophobic attitudes);⁷⁹ which in the long term will monitor discrimination and racism on a regular basis. At regular intervals in time, it will provide measures of

⁷⁴ http://gov.wallonie.be/IMG/pdf/projet_de_declaration_de_politique_regionale_wallonne.pdf pp. 217-218.

⁷⁵ http://www.gcf.be/dmdocuments/declaration_politique_communautaire.pdf pp. 166-167

⁷⁶ http://www.vlaanderen.be/servlet/Satellite?c=Solution_C&cid=1247734278469&context=1141721623065---1191211215889-1191211215089--1247734278469&p=1186804409590&pagename=Infolijn%2FView p. 84.

⁷⁷ A certificate of civic integration (*inburgeringsattest*) is currently being delivered to all individuals with an 80% attendance rate at all classes composing their integration program, regardless of their performances. The new type of certificate will be only given to people who pass the social orientation test and successfully attended 240 hours Dutch language classes.

⁷⁸ This is foreseen for 2011. Self-study packages could be distributed at consulates and embassies for those who want it. It would contain a handbook Dutch (beginners’ level) and a handbook *maatschappelijke oriëntatie* (social orientation)

⁷⁹ http://www.diversite.be/?action=publicatie_detail&id=70&thema=2

discrimination in employment, in access to goods and service (possibly housing and insurances) and in education.

3.8 Citizenship and Naturalisation

In the government's declaration pertaining to its general policy orientation of 13 October 2009,⁸⁰ a reform of the conditions for acquiring the Belgian nationality is announced, as well as modified conditions for applying for naturalisation. The reform had already been agreed upon in the government's agreement van March 2008. The drafting of the bill has been delayed until a global agreement on migration and asylum was reached by the federal government in October. The bill reforming the Code of Belgian nationality will probably be put forward in Parliament in 2010. A residence permit of unlimited duration and evidence that the foreigner has bonds with Belgium will be required to acquire the Belgian nationality. As regards naturalisation, the procedure before the Chamber of Representatives will also be adapted: the foreigner shall have a residence permit of unlimited duration, five years of effective permanent legal residence in the country (instead of three), knowledge of one of the three national official languages and shall show evidence of his/her active participation in the local community (at the level of the municipalities). Loss of nationality will be possible in case of serious crimes (sentence of at least five years imprisonment).

In addition, two important pieces of case law with regard to nationality were made public in 2009. The Constitutional Court decided in its ruling 2009/85 of 14.05.2009⁸¹ that the principle of equal treatment does not impede that the law introduces a difference between categories of Belgians in case of loss of nationality. Loss of nationality can be imposed on "second generation Belgians" (foreign children born in Belgium, who acquire the Belgian nationality by declaration at the age of 18 at the earliest), but not on "third generation Belgians" (Children who are automatically Belgians because they are born in Belgium with at least one parent that is also born in Belgium and has lived in Belgium for five years before the birth of the child). In two decisions of 20.02.2009, the Court of Cassation [*Hof van Cassatie / Cour de Cassation*]⁸² ruled on the type of legal stay that is required to acquire the Belgian nationality on the basis of declaration after 7 years of legal residence in Belgium. The periods during which a foreigner benefited from temporary residence permits or temporary leaves to remain on the territory, have to be taken into account in the calculation of the 7 years residence without interruption.

⁸⁰ <http://www.premier.be/files/Déclarationgouvernementale.pdf>

⁸¹ Grondwettelijk Hof, arrest 2009/85 van 14 mei 2009.

⁸² Hof van Cassatie, arresten van 20 februari 2009

3.9 Illegal Immigration

3.9.1. European Pact on Immigration and Asylum

II(a) only case-by-case regularisation

As reported in our Policy Report 2008, in March 2009, the Minister for Migration and Asylum Policies Annemie Turtelboom (VLD) issued a series of instructions⁸³ to the ID in order to clarify which situations could be seen as ‘dirty humanitarian situations’ constituting exceptional circumstances that can justify the issuance of a residence permit in accordance with Article 9 bis of the Aliens’ Law (regularisation on humanitarian grounds). To a list of six well-known situations susceptible of justifying regularisation claims, the Minister added one specific type of situation. From 26.03.2009 onwards, families with school-going children, who were refused asylum or whose claim is still pending, can be entitled to a temporary residence permit⁸⁴ if they fulfil the following conditions:

- The family has been residing in Belgium for at least five years without interruption; they introduced their asylum claim before June 1, 2007 and the examination of their claim lasted for at least one year;
- The children have been going to school at least since September 1, 2007

Although the measure was welcomed by NGOs and migrants’ support or self-organisations, it was concomitantly criticised for being too limited and failing to offer a solution to the thousands of undocumented migrants that did not meet these specific criteria.⁸⁵ As a result, the Minister’s instructions did not put a definitive end to hunger strikes,⁸⁶ occupations of public and/or empty buildings⁸⁷ and protest actions⁸⁸ of irregular immigrants, of NGOs or of other organisations (universities,⁸⁹ lawyers, etc.) supporting undocumented migrants. Protest actions had multiplied since the June 2007 federal elections and the absence of political agreement on the issue of regularisation which followed the elections. After the regional elections, all parties in the federal government eventually agreed on regularisation measures on 18-19 July 2009. Those were translated into instructions from the Secretary of State for Migration and Asylum Policies to the Immigration Department.⁹⁰ In addition to measures already in application (long lasting procedures), additional criteria on the basis of which claims can be made have been added, many of them officialising current

⁸³ Available at http://www.dofi.fgov.be/fr/20090326%20-%20Instructies%20van%20de%20minister%20inzake%20art%209bis_Fr.pdf (FR)

⁸⁴ The residence permit can only be prolonged if the family does not rely on welfare benefits any more at the end of the first term of legal residence.

⁸⁵ In June 2009, the Minister for Migration and Asylum Policies announced that 981 were regularised on the basis of these instructions (between 25 May and 16 June) and that possibly 4,000-8,000 undocumented migrants would benefit from the measure by the end of the year. No figures are available yet to verify these allegations.

⁸⁶ E.g. hunger strike of up to 79 days in the Béguinage Church in Brussels, ending in June 2009 (200 to 300 individuals); hunger strike of 600 to 700 individuals in Saint-Josse, Place Saint Lazare, Brussels. Next to all hunger strikes and militant actions stopped after the publication of the regularization instruction in July 2009, with the exception of a group of 37 undocumented migrants going on hunger strike on 01.09.2009 in the train station of Bressoux (Wallonia) – three of those sewed their lips... The hunger strike in Bressoux stopped by mid-September

⁸⁷ Among which several universities, churches, etc.

