



**European Migration Network (EMN)**  
**Belgian National Contact Point**

**Practical Measures for Reducing Irregular  
Migration in Belgium**

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With the financial support of the European Union



This report was elaborated with the support of the Belgian National Contact Point of the European Migration Network. The Belgian National Contact Point is a mixed point composed of experts from the Immigration Office, the migration observatory of the Centre for Equal Opportunities and Opposition to Racism and the Office of the Commissioner General for Refugees and Stateless Persons. It is financially supported by the European Union.

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## ABBREVIATIONS

BS	Bulletin of Acts, Orders and Decrees
CEOOR	Centre for Equal Opportunities and Opposition to Racism (Centre pour l'Egalité des Chances et la Lutte contre le Racisme/ Centrum voor Gelijkheid van Kansen en voor Racismebestrijding)
CGRS	Office of the Commissioner General for Refugees and Stateless Persons (Commissariat Général aux Réfugiés et aux Apatrides/ Commissariaat-Generaal voor Vluchtelingen en Staatlozen)
DISR	Department of Information and Social Research (Service d'Information et de Recherche Sociale/ Sociale Inlichtingen- en Opsporingsdienst)
EC	European Commission
FEDASIL	Federal Agency for the Reception of Asylum seekers (Agence fédérale pour l'accueil des demandeurs d'asile/ Federaal Agentschap voor de Opvang van Asielzoekers)
FPS	Federal Public Service (Service Public Fédéral/ Federale Overheidsdienst)
IO	Immigration Office (Office des Etrangers/ Dienst Vreemdelingenzaken)
MOU	Memorandum of Understanding
OLT	Order to leave the territory (ordre de quitter le territoire/ bevel om het grondgebied te verlaten)
PICUM	Platform for International Cooperation on Undocumented Migrants
SWA	Social Welfare Agencies (Centre Public d'Action Sociale/ Openbaar Centrum voor Maatschappelijk Welzijn)

# 1. INTRODUCTION

## 1.1. Objectives

Migration is an integral part of Mankind's History. Undoubtedly it contributes to the evolution of the host countries as to the transit countries and countries of origin of migrants.

Without obscuring the positive contribution of migration on their economic and socio-cultural development, host countries, including Belgium, seek to regulate migration flows to their territory. Some legal "gates of entry" exist in Belgium and most of the migrants benefit from a resident permit. However some third-country nationals do not meet (anymore) the criteria for entry, stay and/or establishment as defined by Belgian legislation.

The irregularity of stay has implications for the economic and social prospects of migrants, and thus for their personal development, and for the Belgian society. Aware of this reality, the Belgian authorities have developed and supported the legislative implementation of practices to prevent, detect and reduce irregular migration towards and into Belgium.

This report is the Belgian contribution to a study, *Practical Measures for Reducing Irregular Migration*, requested by the European Commission and addressed to the National Contact Points (further: NCPs) of the European Migration Network (further: EMN). The overall objective of this European study is to provide an overview of existing approaches, mechanisms and measures implemented by Member States to address irregular migration in the EU.

As part of this comprehensive European study and in accordance with the technical specifications defined by EMN<sup>1</sup>, the specific aim of this national report is to highlight the historical and political approaches towards irregular migration in Belgium. It also provides a comprehensive overview of practical approaches, mechanisms and measures developed in Belgium to reduce irregular migration. In particular, the study identifies effective practical measures undertaken to: (1) address irregular migration before the migrant arrives in Belgium – i.e. at pre-entry level; (2) detect the entry of irregular migrants onto Belgian territory; (3) monitor and ensure migrant compliance with the respective conditions of their visa and/or other permission to stay in Belgium in order to avoid overstay; and (4) address the (legal) situation of irregular migrants by providing ways out of irregularity. Various Belgian transnational partnerships in the field of irregular migration will be highlighted. The impact of the recent development in EU policy and legislation on the national policy and practices will also be examined.

The outcome of this study is primarily intended for policymakers and stakeholders concerned with developing and implementing policy relating to irregular migration. Indubitably this study is interesting for other stakeholders and practitioners working in the field of irregular

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<sup>1</sup> EC, DG Home-Affairs, "European Migration Network – Specifications for EMN Study – Practical Measures for Reducing Irregular Migration in Belgium", MIGRAPOL, EMN, DOC 231.

migration. Researchers and people in the wider public who have an interest in irregular migration could also be triggered by this study.

## 1.2. Definitions

Irregular migrants, by means of measures implemented by the Belgian authorities in order to prevent/avoid their presence in Belgium, are at the core of this report. It is thus crucial to define which migrants are considered as irregular.

In the technical specifications of this study defined by the EMN Steering Board, it is proposed to refer to the definition given in the Return Directive<sup>2</sup>: “the presence on the territory of a Member State, of a third-country national<sup>3</sup> who does not fulfil, or no longer fulfils the conditions of entry (...), stay or residence in that Member State”. It is interesting to notice that this definition applies in the text to “illegal stay”. The term “illegal” is employed in various EU policy documents framing the debate on irregular migration, such as the Stockholm Programme (2009) and the European Pact on Immigration and Asylum (2008).