⁸⁸ e.g. one demonstration on 13.06.2009 with about 1,000 participants, and with support of the Trade Unions (socialist and Christian-democrats) – cf. <http://www.f-a-m.be/>

⁸⁹ E.g. persbericht van Vlaamse interuniversitaire raad (VLIR) (maart 2009) “Universiteiten engageren zich voor mensen zonder papieren”

⁹⁰ Instruction relative à l’application de l’ancien article 9,3 et de l’article 9bis de la loi sur les étrangers, 19.07.2009, available at : http://www.dofi.fgov.be/fr/Instructions_9_3.pdf

practices of the ID (i.a. practices related to international conventions). Claims that have been assessed positively by the ID result in the issuing of a residence permit of unlimited duration (except for criteria 2.8.B, for which only temporary residence permits of 1 year are issued).

1. Long lasting procedures:⁹¹

- 1.1. Unreasonably long asylum procedure of minimum 3 years (for families with school-going children) or 4 years (single individuals, families without school-going children)
- 1.2. Unreasonably long asylum procedure of minimum 4 years (for families with school-going children) or 5 years (unmarried individuals, families without school-going children) whereby the appeal procedure with the Council of State and/of the regularisation procedure that that could have followed the asylum claim are included

Claims based on the following “humanitarian situations” (the removal of the undocumented individual would be a breach of international obligations under international fundamental rights instruments, especially the International convention on the rights of the child and the ECHR) have been examined by the ID from 19.07.2009 onwards:

2. Urgent humanitarian situations:

- 2.1. The foreigner is the author of a Belgian minor child and has a genuine family relation with the child;
- 2.2. The foreigner is the author of an EU minor child; if the child has sufficient subsistence means, possibly provided by the author, and the author takes care of the child;
- 2.3. The family members of an EU citizen who do not fall under the scope of family reunification but whose stay has to be facilitated in accordance with EU Directive 2004/38 (family members sponsored by the EU citizen);
- 2.4. The foreigner who was granted unlimited residence in Belgium as a minor but who went back to his/her country of origin and cannot call upon the right of return to Belgium (including individuals whose passports were confiscated in their country of origin or young women forcibly married in their country of origin);
- 2.6 The foreigner who is entitled to a pension or invalidity benefits in Belgium but who lost his/her right of residence because he/she returned to his/her country of origin;
- 2.7 (similar groups as those described in the previous instruction issued in March 2008 by the former Minister of Migration and Asylum, cf. above)
- 2.8 Regularisation claims based on “sustainable local anchoring” in Belgium. Those claims could only be made from 15.09.2009 to 15.12.2009. It concerns individuals who “have placed the centre of their affective, social and economical interests in Belgium.” Two categories of claims are examined with that respect:
 - A. Continued residence in Belgium of 5 years from the date of the claim, with at least one credible tentative of legalising one’s situation made before 18 March 2008 OR with at least one period of legal residence (other than with a short stay visa, i.e. stay of max. 3 months).

⁹¹ Please consult the instruction and the vade-mecum on the website of the immigration Department for more detailed information on the targeted categories of undocumented migrants : <http://www.dofi.fgov.be/>

B. Continued residence in Belgium since 31 March 2007 AND evidence of a copy of an employment contract of unlimited duration or of at least one year, providing at least the minimum legal salary or wage.⁹² People applying for a residence permit on the basis of point 2.8.B are only entitled to a one year residence permit, which can be prolonged if a new work permit B is re-issued after one year. A Royal Decree published on 14.10.2009 in the Belgian Official Journal stipulates which specific provisions shall be applied to process applications for work authorisations and work permits in the framework of the July 2009 instructions.⁹³

Before taking its final decision, the ID has to check whether the individual is 'sustainably anchored' in the local community by looking at the totality of relevant factors: social relations at local level, school attendance, school performance and integration of the children, knowledge of at least one of Belgium's official languages,⁹⁴ work experience, qualifications and competences that can be directly capitalised on the Belgian labour market, perspective of employment or capacity of sustaining one's own without State support.

In case of doubt on the legitimacy of the claim, the Minister can resort to the '*Commissie voor Advies van Vreemdelingen / Commission consultative des étrangers*' [Advisory Commission of Foreigners]⁹⁵ for an advisory opinion. If the final decision of the ID diverges from the advisory opinion, it has to be motivated.

New claims have to be made through the municipalities. About 60 new case workers have been engaged by the ID, i.a. to reinforce its Regularisation unit. The instruction of July 2009 listing possible grounds for regularisation does not supersede the discretionary power of the Minister or its representatives in deciding which undocumented migrants can be granted legal residence in Belgium on the ground of Article 9bis of the Aliens Act. Are excluded of the scope of application of the instruction of July 2009: people constituting a danger to public order and individuals who tried to deceive the Belgian authorities or committed fraud. Written in collaboration with the ID and the Flemish, French-speaking and German-speaking bars and the non-profit sector, a vade-mecum was published by the cabinet of the Secretary of State of Migration and Asylum to help candidates constitute their dossiers.⁹⁶ Information sessions were also held with the non-profit sector, Fedasil, the local authorities, etc.

In Belgium also, the instruction was heavily criticised by the opposition.⁹⁷ In addition, social work practitioners warned against the financial burden a new wave of regularisation would mean for the Public Centres for Social Aid of the big cities.⁹⁸ On that issue, the Prime Minister held coordination

⁹² Within three months, claimants are requested to provide evidence of a positive opinion of the Regional authorities delivering the work permits B; or to provide their work permit B issued by the Regional authorities on the basis of a certificate of immatriculation of 3 mnths. The Regional authorities in charge of employment and responsible for issuing the work permit are going to control all applications individually. Controls can also be performed after the start of the contract.

⁹³ Belgium/ Arrêté Royal du 09.10.2009 portant des dispositions particulières relatives à l'occupation de certaines catégories d'étrangers / Koninklijk besluit van 07.10.2009 houdende bijzondere bepalingen met betrekking tot de tewerkstelling van sommige categorieën van buitenlandse werknemers / MB – BS 14.10.2009

⁹⁴ Or having taken literacy classes.

⁹⁵ The composition of the Advisory Commission of Foreigners was renewed; a call for participation was published in the Belgian Official Journal.

⁹⁶ Cf. <http://www.lesfamilles.be/portail/public/pages/?lang=1&rub=rubDossier#259> (FR) & <http://www.lesfamilles.be/portail/public/pages/?lang=2&rub=rubDossier> (NL)

⁹⁷ E.g. The Flemish right-wing party 'Lijst Dedecker' described the wave of regularisation as a policy imposed by French-speaking parties on the Flemish tax-payers.

⁹⁸ The President of the Public Centre for Social Aid of Antwerp, Monica De Coninck declared in the press that the city of Antwerp could expect an extra 2,000 à 4,000 social benefits claims due to the regularisation wave of 2009, which would request the recruitment of 40 à 80 extra social workers. Estimations of the number of people

meetings with the Secretary of State in charge of the Public Centres for Social Aid and the Secretary of State in charge of Migration and Asylum. Some local authorities (mainly those of the big cities where most undocumented migrants settle) also warned against the consequences at local level in terms of demand for language courses, number of people involved in the civic integration programmes,⁹⁹ help in searching for a job, housing support, etc. ‘Pull factor’ effect of the wave of regularisations has also been seriously feared. Moreover, the information that work contract can be bought for sums from 1,500 € to 8,000 € is circulating in migrants communities, as reported by lawyers and support organisations. Also false rental contracts, false member cards of associations and false medical certificates would be in circulation.

Following legal action of political party *Vlaams Belang*, the Council of State annulled the Secretary of State’s instructions in a ruling of 09.12.2009.¹⁰⁰ According to the Council of State, such measures should have been passed through Parliament in a law, instead of through ministerial instructions to the administration. Article 9bis of the Aliens Act foresees that foreigners can apply for a residence permit of more than 3 months in Belgium, but only if they can justify of “exceptional circumstances” (otherwise the residence permit should be applied for from abroad). According to the Council of State a foreigner claiming regularisation in accordance with the July 2009 instructions does not have to invoke ‘exceptional circumstances’, because finding oneself in one of the described situations in the instructions is sufficient to be regularised. Also according to the Council of State, the described situations do not imply that the foreigner is unable to apply for a residence permit from abroad, as foreseen in the Aliens Act. Therefore, a modification of the Aliens Act by the legislators was needed in order to apply the regularisation measures contained in the instructions. As a consequence of the ruling, the instructions of 19.07.2009 does not have any legal nature any more. However, individual regularisation decisions by the Minister remain legal decisions. The Secretary of State for Migration and Asylum Policy thus announced that he would follow the guidelines that were agreed upon in July 2009, in the framework of his discretionary power to decide on individual regularisation claims, as stipulated in the Aliens Act.¹⁰¹ When processing the regularisation claims, the ID will loyally follow the guidelines of the Secretary of State in the remit of his discretionary power.¹⁰² The legal security for individuals who have claimed regularisation on the basis of the annulled instructions will be guaranteed.

It is currently impossible to assess the definitive number of irregular migrants who will be effectively regularised. In its General Policy Note of 05.11.2009, the Secretary of State for Migration and Asylum Policy stressed that the creation of an independent commission to decide on regularisation claims could be envisaged in the future.

3.9.2. Additional/Complementary developments

Fight against illegal immigration in Oostende

who will be regularised in Antwerp range from 15,000 to 40,000 depending on the sources... In the previous wave of regularisation of 1999-2000, each claim concerned on average 1.6 individuals.

⁹⁹ The Flemish Minister of Integration Geert Bourgeois (N-VA) warned that the cost of civic integration programs for regularised migrants might be considerable (on average 1,500 € per new arrival) and that availability of funds was limited due to the economical crisis. The Minister said in the press that “he was concerned about cohesion in our society.”

¹⁰⁰ Raad van State, arrest n° 198.769 van 09-12-2009.

¹⁰¹

Cf.

http://www.melchiorwathélet.be/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=155&cntnt01returnid=317&hl=fr_FR

¹⁰² Cf. <http://www.dofi.fgov.be/nl/1024/frame.htm>

The number of integrated actions¹⁰³ to tackle the flows of undocumented immigrants in Oostende and Zeebrugge was increased in 2009 following an upsurge in the estimated number of undocumented migrants present in the region. Many transit migrants are smuggled or try to find their way to the UK through the harbours of Oostende¹⁰⁴ and Zeebrugge. The police actions seemed to have a direct dissuasive effect on the number of intercepted transit migrants many of whom seemed to come from neighbouring countries¹⁰⁵ For example, agreements were made with France with regard to rapid exchange of information (i.a. on human smugglers and traffickers) and possible common police controls with the French authorities in the border areas. Following the closure of “the jungle” in Calais, extra police controls were foreseen.

3.10 Actions against human trafficking

3.10.1. European Pact on Immigration and Asylum

II(e) cooperation with the countries of origin and of transit, in particular to combat human trafficking and to provide better information to communities under threat

A project launched by the former Minister of Migration and Asylum Policy Annemie Turtelboom was implemented in 2009. It seeks to prevent smuggling and economic exploitation of irregular Brazilian migrants (especially those coming from Goiania and Uberlandia). The core of the project is an information campaign targeting irregular migrants in Belgium who might be victims of economic exploitation or people smugglers.¹⁰⁶ This project is implemented by IOM Brussels.

A second project between a Belgian reception centre for asylum seekers and a reception centre for victims of THB aims to organise the reception of victims of THB in countries of origin. A common management manual for the reception centers, and training of specialised staff has been developed.¹⁰⁷

Also, in the framework of the European Anti-Trafficking Day 2009, the reception centers for victims of human trafficking and the Centre for Equal Opportunities and Opposition to Racism organised in cooperation with the federal police a national awareness-raising event on October 16, 2009.¹⁰⁸

3.10.2. Additional/Complementary developments

As reported in our 2008 Policy Report, a Ministerial Circular Letter was prepared within a workgroup of the Interdepartmental Cell for the Coordination of the Fight against Human Trafficking and was issued on 26.09.2008. The *Circular letter of 26.09.2008 pertaining to multidisciplinary cooperation in relation to victims of Human Trafficking or of aggravated forms of Human Smuggling*¹⁰⁹ aims at

¹⁰³ Cooperation of the local police and the ID (*Mistralacties*). Cf. Chambre des représentants, CRIV 52 COM 662

¹⁰⁴ In the city of Oostende, illegal migrants tend to stay in squats or live in city parks

¹⁰⁵ Source: Declarations of the Minister of Asylum and Migration Annemie Turtelboom to the press after an evaluation meeting of the integrated actions, in Bruges, June 2009.

¹⁰⁶ <http://www.infobrasil.be/>

¹⁰⁷ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en Asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d’Asile. Doc 52 2225/09 (2009/2010).