The use of the term “illegal” to describe irregular migrants is sometimes criticised by researchers, civil society organisations and various European actors, including the Council of Europe<sup>4</sup>, the EU Parliament, the Fundamental Rights Agency, and others.<sup>5</sup>

According to Merlino & Parkin<sup>6</sup>, these criticisms have begun to start change in the discourse of the European Commission. In particular it is noteworthy that the Commissioner for Home Affairs, Cecilia Malmström, now uses the term “irregular migration” and that the technical specifications also recommend the use of this term.

Actually, even if irregular migration is often discussed in public and political spheres in Belgium, the definition of the term remained unclear.<sup>7</sup> Even in legislation, no specific definition of the “irregular migrant” is given. We must refer to various articles of the Act of 15 December 1980 on the Access to the Territory, Residence, Settlement and Removal of Foreign Nationals<sup>8</sup> (further: “Aliens Act”) in order to have an idea of who is designated by the

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<sup>2</sup> Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (*OJ L 348*, 24.12.2008, pp. 98-107).

<sup>3</sup> According to the EMN glossary, a third country national is “any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the Union right to freedom of movement, as defined in Article 2(5) of the Schengen Borders Code”.

<sup>4</sup> Council of Europe, Resolution 1509 (2006), Human Rights of Irregular Migrants, <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta06/eres1509.htm>

<sup>5</sup> MERLINO, M. & PARKIN, J. (2011) *Irregular Migration in Europe: EU policies and the Fundamental Rights Gap* (Brussels: Centre for European Policy Studies), retrieved September 22nd, 2011, from <http://migration.etuc.org> and CHOLEWINSKI, R. (2005) *Study on obstacles to effective access of irregular migrants to minimum social rights* (Strasbourg: Council of Europe Publishing).

<sup>6</sup> MERLINO, M. & PARKIN, J. (2011) *op cit*.

<sup>7</sup> GUILD, E. (2004) ‘Who is an irregular migrant?’ in : BOGUSZ, B., CHOLEWINSKI, R., CYGAN, A. & SZYSZCZAK, E. (eds.) *Irregular Migration and Human Rights: Theoretical, European and International Perspectives* (Leiden : Martinus Nijhoff Publishers).

<sup>8</sup> BS, 31 December 1980. An unofficial coordinated version of the Aliens Act is [https://dofi.ibz.be/fr/reglementering/belgische/wet/Loi\\_derniere\\_version.pdf](https://dofi.ibz.be/fr/reglementering/belgische/wet/Loi_derniere_version.pdf).

term “irregular” (“illegal” in the Aliens Act). To resume, “irregular migrants” are all the individuals who do not enjoy the right of (legal) staying or residence in Belgium.<sup>9</sup> In this context, some researchers consider it is more correct to speak of “irregular residents”.<sup>10</sup> In practice, only the Minister of Home Affairs or his proxy, that means a civil servant of the Immigration Office (IO), can judge about the legal character of the stay.<sup>11</sup>

On the basis of the legislative framework, seven categories of irregular migrants can be pointed out<sup>12</sup>:

- 1) The first category concerns migrants who enter the country illegally and stay clandestinely
- 2) The second category concerns migrants who obtain valid documents to enter, but who breach the terms of their admission, for example by overstaying their period of entrance permission.
- 3) The third group are migrants with forged documents, persons who have assumed false identities with real documents or persons who have obtained a status thanks to the diversion of legal measures (stateless status, marriages of convenience<sup>13</sup>...);
- 4) The fourth group concerns persons whose immigration status is pending. This group includes people, whose application for regularisation is pending and whose application papers prevent their expulsion, or third country nationals (further TCN’s) who have lodged an asylum application. This group also includes individuals who have filed a request for status prolongation but still wait for a decision by the time that their limited residence permit expires. These people live irregularly in Belgium but with knowledge and toleration of the authorities.
- 5) The fifth group concerns migrants who obtain valid documents to enter, but who disrespect the terms of their (temporary) admission. Among this group are migrants, who entered the country with a tourist visa but take up an illegal employment. These persons are irregular workers rather than irregular migrants. However, it is important to notice that, following the Council of State, the fact that a TCN residing regularly in Belgium works without a work permit is a valid reason to deliver an order to leave the territory.
- 6) TCN’s under the age of 18, who arrive on the territory of a state unaccompanied. These children are addressed under the expression “unaccompanied minors” (MNA)

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<sup>9</sup> EMN – Belgian Contact Point (2005) *Illegally Resident Third Country Nationals in Belgium: State approaches towards them and their profile and social situation* (Brussels: EMN – Belgian Contact Point), p.11.

<sup>10</sup> JANDL, M., VOGEL, D. & IGLICKA, K. (2008) “Methodological Issues in Irregular Migration Research”, Research Paper, CLANDESTINO Undocumented Migration: Counting the Uncountable, retrieved 7th July, 2011, from <http://clandestino.eliamep.gr/category/irregular-migration-ethics-in-research>.

<sup>11</sup> EMN – Belgian Contact Point (2005) *op cit*, p. 9.

<sup>12</sup> This categorization is essentially based on two research projects: KAGNE, B. & MARTINIELLO, M. (2000) *Easy Scapegoats: Undocumented Immigrants In Europe – Belgian report* (Brussels: King Baudouin Foundation) and JANDL, M., VOGEL, D. & IGLICKA, K. (2008) *op cit*.