¹⁰⁸ Cf. <http://www.antitraffickingday.be/>

¹⁰⁹ This Circular letter integrates the whole protection system of the victims of THB, it clarifies provisions on victims of human trafficking that are to be found in the Law of 01.06.2007 modifying the Aliens Act and it replaces the circular letter of 01.07.1994 and the directives of 13.01.1997, as modified on 17.04.2003 (circulaire du 1^{er} juillet 1994 concernant la délivrance des titres de séjour et des autorisations d’occupation (permis de travail) à des étrangers(ère), victime de la traite des êtres humains et les directives du 13 janvier 1997 à l’Office

coordinating and organising the tasks of the numerous key-actors involved in identifying, protecting and accompanying victims of THB: the police, the social inspection services, the ID, the specialised reception centres for victims of THB (Payoke, Pagasa, Surya) and the judicial authorities. The Circular Letter will be evaluated on 31.10.2010 and it will be decided whether new measures are needed.

In addition to the Circular Letter, various initiatives about THB are seeking to increase the authorities' awareness of the existence of child victims of trafficking. A list of signs to be checked has been established by the police for the border guards as well as for policemen in contact with children. The check list is a tool for identifying children who are victims of exploitation, trafficking or smuggling. The awareness-raising initiatives are launched by an ad hoc work group within the Interdepartmental Cell for the Coordination of the Fight against Human Trafficking.¹¹⁰ Civil servants and other public personnel are to be better informed of the new legislation that came into force on 01.06.2007 and of the Circular Letter of 26.09.2008; and victims have to be rapidly re-directed to the specialised reception centres so that they can benefit from the victim status, if needed.

des étrangers, aux parquets, aux services de police, aux services de l'inspection des lois sociales et de l'inspection sociale relative à l'assistance de la traite des êtres humains, modifiées par les directives du 17 avril 2003).

¹¹⁰ Article 4 de l'arrêté royal du 16 mai 2004 relatif à la lutte contre le trafic et la traite des êtres humains, Moniteur Belge, 28 mai 2004.

3.11 Return migration

3.11.1. European Pact on Immigration and Asylum

II(b) To conclude readmission agreements at EU or bilateral level

Readmission agreements

With respect to EU readmission agreements, Belgium fully supports EU initiatives at the Justice and Home Affairs Council. To the present, Europe has concluded 11 readmission agreements. Negotiations with China and Algeria have not started yet (despite the approbation of the negotiation mandates in 2002).. In 2009, the EU started negotiations with Georgia, whereas negotiations with Cap Verde should start in 2010.

With respect to Benelux cooperation in return policy, Belgium has led negotiations between Benelux and Russia for the implementation protocol of the EU readmission agreement. The protocol should be signed by the end of 2009. Negotiations have also been started with Ukraine, Moldavia and the West-Balkan countries (Bosnia, Serbia, Montenegro and Macedonia) in 2009. At bilateral level, MoUs (Memoranda of Understanding) were signed with Burundi, Kosovo, Ecuador and Vietnam in 2009. Administrative agreements for readmission will be negotiated with Brazil, Pakistan and Afghanistan. Reinforced collaboration between Belgium and the UK is also envisaged in order to combat illegal immigration and transit migration to the UK. A bilateral visit was organised at the end of 2009 to improve the implementation of the Memorandum of Understanding of 2004 pertaining to the collaboration between the police services and the immigration services of both countries. Efficient, stable and sustainable collaboration with the Democratic Republic of Congo regarding return policy was reinforced and developed through the RETURN project that terminated in 2009. The project sought to intensify collaboration between the Congolese Ministry of Foreign Affairs and five EU MS on identification and return of irregular Congolese nationals, and included technical assistance to Congolese institutions.

II(f) To devise incentive systems to assist voluntary return and to keep each other informed

Voluntary return is at the centre of the Belgian return policy

As stated by the Secretary of State for Migration and Asylum Policy in his Policy Note of 05.11.2009, voluntary return is the priority of a humane return policy. The coordination of AVR in Belgium is under the responsibility of the federal agency for the reception of asylum seekers (FEDASIL) and of the Secretary of State for Social Integration. The Secretary of State for Migration and Asylum Policy announced his intention to cooperate closer with the Secretary of State for Social Integration, towards a more integrated return policy. As regards information provided to migrants subjected to a return decision, the objective is to inform them as soon as possible and in all cases at the moment that all conditions are met for return. Good information on AVR, re-integration programs, conditions for detention and removal procedures contribute to the acceptance of return. Therefore, leaflets and audiovisual material have already been produced in several languages, to be used by the public, by Belgian and foreign diplomatic posts, etc. More resources will be put in producing additional information instruments. In detention centers, social workers provide information to residents; in the future, additional counseling instruments on return could be developed. In addition to the AVR program 'REAB'¹¹¹ implemented by IOM, the ID, IOM and NGOs are jointly developing pilot

111 The REAB ("Return of Asylum Seekers ex Belgium") program has been running since 1984. Through the REAB programme, the costs of travel documents, return journey, assistance in transit and arrival; and a lump sum resettlement money of 250 €person (125 €for minors younger than 18) are covered. The programme is

projects aiming, amongst other, at improving assistance of returning migrants in their country of origin. These pilot projects are co-funded by the EU Return Fund and are complementary to the REAB program. Individual assistance in the country of origin can take different forms (medical help, training, starting a self-employed activity, etc.). One pilot project of assistance to reintegration in the country of origin targets ill foreigners or foreigners suffering from psychological disorders. Psychological or medical assistance is provided during the voyage and reception in a psychiatric or medical centre on arrival is arranged; medical costs are taken care of for several months. Other pilots will be started, e.g. on return and reintegration of ex-detainees, of people showing violent behavior, and of vulnerable people.¹¹²

Evaluation of the REAB programme and new measures for 2010

Results of the evaluation of REAB carried out in 2008/2009 (i.a. reform and extension of types of assistance, strict definition of target groups, etc.) will be implemented in the course of 2010. This will partly be possible thanks to financial resources of the EU Return Fund. In 2010, the two following measures will be co-financed by the EU Return Fund:

- Additional support to people starting a small-scale self-employed activity (up to 2,000 €/dossier);
- Additional support to vulnerable groups, based on assessment of individual needs.

The programmes are coupled to general actions, i.e. activities aiming at providing information to the target group and ensuring that professional pre-departure counselling is available to people who want to return. Priorities for 2010 have already been determined: use of new actors in providing information (e.g. municipalities), use of new techniques (e.g. video-conference).

With regard to the legal basis for AVR in Belgium, the Reception Act of 2007 stipulates that Fedasil ensures access to an AVR programme. This provision is still to be implemented through a Royal Decree. In the future Royal Decree, the various roles and responsibilities of the actors involved, namely the ID and Fedasil, will have to be stipulated. The drafting of this Royal Decree started in 2009. The final proposal and approbation of the Decree will probably take place in 2010 with the necessary consultation of all actors involved.

As regards cooperation with other MS, Belgium will coordinate an evaluation of synergies between the various reintegration programmes of participating MS. The evaluation is foreseen for the second semester of 2010 and will be co-financed by the EU Return Fund.

3.11.2. Additional/Complementary developments

Modifications of the terms for appeal (return decision, implementation of forced return and others)

The law of 06.05.2009 entering into force on 29.05.2009 modifies certain provisions of the law of 15.12.1980 related to return decisions and forced return. The timeframe within which the suspension of a return decision can be requested by means of a judicial summary procedure (or procedure “in extreme emergency”) has been prolonged from 24 hours to 5 days after the communication of the

open for asylum seekers, asylum seekers whose claim has received a negative decision and irregular migrants. About 2,500-3,000 migrants leave Belgium with REAB each year. In 2006, the existing programme was extended with a complementary re-integration scheme. All people resorting to REAB, can also benefit from material aid for re-integration (of a max. money value of 700 €/per person or 1,750 €/per dossier). Vulnerable people can receive 700 € value of material aid. About 1,000 people benefit yearly from the re-integration scheme.

¹¹² Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie- en Asielbeleid. Doc 52 2225/009 (2009/2010) / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d’Asile. Doc 52 2225/09 (2009/2010).

return decision, with an absolute minimum of 3 days. A forced return decision can be enforced 5 days after the communication of the return decision at the earliest, with an absolute minimum of 3 days.

The same law of 06.05.2009 also modifies the number of days between the communication of a decision of the ID or the CGRS and the lodging of an appeal against that decision with the Aliens' Litigation Council. Foreigners who are not detained can lodge an appeal within 30 days of receiving the decision, whereas foreigners detained in closed centres have 15 days to appeal a decision.

These two sets of modifications had to be made before 30.06.2009, as stipulated in the ruling of the Constitutional Court of 27.05.2009.¹¹³

Circular Letter pertaining to the identification of foreigners staying illegally on the Belgian territory

In June 2009, the Minister of Migration and Asylum Policies and the Minister of Home Affairs issued a joint circular letter¹¹⁴ detailing the existing procedures to identify undocumented migrants. The circular letter was issued to speed up procedures and facilitate collaboration between the various public services involved in identifying undocumented migrants (e.g. municipal authorities and their local police force, the federal police, the judiciary, the Immigration Department).¹¹⁵

New developments regarding closed centres and removals

The ID is currently working on a centralised system to collect more reliable data on detention in closed centres, such as the length of detention in a closed centre.. Also, the construction work for the new transit centre of the Zaventem Airport started on 02.06.2009.¹¹⁶ Instead of the containers of the centres T127 and INAD of Zaventem, the new infrastructure will be adequate for the accommodation of vulnerable people. The building should be finished by end 2010. Other important improvement of the infrastructure in the closed centres of Steenokkerzeel (127bis), Brugge, Merksplas and Vottem are being done or will be undertaken in 2010. On 04.08.2009, the bureau of legal aid (*bureau d'aide juridique*) of Liège launched a pilot project to improve access and efficiency of the legal aid offered to detained foreigners in closed centres. First-line legal counselling is available in the closed centre of Vottem once a week. Priority is given to newly detained irregular migrants. The interpretation services are provided by the ID. It is hoped that the initiative will improve the respect of the terms for appeals and the efficiency of legal aid. The Secretary of State for Migration and Asylum Policy announced in his General Policy Note of 05.11.2009 that a proposal of Royal Decree was being drafted to set up a "Permanent Parliamentary Commission for Return Policy" as was recommended in the final report of the Commission Vermeersch II in 2005. This permanent commission should 1) assess the progress made towards the implementation of the recommendations of the Commission Vermeersch on removal procedures; 2) evaluate return policy in the global context of migration and asylum policies.¹¹⁷ Eventually, the Secretary of State for Migration and Asylum Policy decided that families with children that were refused entry to the territory would not be detained in the so-called "INAD" closed centres any more. The objective is that they would be accommodated in private housing units for irregular

¹¹³ Cf. 2008 Policy Report, p. 37.

¹¹⁴ Circulaire du 29.05.2009 relative à l'identification d'étrangers en séjour irrégulier / Omzendbrief van 29.05.2009 betreffende de identificatie van onregelmatig verblijvende vreemdelingen http://www.dofi.fgov.be/fr/reglementering/belgische/overige/omzendbrieven/2009/29052009_f.pdf (FR) / http://www.dofi.fgov.be/nl/reglementering/belgische/overige/omzendbrieven/2009/29052009_n.pdf (NL)

¹¹⁵ Three NGOs (Ligue des droits de l'homme, Liga voor de mensenrechten, Ciré) have filed an appeal with the Council of State (Higher Administrative Court) to suspend and annul the Circular Letter. They claim the provisions described in the document are an infringement of individual freedom and right to privacy.

¹¹⁶ The construction of a new transit centre for inadmissible foreigners has been planned since 2006. Cf. http://www.diversite.be/index.php?action=artikel_detail&artikel=237

¹¹⁷ Cf. Belgische Kamer van Volksvertegenwoordigers (5.11.2009) Algemene Beleidsnota. Migratie en asielbeleid. Doc 52 2225/009 (2009/2010), p. 25 / Chambre des représentants de Belgique (5.11.2009) Note de politique générale. Politique de Migration et d'Asile. Doc 52 2225/09 (2009/2010), p. 25.

families, pending their return. In order to do so, the housing units will have to be given a border status by Royal Decree. The housing units were launched in 2008 but received a legal basis on 14.05.2009.¹¹⁸

EU Return Fund

The EU Return Fund is managed at national level by the ID. The yearly national programme is established in collaboration with Fedasil and IOM. Key objectives of the current programmes are: promotion of AVR and reinforcement of current practices; increase of AVR through information and communication plans, development of pilots on return and reintegration for certain target groups; alternative reception structures for families and vulnerable people where counsel and information on return is provided; more rapid identification; development of a more integrated return policy that comprises voluntary return, forced return and sustainable re-integration in the country of origin; development of analysis and evaluation instruments regarding return and flows of irregular migrants; commitment in EU information exchange structures. Most pilot projects of the ID regarding return are co-financed by the EU Return Fund. AVR programmes are mainly implemented by NGOs, IOM or Fedasil.

Return Directive

The completion of the transposition of Directive 2008/115/CE of 16 December 2008 in Belgian legislation is foreseen for 2010.

¹¹⁸ 14 MEI 2009. - Koninklijk besluit houdende vaststelling van het regime en de werkingsmaatregelen, toepasbaar op de woonunits, als bedoeld in artikel 74/8, par. 1, van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, bl. 38857. 19 MEI 2009. - Ministerieel besluit tot aanduiding van de woonunits, als bedoel in artikelen 51/5, par. 3, 74/8, par. 1 van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, bl. 38868.