<sup>13</sup> Article 146 bis of the Civil Code defines “marriage of convenience”. This concept is used when, although the formal consent has been given, it appears that the intention of at least one of the spouses is clearly not the creation of a sustainable matrimonial cohabitation, but aims solely to obtain an advantage, related to the status of spouse.

MNA's entering illegally the territory or/and did not lodge an asylum applications or other procedures, might also be seen as irregular migrants.

- 7) Under certain conditions (illegal entering, no legal stay, etc.) victims of human trafficking.<sup>14</sup>

As highlighted by two important researches conducted in Belgium<sup>15</sup>, the different categories described above experience a variety of migration trajectory, as well as in terms of institutional, social and material resources.<sup>16</sup>

Finally, it is important to point out the fact that the status of irregularity is not fixed, but subject to changes over time. These changes are often related to developments in individual's personal circumstances that render their presence "illegitimate" in the eyes of the Belgian state.<sup>17</sup> For example, for migrant workers, renewal of a residence permit is tied to a work contract.

### 1.3. Methodology

The purpose of this study is to highlight the different measures developed in Belgium in order to reduce irregular migration flows. For this purpose, we have compiled various laws, practices and statistical data. This helped us to expose not only the current legislative framework for the management of irregular migration in Belgium, but also to highlight the legislative history, philosophy, laws and practices developed.

Annual reports edited by the IO and the Belgian NCP have been at the basis of our compilation. Some (more confidential) documents of different actors involved in the fight against irregular migration have also been useful. Scientific research conducted at both the Belgian and European level, as documents edited on this topic by various national or international organisations, have further fed our reflections.

To improve data collection and select the most relevant measures, semi-structured interviews with different stakeholders<sup>18</sup> involved with Belgian migration policy have been conducted. The Belgian Contact Point of the EMN (EMN-BCP) has selected these experts. The interviews helped us to highlight the philosophy of the legislation and practices developed in

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<sup>14</sup> In accordance with the specifications defined by the EMN Steering Board, measures implemented in order to fight against human trafficking will be not examined in the framework of this report.

<sup>15</sup> ADAM, I., BEN MOHAMMED, N., KAGNE, B., MARTINIELLO, M. & REA, A. (2002) *Histoires sans papiers* (Bruxelles: Vista) and REA, A., GODIN, M., MARX, I., VERBIST, G. & CORLUY, V. (2008) *Before & After: La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000* (Brussels: Centre for Equal Opportunities and Opposition to Racism).

<sup>16</sup> ADAM, I., BEN MOHAMMED, N., KAGNE, B., MARTINIELLO, M. & REA, A. (2002) *op cit.*

<sup>17</sup> *Ibidem*, p. 3.

<sup>18</sup> Interviewees and the organization they work for are: Michel Mouligneaux, IO, "Enquiry" unit; Stéphanie Jassogne, Medimmigrant; Geert Verbauwhede, IO, "CID/ Identification for migrants in detention Centres" unit; Dirk Van Daele, De Foyer; Julie Lejeune and Koen Dewulf, Centre for Equal Opportunities and Opposition to Racism; Frédérique Mawet and Michaël Franssens, Coordination and Initiatives for Refugees and Foreigners (CIRE); Paul De Backer, federal police, General Direction of Administrative issues; Bart Verstraete and Johan Hongenaert, IO, "Immigration Liaison Officer" unit; Pol Neuville, FPS Employment, Labour and Social Dialogue.

Belgium. They have been also crucial in order to highlight the impact of the European policy on the development of these practices and legislation. Finally, the various contributions of those interviewees were essential to highlight the different stakes that cover their daily work.

A round table, bringing together experts previously encountered, or officials of their administration/institution, as well as representatives of the EMN-BCP, has also been organised. During this round table, experts were invited to comment on the intermediate report previously drafted.

## 2. POLICY AND LEGAL FRAMEWORK IN RELATION TO IRREGULAR MIGRATION IN BELGIUM

### 2.1. National policy and legislation towards irregular migration

Belgium has hosted many migrants in its history. But until the mid of the 1930s the country did not have a migration policy in the modern understanding. During the inter-war period, Belgian authorities, under pressure of employers' federations, organised the immigration of workers originating from Italy, Germany and Eastern European countries. A draft of an immigration policy, correlated with an employment policy, was then designed. The Royal Decree of March 31<sup>st</sup>, 1936<sup>19</sup>, establishes the obligation of a work permit based on a double authorization (work permit and residence permit). The petrol crisis in 1973 and its consequences in many domains led the Belgian state, by decision of the Cabinet on August 1<sup>st</sup>, 1974, to put an end to this policy of work immigration based on quotas. The first wave of massive regularisation of migrants without residence permits was carried out at that time: Between August 1974 and October 1975, some 8.420 applications were introduced of which almost 7.500 cases were granted a positive outcome.<sup>20</sup>

#### 2.1.1. Legal framework

The cornerstone of Belgian legislation is the Aliens Act and its executive decree of 8 October 1981 on the Access to the Territory, Residence, Settlement and Removal of Foreign Nationals<sup>21</sup>. The Aliens Act determines five “gates of entry” onto the Belgian territory: free circulation of EU members’ citizens, studies, family reunification, work and asylum applications. Depending on the residence status granted, the migrant has a number of rights and is subjected to certain obligations.