3.12 External relations/Global Approach

3.12.1. European Pact on Immigration and Asylum

V(a) conclude EU-level or bilateral agreements with the countries of origin and of transit containing clause on legal and illegal migration as well as development

Cf. 3.11.1

V(b) offer the nationals of partner countries to the East and South of Europe opportunities for legal immigration

V(c) cooperation with the countries of origin and of transit in order to deter or prevent illegal immigration

The ID has launched a prevention campaign against illegal immigration in North Punjab, India. With the help of posters, brochures, filmed documentaries and a play, the campaign informs potential candidates to illegal immigration to Belgium about the risks they are willing to take (human trafficking, false document, shanty housing, blackmail, illegal work, etc.). The Indian nationality is represented in the top-5 of the most intercepted nationalities of illegal migrants in Belgium. In addition, new prevention or awareness-raising projects will be started by the end of 2009 in the Democratic Republic of Congo, concomitantly to the launch of an awareness-raising campaign in Belgium targeting irregular migrants from Brazil and a project to raise the awareness of municipalities on fraudulent practices.

V(d) More effective integration of migration and development policies

Belgium wants to encourage synergies between immigration policy, foreign policy and development policy, in order to reach a more coherent and global approach of migration. This has also been the starting point of large international and regional conferences that took place in 2006 and that gathered countries of origin, countries of destination and countries of transit. Belgium, which organised the first Global Forum on Migration and Development in 2006, actively participated in the second forum in Manila and in the forum in Athens in 2009.

In that same perspective, the ID and the Directorate-General Development Cooperation jointly manage the financial resources made available for projects participating in both migration policy objectives and in development policy objectives. Examples of these projects are: promotion of AVR and reintegration from Morocco to Sub-Saharan African countries; support to economical sustainability of rural women to prevent their migration to Kinshasa; the contribution to the Budapest process.

V(e) promote co-development actions and support instrument for transferring migrants' remittances

3.12.2. Additional/Complementary developments

Stockholm Programme and EU Presidency in 2010

Belgium has actively participated in drafting the programme, at its very origin and during the negotiation phase. The Stockholm programme will integrate the objectives and instruments agreed upon in the EU pact on immigration and asylum. Since the start of 2009, Belgium and the ID have been actively preparing the Belgian Presidency of the EU of the second semester of 2010. The definitive calendar of activities in the field of asylum and migration will be finalised by early 2010. In his General Policy Note of 05.11.2009, the Secretary of State for Migration and Asylum policy briefly outlined the provisory priority issues of the Belgian Presidency as regards Migration and Asylum: implementation of the Common EU Asylum System through legal instruments, reinforced practical cooperation and the development of solidarity instruments (towards other MS or towards third-countries); finalisation of EU instruments for legal immigration; evaluation of Frontex; cooperation for issuing visas; evaluation of the readmission agreements; and the development of the concept of mobility partnerships.

3.13 Other policy areas/topics

EU External Borders Fund and EU Return Fund

In Belgium, the ID is responsible for the management of the External Borders Fund (2007-2013) and the Return Fund (2008-2013). The ID receives the EU subventions, selects the supported projects and distributes subventions to operational project partners. The total amount of the EU subventions received by Belgium is 5.2 millions Euro for the yearly programmes 2007 to 2009 of the External Borders Fund, and 6.1 millions for the yearly programmes 2008 & 2009 of the Return Fund. In 2010, Belgium will receive, 1.9 millions Euro for the EBF, and 3.4 millions for the RF. The budget of the federal State foresees sufficient funds to co-finance the yearly programmes managed by the federal administrations. The ID has developed a management and control system; and has prepared pluri-annual programmes that serve as basis for the yearly programmes and the concrete projects. These programmes are established in collaboration with the main operational partners. For the EBF, the SPF Foreign Affaires, the federal police and the SPF Home Affaires are the principal partners. For the RF, Fedasil, international organisations and NGOs are the main operational partners. Projects related to forced return are implemented by the ID and by the federal police. Projects for voluntary return are selected after a call for propositions drafted by the ID and Fedasil.. The ID has drafted the 2010 annual programmes for the EBF and the RF which is being assessed by the European Commission. These 2010 programmes will probably cover: development of the VIS, biometric material in consular posts, exchange of electronic administrative reports between the police and the ID, development of adequate software to manage the in- and out-flows in detention centres, adaptation of closed centres to the needs of vulnerable people, reinforcement of AVR and of reintegration of vulnerable people, families and target groups.

4. Implementation of EU Legislation

4.1 Transposition of EU legislation 2009

Transposition of Directive 2003/109/EC

The directive is completely transposed in the Belgian legislation. A last Royal Decree¹¹⁹ complementing the set of laws and decrees transposing the directive came into force on 01.01.2009. It concerns access of LTR to the Belgian labour market (cf. section 3.6.2).

Transposition of Directive 2003/110/EC

This directive is also completely transposed in the Belgian legislation. A law pertaining to assistance during transit in the framework of removals by air was published in the Belgian Official Journal in January 2009.¹²⁰

Transposition of Directive 2005/85/EC

This directive is almost completely transposed. The Belgian Constitution was modified on 22.12.2008, i.a. to incorporate some important rights of the child (cf. section 3.3.2.).¹²¹ Minor revisions of the Aliens Act have been introduced¹²² in order to 1) prolong the time limit for the lodging of an appeal following a negative decision in an asylum claim in first instance (30 days, instead of 15 days); 2) cancel certain technical motives for refusal; 3) adapt legislative provisions on fast-track processing of certain asylum claims (cf. section 3.1.2.). The Royal Decrees pertaining to the organisation of the ID and the CGRS will also be adapted soon to transpose Directive 2005/85/EC.

Transposition of Directive 2008/115/EC

This directive is partially transposed in the Belgian legislation. In 2009, a set of two Royal Decrees pertaining to the organisation of detention centres for irregular migrants was passed.¹²³ One Royal Decree regulates the specific detention regime and work procedures applicable to the INAD-centres. The second Royal Decree modifies the regulations applied in detention centers for irregular migrants, so that fundamental rights of detainees are better guaranteed and certain confinements of individual freedom are better regulated (cf. 3.11.2.). In addition, a legal basis¹²⁴ was given to the private housing units created by the ID to accommodate irregular families with children, pending their return. The measure is meant as an alternative to detention of families with children in closed centers (cf. section 3.3.2 and 3.11.2).

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

¹¹⁹ Arrêté royal du 23 décembre 2008 modifiant, en ce qui concerne les résidents de longue durée, l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers (MB du 29/12/2009).

¹²⁰ Loi du 15 décembre 2008 relative à l'assistance au transit dans le cadre des mesures d'éloignement par voie aérienne (MB du 23/01/2009).

¹²¹ Révision de la Constitution du 22 décembre 2008 (MB du 29/12/2008).

¹²² Loi du 22 décembre 2008 portant des dispositions diverses (I). TITRE 5. — Asile et immigration. CHAPITRE UNIQUE. — Modifications de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers – Articles 17 et 18 (MB du 27/12/2008).

¹²³ Arrêté royal du 8 juin 2009 modifiant l'arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'office des Etrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, §1^{er}, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 25/06/2009).

¹²⁴ Arrêté royal du 14 mai 2009 fixant le régime et les règles de fonctionnement applicables aux lieux d'hébergement au sens de l'article 74/8, §2, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 27/05/2009).

Those new directives have not yet been transposed in Belgian law. However, the transposition process started in 2009.

A thorough list of pieces of Belgian legislation transposing EU Directives in the field of asylum and migration is presented in annex. The list in annex provides a better overview as it is not limited to 2009.

4.2 Experiences, debates in the implementation of EU legislation

Free movement of EU citizens and their family members

The ID has been granted access to the so-called ‘Crossroads Database’ of the Social Security to check the source of income of EU students. By consulting the Crossroads database data the ID is able to check whether an individual works or depends on unemployment benefits, social aid or other social security benefits for income. The ID also cooperates with the Public Centre for Social Aid and the local authorities in order to control whether non-active EU citizens live on State benefits (avoiding abuse) Non-active EU citizens can remain in another EU Member State if they have sufficient income and do not constitute an unreasonable burden on the national social security system. Theoretically, their right of residence could be retrieved if the ID finds out these EU citizens live on income provided by the Public Centers from Social Aid and if the ID proves they then constitute an unreasonable burden for the Belgian State.

Parents of EU citizens have to be looked after by the EU citizen in order to benefit from free movement as family members of the EU citizen. The situation of dependence of the parents is evaluated in the MS of origin, and not in the host MS. However, experience has shown that some parents, after they have been granted right of residence in the host country, do resort to social aid as their children cannot provide means of subsistence for them anymore. If they are parents of EU workers, the host State cannot claim that they constitute an unreasonable burden for its social security system (art. 14.4 Directive 2004/38) and cannot retrieve their right of residence.

Furthermore, Directive 2004/38 foresees that EU citizens and their family members can be refused residence in another MS because of proven fraud or abuse of the authorities. However, since the Directive also limits the types of documents that can be required by the host MS in the visa application, identification and investigation of cases of abuse or fraud is practically very difficult. Similarly, criminal record cannot be asked to the EU citizen itself but has to be checked via his/her country of nationality, which can take time and which means that right of residence is often already granted when the authorities find out that the EU citizen should have been refused entry for reasons of national security or public order.

Other types of issues with Directive 2004/38 relate to claim of unemployment benefits by EU citizens after very short period of employment or after dubious jobs. E.g, The ID detected a pattern of Portuguese citizens officially employed in the same small Dutch company, who exercised their professional activities in Belgium for a very short time, only to benefit afterwards from unemployment benefits. In 2009, the Secretary of State received a Parliamentary question¹²⁵ on the alleged increase in Spanish citizens claiming social benefits with the Public Centre for Social Aid of Antwerp. It is however still unclear whether this has to be dealt as fraudulent phenomenon.

With regard to free-movement of EU students, in June 2009, the advocate-general to the European Court of Justice, Eleanor Sharpston, rendered her conclusions in the framework of the request by the Belgian Constitutional Court for a preliminary ruling of the ECJ in the case related to maximum

¹²⁵ Kamer, 4^{de} zitting van de 52de zittingsperiode, 2009-2010, CRVI 52 COM 662

quotas of foreign students in certain higher education institutions of the French Community in Belgium.¹²⁶ The advocate-general concluded that the practice of imposing quotas did not comply with Community Law but she also underlined that the EU should not ignore the real problems of MS confronted to large inflows of foreign students coming from other MS. According to the advocate-general, the host MS and the sending MS are responsible for actively negotiating a solution conform to the EC Treaty.¹²⁷

The ‘Belgian route’ or ‘Europe route’

Belgium and The Netherlands are dealing with a specific abuse (or at least improper use) related to the *free movement* of Dutch citizens who settle (temporarily) in Belgium (but also in Germany) in order to avoid the strict Dutch legislation on family reunion of own nationals with third country nationals.¹²⁸ This phenomenon has been referred to as the “Belgium route”, but it is now generally known as the “Europe Route”. The phenomenon is widespread and finds its origin in the fact that in the Netherlands family reunion with a Dutch citizen is much harder than family reunion with an EU-citizen. No provisions exist in EU law for family reunification with own MS nationals. MS can impose their own national rules for family reunification with its own nationals; these can be stricter than the rules imposed on EU citizens by Directive 2004/38. Belgium has opted to more or less align the conditions for family reunification with its own nationals to the ones applicable for EU citizens. The Netherlands has opted for much stricter family reunification rules for its own nationals than for EU citizens.

Directive 2004/38 is only applicable to EU citizens who move to another MS, with their family members. In order to become an EU-citizen the Dutch national has first to have benefited from the *free movement of persons* within the EU (i.e. a short stay in Belgium or Germany with his or her third country family members).

The ID has observed the following patterns:

- Dutch citizen comes to Belgium with proof of job in Belgium (sometimes with false documents).¹²⁹
- Dutch citizen proves income in home country (sometimes with dubious work permit or payslip).
- Third country national applies for family reunion in Belgium after illegal (or temporary legal) stay in the Netherlands or applies for visa in home country.
- In a considerable number of cases the third country applicants are signalled in SIS by the Netherlands for reasons of public order, among whom quite some asylum seekers who have been refused asylum on the basis of art. 1F of the Geneva Convention on the Status of Refugees (persons supposed to be war criminals).¹³⁰

The ID does not have clear statistics on the phenomenon since the abuse is hard to prove on the Belgian side (people do not mention their real intentions to settle in Belgium). The second step in the ‘Belgian route’ is often the return to The Netherlands, where family members of the EU citizen have the right to reside since the EU citizen has made use of his/her right to free movement. This second step can be considered a fraudulent practice (because of the circumnavigation of the national legislation). Belgium and The Netherlands are negotiating to address the problem but no practical solution has been found so far.

¹²⁶ The issue mainly occurs in medical, paramedical and vet schools, where high numbers of French nationals are enrolled.