Several modifications have been incorporated into the Aliens Act and its executive decree these last decades. As highlighted by some scientists<sup>22</sup>, since the implementation of the law, the Belgian immigration policy has become more and more restrictive, notably in order to combat (the increasing) irregular migration flows. Ministerial Circulars have attempted to arrange many administrative practices. However, as a consequence of the multiplicity of circulars, it was sometimes difficult to know how to handle certain situations.

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<sup>19</sup> Order N° 285 supplementing and coordinating arrangements for the employment of foreign workers (*BS*, 7 April 1936).

<sup>20</sup> DE BRUYCKER P, APAP J, BERNARD F e.a. “Regularisations of illegal immigrants in the European Union, 2000.

<sup>21</sup> *BS*, 26 October 1981.

<sup>22</sup> VAN MEETEREN, M., VAN SAN, M. & ENGBERSEN, G. (2007) *Irreguliere immigranten in België Inbedding, uitsluiting en criminaliteit* (Rotterdam: Erasmus Universiteit Rotterdam); MARTINIELLO, M. & PERRIN, N. (2009), “Immigration et diversité en Belgique” in: BEAUFAYS, J. & MATAGNE, G. (eds) *La Belgique en mutation. Systèmes politiques et politiques publiques (1968-2009)* (Bruxelles, Bruylant), pp. 217-251.

One major reform of the Aliens Act took finally place in 2006. Two Acts, also known as Mammoth I & II, have profoundly reformed the Belgian immigration policy: the Act of 15 September 2006 amending the Act of 15 December 1980 on the Access to the Territory, Residence, Settlement and Removal of Foreigners Nationals<sup>23</sup> and the Act of 15 September 2006 reforming the Council of State and creating the Alien's Litigation Council<sup>24</sup>.

These reforms had among others the purpose to incorporate the aforementioned circulars into law. Also it transposed several European directives in Belgian legislation and brought major changes to the Belgian asylum procedure (the introduction of the subsidiary protection status, a faster and more efficient asylum procedure by reducing the number of authorities examining the asylum requests (in particular to unburden the Council of State), and the transformation of the Permanent Refugee Appeals Commission into the Aliens Litigation Council).

Finally, it became clear to the government that there was a shift from purely irregular migration towards more pseudo-legal migration (e.g. marriages of convenience, fraud in family reunification, etc.).

### *2.1.2. State approaches*

In accordance with this legal framework, the fight against irregular migration initiated by the Belgian political authorities is mainly based on seven approaches, to a large extent interdependent:

- prevention
- coordination between the various national actors
- detection of pseudo-legal migration
- efforts to reduce the informal economy
- removals (voluntary or forced)
- regularisation
- international cooperation

Hereafter the five first aforementioned approaches are highlighted. The regularisation options will be addressed in point 3.4. The international cooperation will be discussed in depth in chapter 4.

#### *Prevention*

Prevention became one of the corner stones of Belgian policy, as pointed out in the 2010 End of Year Statement<sup>25</sup> of the Secretary of State for migration and asylum policy. As we will see in point 3.1, various types of practical measures have been implemented with this aim: start information campaigns and by that raise awareness in the countries of origin in order to

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<sup>23</sup> BS, 6 October 2006.

<sup>24</sup> BS, 6 October 2006.

<sup>25</sup> WATHELET, M. (2011) "Migratie- en asielbeleid – Politique de migration et d'asile: 2010 Balans– Bilan", retrieved September 18<sup>th</sup>, 2011, from <http://www.melchiorwathelet.be/uploads/Docs/110119%20AM%20bilan%202010%203.0%20FR.pdf>.

discourage irregular migration, controls and checks prior to arrival at national borders, training activities of border staff for carrying out practical measures. These actions are in particular based on strategic analyses and action plans elaborated by the various partners in the fight against irregular migration.

In Belgium, prevention is also based on sanctions for some particular actors: carriers and employers. Indeed, in application of the Aliens Act (article 74/4 bis), administrative fines can be imposed on carriers when transporting passengers - to and from Belgium - who lack the necessary documents to enter the Schengen area or the country of destination. Also in compliance with article 74/4bis of the Aliens Act, carriers can conclude a Memorandum of Understanding (MOU) with the Minister of Home Affairs. Since they are subject to lower penalty amounts, carriers who have a MOU make more effort to lessen the transport of passengers with insufficient documents, to and through Belgium. In 2010, 46 carriers had such agreements.

Sanctions also concern the Belgian labour market. In order to reduce the employment of irregular workers, employers are also subject to penalties in the case they hire them. In accordance with article 13 of the Act of 30 April 1999 on the employment of foreign workers<sup>26</sup>, former employers of irregular migrants are hold liable for their repatriation and subsistence expenses. The Minister of Home Affairs claims these amounts to the employer. If, after a reminder, the employer has not paid the invoice, his file is sent to the FPS Finance, and more specifically to the offices in charge of Crown revenue and criminal fines, which will then collect these amounts to the employer themselves.<sup>27</sup>

#### *Coordination between the national actors*

Various actors<sup>28</sup> are involved in the fight against irregular migration in Belgium: IO, the communes, FPA Foreign Affairs (more especially the General Consular Direction of Foreign Affairs), federal and local police-services, Security and Information services, the services of the Public Prosecutors, the Social Inspection Service. In recent years, efforts have been undertaken to strengthen synergy and improve information exchange between the different actors. Procedures involving various actors have been formalized. It is in particular the case for the institutions involved in the detection of marriages of convenience.<sup>29</sup> The circular of 13 September 2005<sup>30</sup> regulates their collaboration. The multi-disciplinary approach also prevails

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<sup>26</sup> BS, 21 May 1999.

<sup>27</sup> In 2010, 455 employers for the first time were ordered to pay the fees mentioned above. 291 employers have actually paid, against 389 in 2009(Source: Immigration Office)

<sup>28</sup> A description of these actors is available in the next point (2.2).

<sup>29</sup> See also the Belgian answer to the EMN ad hoc query on marriage of convenience, requested in June 2011, <http://www.emnbelgium.be/publication/ad-hoc-query-marriage-convenience-0>

<sup>30</sup> Circular of 26 September 2008 on the implementation of a multi-disciplinary cooperation for victims of human trafficking and / or certain aggravated forms of human trafficking (BS, 31 October 2010).

in the fight against trafficking in human beings.<sup>31</sup> The project ‘Europa’ (detection of frauds, see 3.3.) and the project Communes-Pilot (assistance for removals, see 3.4.) are some examples of this close collaboration of different partners in the fight against irregular migration.

### *Detection of pseudo-legal migration*

According to many actors, Belgium is confronted to different forms of pseudo-legal immigration. This expression covers various types of diversion of legal measures, among others marriages of convenience, false legal cohabitation, misuse of visas (business, student or tourist visas), fake documents, false declarations concerning the means of subsistence, abuse of stateless status...

In order to detect these irregularities, some special units have been reinforced or created. The legislation has also been enforced in order to combat especially one of these phenomena: the marriage of convenience. The Act of 25 April 2007 amending the Act of 15 December 1980 on the Access to the Territory, Residence, Settlement and Removal of Foreign Nationals<sup>32</sup>, in force since the 1<sup>st</sup> June 2008, introduces new means of action for Belgian authorities. During the first three years after obtaining a residence document, when the foreigner no longer meets the conditions required by law, the IO may terminate the right of residence by an administrative procedure. During the first two years, the fact that the two partners no longer live physically under the same roof, is a sufficient criterion to withdraw the residence permit. During the third year, a negative opinion from the public prosecutor is sufficient to end the right of residence. After these first three years, any intervention always requires an annulment by a court.

It is important to notice that this act is also at the basis of a new kind of fraud. Indeed, this act transposes the European directive 2004/38/EC in the Belgian legislation and introduces the notion of “legal cohabitation”. Since it came into force on 1 June 2008, a new phenomenon, similar to marriages of convenience, made its appearance: fraudulent declaration of legal cohabitation. This statement, based on a lasting relationship with an EU national, allows a TCN to obtain a residence permit in the same way as married people. We learned from several sources that this status was increasingly being used fraudulently in order to obtain a residence permit. In addition, it appears that foreigners who in the past tried unsuccessfully to conclude a marriage of convenience have turned to the procedure of legal cohabitation.

### *Efforts to reduce the informal economy*

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<sup>31</sup> Circular of 13 September 2005 on the exchange of information between the officers of civil status, in collaboration with the Immigration Office on the occasion of a declaration of marriage with a foreigner (BS, 6 October 2005)

<sup>32</sup> BS, 10 May 2007.

Taking into account that few irregular migrants receive assistance (financial and/or material) from social welfare agencies, many of them are involved in the informal economy.<sup>33</sup> Belgian authorities try to detect employers hiring irregular migrants as so far as they consider that employment possibilities in the informal economy constitute a pull factor: some researches have pointed out the fact that some migrants consider as a reasonable choice to stay irregularly in the country in order to work some years in Belgium and earn money to return later to their country of origin.<sup>34</sup> It is important to notice that the work of the Social Inspection do not focus on the regularity of the stay of the employees as so far as immigration legislation and employment legislation are independent. That means that employers can only be sanctioned if they employ immigrants who do not have a work permit (see 3.3.).

### *Voluntary return and forced removals*

Belgian policy on removal issues is based, to quote the IO, on a “step-by-step approach”. Belgium applies the principle that every migrant (irregular or regular) may/can leave the country on an independent or voluntary basis. Programs for assisted voluntary return have been implemented, for instance the REAB program (see 3.4.). At any time irregular migrants can leave on a voluntary basis.

If the irregular migrant does not return independently or voluntarily, the IO may make use of forced return measures. According to the IO, forced returns are “inescapable for a realistic and credible return policy”<sup>35</sup>. The authorities may also consider the detention of irregular migrants in closed facilities (see 3.4.). The detention centres are responsible for an adequate housing of irregular migrants. The centres are also involved in the organisation of the return measures, which are stipulated by international legal provisions. Conditions of detention and operation of detention centres are regulated by a 2002 Royal Decree<sup>36</sup>. The Act of 15 December 1980 prescribes the maximum period of detention of two months. A prolongation of the detention is possible to a maximum of 5 months,<sup>37</sup> respectively to a maximum of 8 months.<sup>38</sup>

Belgian policy on removal has been often criticized, notably by some civil society organisations (CIRE, MIGREUROP...). In 1998, the death of Semira Adamu, a failed former asylum seeker from Nigeria during a forced return flight, led to an evaluation of the national

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<sup>33</sup> ADAM, I. & al. (2002) *op cit* and REA, A. & al. (2008) *op cit*.