¹²⁷ Case C-73/08 - http://curia.europa.eu/jcms/jcms/j_6/

¹²⁸ Since a number of years a manual circulates on the internet with precise guidelines as how to circumnavigate the Dutch rules on family reunion (in Dutch: webmaster.zattevrienden.be/handboek.htm).

¹²⁹ In order to establish the degree of abuse (marriage of convenience, document fraud, false declarations, criminal record) information is being exchanged with the Dutch Immigration Service on a case by case basis.

¹³⁰ In the Netherlands these persons have mostly been given the status of unwanted foreigner on national legal grounds. By using the “Europe Route”, they can upon return apply for a stay in the Netherlands on European grounds, which is much harder to refuse.

Annex – Methodology, terms and definitions

A1.1 Methodology

This report was written by the EMN Belgian national contact point. The specifications provided by the European Commission were strictly followed. Where no new developments occurred or no significant debate had taken place in 2009 and late 2008, no information was mentioned. This however does not mean that the issue is not being dealt with already existing measures.

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

- Information provided by departments and services of the ID and of the CGRS that are dealing with the issues highlighted in the report. Not all contacted services or departments answered our request for information.
- Parliamentary documents, declarations of the federal government, press releases of Ministers and Secretary of States.
- Legislation published in the Belgian Official Journal.
- Press releases of NGOs and non-profit organisations assisting asylum seekers or defending the fundamental rights of foreigners.
- Official reports, such as the reports of the federal ombudsman, of the Council of Europe Commissioner for Human Rights, of the High Council for Employment, etc.
- Academic papers
- Press articles, especially when the information could be cross-checked through other types of sources

At the time of writing the first version of the Policy Report (December 2009), no use could be made of key-organisations annual reports (annual report of the ID, of the CGRS, of the ALC, of the Centre for Equal Opportunities and Opposition to Racism, etc.). Also, few statistics relating to 2009 could be collected at such short notice.

A1.2 Terms and Definitions

LIST OF ABBREVIATIONS

Aliens Act	Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens
ALC	Aliens Litigation Council (<i>Raad voor Vreemdelingenbetwisting / Conseil du Contentieux des Etrangers</i>)
ID	Immigration Department (<i>Dienst Vreemdelingenzaken / Office des Etrangers</i>)
CS	Council of State (<i>Raad van State / Conseil d'Etat</i>)
CGRS	Office of the Commissioner General for Refugees and Stateless Persons (<i>Commissariaat-generaal voor Vluchtelingen en Staatlozen / Commissariat Général pour les Réfugiés et les Apatrides</i>)
ECHR	European Convention on Human Rights
FPS	Federal Public Service (<i>Federale Overheidsdienst / Service public fédéral</i>)
CEOOR	Centre for Equal Opportunities and Opposition to Racism (<i>Centrum voor gelijkheid van kansen en voor racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme</i>)
DG SIE	Directorate-General Statistics and Economic Information (<i>Algemene Directie Statistieken en Economische Informatie / Direction générale Statistiques et Informations économiques</i>)

SPECIFIC TERMS :

Closed centres	Detention centres for irregular migrants, pending their forced return to their country of origin (administrative detention).
Open centres	Reception centres for asylum seekers.
'Rapatriements' (FR) / 'repatriering' (NL)	Implementation of a Forced return decision.
Housing units	Private housing units where irregular families with children are accommodated pending their (forced) return. Alternative to their detention in closed centers where a collective regime prevails.

Annex – Transposition of EU legislation (Migration and Asylum)

Directives Asile- Immigration : Transposition en droit belge

- Directive 2001/40/CE (reconnaissance mutuelle des décisions d'éloignement) : **Transposée**

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

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

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

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

- Directive 2001/51/CE (transporteurs routiers, lutte contre l'immigration clandestine) : **Transposée**

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

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

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

- Directive 2001/55/CE (protection temporaire des personnes déplacées) : **Transposée**

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

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

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

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

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

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

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

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

- Directive 2002/90/CE (lutte contre l'aide à l'immigration clandestine) : **Transposée**

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

- Directive 2003/9/CE (normes minimales accueil demandeurs d'asile) : Transposée

Loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (MB du 07/05/2007) ;
+ réglementation belge relative aux centres fermés dans la loi du 15/12/1980, l'AR du 08/10/1981 et l'AR du 02/08/2002 i.a.

- Directive 2003/86/CE (regroupement familial des ressortissants de pays tiers) : Transposée

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

- Directive 2003/109/CE (statut ressortissants pays tiers résidents longue durée) : Transposée

Loi du 25 avril 2007 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/05/2007) ;
Arrêté royal du 7 mai 2008 fixant certaines modalités d'exécution de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 13/05/2008) ;
Arrêté royal du 7 mai 2008 modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 13/05/2008) ;
Arrêté royal du 23 décembre 2008 modifiant, en ce qui concerne les résidents de longue durée, l'arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers (MB du 29/12/2009)

- Directive 2003/110/CE (assistance au transit, éloignement des illégaux par voie aérienne) : Transposée

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

- Directive 2004/38/CE (libre circulation et droit de séjour des ressortissants des citoyens de l'UE et des membres de leurs famille) : Transposée

Loi du 25 avril 2007 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/05/2007) ;
Loi du 4 mai 2007 modifiant les articles 39/20, 39/79 et 39/81 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 10/05/2007) ;
Arrêté royal du 7 mai 2008 fixant certaines modalités d'exécution de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 13/05/2008) ;
Arrêté royal du 7 mai 2008 modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (MB du 13/05/2008) ;

- Directive 2004/81/CE (titre de séjour pour les victimes de la traite des êtres humains) : Transposée

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

- Directive 2004/82/CE (transporteurs aériens, obligation de communiquer les données relatives aux passagers, lutte contre l'immigration clandestine) : Transposée

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

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

- Directive 2004/83/CE (qualification asile, protection subsidiaire) : Transposée

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

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

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

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

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

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

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

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

- Directive 2004/114/CE (conditions entrée et séjour étudiants) : Transposée

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

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

- Directive 2005/71/CE (conditions entrée et séjour chercheurs) : Transposée

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

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

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

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

- Directive 2005/85/CE (procédure asile) :

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

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

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

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

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

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

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

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

- Directive 2008/115/CE (retour illégaux) : (date limite de transposition pas encore expirée)

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

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

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

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

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

- Directive 2009/50/CE (conditions entrée et séjour travailleurs hautement qualifiés, « carte bleue ») (date limite de transposition pas encore expirée)

- Directive 2009/52/CE (sanctions employeurs de ressortissants de pays en séjour irrégulier) (date limite de transposition pas encore expirée)