<sup>34</sup> E.g. LEMAN, J. (1997) “Undocumented migrants in Brussels: diversity and the anthropology of illegality”, *New Community* 23(1), pp. 25-41.

<sup>35</sup> EMN – Belgian National Contact Point (2005) *op cit*, p. 63.

<sup>36</sup> *BS*, 12 September 2002.

<sup>37</sup> Detention up to 5 months is possible under the following preconditions: 1) IO initiated the procedure of removal within 7 labour days after the begin of the detention; 2) IO continues the procedure respecting the legal diligence; 3) the removal of the concerned person is still possible in an appropriate time frame; The prolongation of the detention takes place in terms of 2 months – the first prolongation may be pronounced by the IO, the following just by the authorized minister.

<sup>38</sup> Detention up to 8 months is only possible in cases of danger for the public security and/or the national security. After the maximum detention of 5 months passed by, in these cases a prolongation in terms of one month can be pronounced up to the utmost maximum of 8 months.

policy on return. For this purpose the Minister of the Interior established two successive evaluation bodies, called after its chairman, Prof. Vermeersch. The ‘Commission Vermeersch I&II’ evaluated the instructions concerning removals and formulated recommendations to adopt the guidelines for removal. However, the reports of the two Commissions were received by national NGO’s with criticism, which stated that the recommendations were biased due its composition out of many representatives of the police services.

### ***2.1.3. Basic rights of irregular migrants***

Some basic rights are guaranteed to irregular migrants based on international<sup>39</sup> and national legislation. Article 23 of the consolidated text of the Belgian Constitution of 17 February 1994<sup>40</sup> states that everyone has the right to live a life consistent with human dignity. In consequence irregular migrants would benefit from some basic rights. According to the Belgian law, these basic rights for irregular migrants focus mainly on the right to education for children and the right to health care. The right to education is a fundamental right recognized by various international conventions and by the Belgian Constitution. Indeed, the article 24, paragraph 3, of the Belgian Constitution states: “everyone has the right to education in accordance with the fundamental rights and freedoms”. Any child residing in Belgian territory, regardless of his administrative status or the one of his parents, may benefit from schooling.

The language communities in Belgium are in charge of the schooling system. The three entities secured this right by decrees<sup>41</sup> or circulars<sup>42</sup>. The communities also gave guarantees to school principals that (1) they will not be sanctioned for hosting pupils with irregular status, (2) they are not obliged to inform the police about the administrative status of their pupils and/or their parents and (3) these irregular migrants may not be arrested in the vicinity of the school.<sup>43</sup>

Even if the article 24, paragraph 3, of the Belgian Constitution does not exclude them, the access to education and training for adult irregular migrants has no explicit legal base. Adult irregular migrants may attend university in the case they possess the required qualifications. However, universities may decide by their own authority to accept or refuse these students. For training courses, adult irregular migrants may in general only attend those that are not

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<sup>39</sup> The international sources are mainly: the International Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the European Social Charter and the Convention on the Rights of the Child.

<sup>40</sup> BS, 17 February 1994.

<sup>41</sup> For the French Community, these regulations are described in the Decree of 30 June 1998 aiming to ensure to all students equal opportunities of social emancipation, including the implementation of positive discrimination (articles 40-42 bis) (BS, 22 August 1998).

<sup>42</sup> Circular of 24 February 2003 of the Flemish Minister of Education on the right to education for minors without residence documents.

<sup>43</sup> JAMIN, Ch. & PERRIN, N. (2005) *Les politiques publiques en matière d'enfance et de jeunesse au XXème siècle, en Belgique et en Communauté française* (Bruxelles: Communauté Française de Belgique).

government-funded (although there are exceptions to this rule). If the school or the training centre is government-funded, as is the case with e.g. language courses for unemployed people, adult irregular migrants are usually<sup>44</sup> excluded.<sup>45</sup> On 1 July 2011, the Flemish government adopted the new ‘Education Decree XXI’ in which irregular migrants are explicitly excluded from the adult’s education (article IV, 48°).<sup>46</sup>

Concerning right to health care, article Article57, paragraph 2, of the Organic Law of 8 July 1976 on the CPAS<sup>47</sup> stipulates that irregular residents are also entitled to “emergency medical assistance” if they meet certain conditions. The concept of “emergency medical assistance” was clarified by the Royal Decree of 12 December 1996 on emergency medical assistance<sup>48</sup>. This Royal Decree does not provide a concrete definition of this concept, however it clearly states that:

- 1) The assistance provided should be exclusively of a medical nature;
- 2) The “urgent” character must be certified by a doctor;
- 3) Health care provided can be preventive and curative;
- 4) The medical help given can be both mobile or provided in a health centre;
- 5) The assistance cannot consist of financial help, housing or any other provision of service in kind.

In 2010 the reimbursement rules for medical care were changed by a circular.<sup>49</sup> In consequence, the state reimburses the costs of medical assistance recipients of the CPAS only after systematic social inquiry.

Irregular migrants can also benefit from other basic rights, even if no specific legislation specifies them. . It is worthy to note that landlords renting to irregular migrants are not legally punishable. On the contrary, the article 77quater of the Aliens Act implements sanctions against landlords or real estate agencies abusing the vulnerable situation of tenants, in this particular case against slumlords.

Irregular migrants have legally no right to work. This fact does not mean that irregular migrants who are working nevertheless illegally, are deprived from fundamental rights. Fundamental rights for workers – irregular or regular – are statutory minimum wages, personally and regularly payment, strict rules in the case of allowance in kind payment (i.e. payment in form of food, housing, etc.), independence of payment from profit or loss of the

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<sup>44</sup> It seems that some government-funded institutions have a certain tolerance towards illegal migrants following their courses/trainings.

<sup>45</sup> ADAM, I. (2002) “The social and economic situation of undocumented migrants in Belgium” in: PICUM (Ed.) *Book of Solidarity: Providing Assistance to Undocumented Migrants. Vol. 1: Belgium, Germany, the Netherlands and the United Kingdom* (Brussels: PICUM), pp. 16-20.

<sup>46</sup> [BS 30 August 2011](#)

<sup>47</sup> BS, 5 August 1976.

<sup>48</sup> BS, 31 December 1996.

<sup>49</sup> Circular on the required social enquiry for the reimbursement of medical expenses under the Act of 2 April 1965 and the Ministerial 30 January 1995 (BS, 6 May 2010)

employer, employer-share on the home-work transport costs, etc. For non-respect of one or several of these rights, irregular migrants may lodge a court case against an employer.<sup>50</sup> The defence of the rights of irregular workers is an important topic for several national and international organisations based in Belgium. According to PICUM, a European umbrella organisation of these actors, “lack of access to the labour market compels undocumented migrants to seek informal work, which can lead to exploitation and human rights violations.”<sup>51</sup>

Since 1984, irregular migrants are not allowed to benefit from the assistance of the Social Welfare Agencies. However, some categories of irregular migrants have a more “expanded” right to aid and can receive material aid and housing in a community centre (food, social, psychological and medical care, access to legal aid, assistance on voluntary return, right to education and professional training), including:

- Failed asylum seekers who have requested the suspension of removal measures due to children attending school. The material aid ends when the request is not granted or when the suspension of the removal measure has ended.
- Failed asylum seekers who cannot give heed to the removal order due to a pregnancy of more than six months. The material aid ends with a maximum of two months after giving birth.
- Failed asylum seekers who cannot leave the territory because of medical reasons and consequently apply for a residence permit on the basis of article 9ter Aliens Act and who can prove that it is medically not possible for them to leave the open reception centre (through a medical certificate).
- Children who are staying irregularly in Belgium with their parents in the case that the Local Public Welfare Centre has determined that the parents are not able to provide for their children.
- Failed asylum seekers who cannot leave the territory and return to their country of origin due to circumstances beyond their control and who have introduced a request for suspension of the removal order. This can be the case when the political situation in the country of origin impedes every possibility of return.
- Failed asylum seekers who cannot pay heed to the removal order because they are the parent of a Belgian child and have introduced an application of authorization of residence on the basis of article 9bis Aliens Act. The right to material aid ends when the IO has taken a decision on the application for authorization of residence.
- Failed asylum seekers who have signed a commitment of voluntary departure: the right of material aid will last until departure.

Moreover, as stated in the circular of 17 December 1999 on the Law of 4 May 1999 amending certain provisions relating to marriage<sup>52</sup>, the right to marry is not subjected to the residence

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<sup>50</sup> ORCA (2009) *Travailleurs sans-papiers: Un guide de droits* (Bruxelles: ORCA).

<sup>51</sup> PICUM (2010) *2010 – PICUM’s Main Concerns about the Fundamental Rights of Undocumented Migrants in Europe* (Brussels: PICUM), retrieved July 1st, 2011, from <http://picum.org/picum.org/uploads/publication/Annual%20Concerns%202010%20EN.pdf>.

<sup>52</sup> BS, 31 December 1999.

status of the future spouses and the registrar cannot refuse to celebrate the marriage on the sole ground that the foreigner is staying irregularly in the Belgian Kingdom.

Irregular migrants have also the right to file a lawsuit and to receive pro-bono legal assistance. Legal assistance offices can advise people considering a complaint or a civil action in case of a trial. If people cannot afford a lawyer, they may ask a lawyer "pro bono" (a legal aid office). Irregular migrants may, however, be denied this opportunity for legal actions that are not related to the application of the Aliens Act (e.g. work, marriage, housing, social assistance). These requests are handled on a case-by-case basis.

The Belgian Alien Act does not stipulate any duty to denounce irregular migrants to the authorities. However, art. 29 of the Code of Criminal Procedure stipulates for civil servants a duty to denounce crimes or offences. Although irregular residence and entry can be considered as offence, the obligation is a moral one and implies no penal sanctions. Moreover, the article is not applicable to persons bound by professional discretion.

## **2.2. Institutional framework**

Whereas Regions and Communities manage integration issues, the entry, the residence status and the removal of irregular migrants are still under the authority of the federal government. The IO, an administration of the SPF Home Affairs, is in charge of the correct execution of the Aliens Act. The activities of the IO can be resumed as followed<sup>53</sup>:

- to manage migration flows and decide on the validity of applications (such as family reunification and short term stay);
- to adapt and implement national legislation to comply with European law;
- to enhance the struggle against human traffickers in collaboration with other services involved;
- to apply the Dublin-II Regulation; the registration of the asylum seekers' applications and the management of the applicants' residence requirements throughout the asylum procedure;
- to organise the forced return of foreigners who do no longer/not comply with the entry- and residence conditions;
- to struggle against pseudo-legal migration;
- to implement international collaboration with similar bodies of other EU Member States as with of countries of transit and origin.

In order to fulfil its mission the IO is divided into different sections in charge of specific issues. Relevant sections with regard to preventing, detecting, addressing and reducing irregular migration are: "Border Control" section, "Visa/Short Stay" section, "Inquiries" section, "Immigration Liaison Officers" section (ILOBEL), "Bureau C/Irregular Migrants", "Permanency" section, "Bureau CID/Identification for migrants in detention Centres" section, "DID/Identification for migrants in prisons" section, "Transfer" section... In order to prevent

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<sup>53</sup> EMN – Belgian Contact Point (2009) *The Organization of Asylum and Migration Policies in Belgium* (Brussels: EMN – Belgian Contact Point), pp. 7-8, retrieved 23rd June 2011, from [http://www.emnbelgium.be/sites/default/files/publications/org\\_of\\_migration\\_and\\_migration.pdf](http://www.emnbelgium.be/sites/default/files/publications/org_of_migration_and_migration.pdf).

irregular migration, IO works in close partnership with embassies and consulates that issue various kinds of visas. Moreover, IO's Immigration Liaison Officers work in a preventive and/or repressive approach on various topics linked to irregular migration (human smuggling, removals, pseudo-legal immigration...).

In the struggle against entry of irregular migrants onto Belgian territory, the Federal Police is an important actor working in close cooperation with the IO. Different sections of the Federal Police are stationed at external border posts.. In the case that immigrants do not fulfil the required entry conditions, decisions are taken by the IO concerning the entry in Belgium. These decisions are: (1) either a removal decision ("refoulement" from the border), with possible detention at a specific place near the border or (2) access to the territory is granted with, if necessary, the issuance of a visa.

The External Borders Commission assesses the infrastructure and the organisation of the external border policy. The overall objective of this Commission is to ensure compliance and implementation of the Schengen rules on border controls at the external borders of Belgium and advise the Minister of Home Affairs on the matter. The Commission consists of representatives from the IO, Federal Police, customs (FPS Finance), FPS Mobility and representatives of the Walloon and Flemish Regions.

On the local level, the municipalities are important actors in the prevention of irregular migration, especially in the detection of falsified European identification documents. Concerning the detection of marriages of conveniences or fraudulent declarations of legal cohabitation, the local authorities play a crucial role. Several communes implemented in their administrations "marriage of convenience-units", which investigate on request on the registrar in charge relevant suspicions.<sup>54</sup> In this context it is obvious that also the local police play a crucial part in preventing irregular migration on the level of municipalities. .

The Belgian labour market inspectors check irregularities on the labour market, both in regard to employees and self-employed. Their mission is to identify both irregular workers and employers hiring such workers.

Concerning forced removals, the IO's General Co-ordination and Control Cell is in charge of the coordination between the different detention centres, between the centres and the executing offices and between third parties (authorities, lawyers, etc.) and, on the other hand, for checking the system and the working measures of the centres. In case an irregular migrant is being held in a detention centre, repatriation preparatory activities are under the responsibility of the IO. It takes charge of securing travel documents and identification and practical departure arrangements, particularly flight booking.

Two institutions must be also mentioned insofar as they intervene in the trajectory of some irregular migrants in Belgium: CGRS and Fedasil. The CGRS, an independent administrative instance, has the competence to examine asylum applications recorded by the IO. The CGRS is the competent instance to either grant or refuse refugee status or the subsidiary protection.

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<sup>54</sup> Belgian answer to the EMN ad hoc query on marriage of convenience, requested in June 2011, <http://www.emnbelgium.be/publication/ad-hoc-query-marriage-convenience-0>

As soon as a negative decision is taken the CGRS sends the information to the IO. The same procedure is applied when the CGRS withdraws a status previously granted to a foreigner.

The Federal Agency for the Reception of Asylum seekers (further: “Fedasil”) is responsible to ensure that all persons who wish to voluntarily return to their country of origin can make an appeal to a support programme. This institution assumes also reception of unaccompanied minors to the extent that they can no longer be held in a detention centre and of families with children staying irregularly in Belgium in the case that the Local Public Welfare Centre has determined that the parents are not able to provide for their children. Finally some organisations are also involved at different stages. The Belgian bureau of the International Organization for Migration (further: “IOM”) is involved in many prevention campaigns held in the countries of origin and transit of migrants. In supervision of Fedasil, it is also in charge of a program for voluntary return, the so-called “Return and Emigration of Asylum Seekers ex Belgium” (REAB) - program.

Several organisations in recent years have also specialized in defending the rights of irregular migrants. We can cite, among others, the Platform for International Cooperation on Undocumented Migrants (further: PICUM)<sup>55</sup>, Organisation for Clandestine Labour Migrants (further: ORCA)<sup>56</sup>, Medimmigrant<sup>57</sup>, Point d’Appui<sup>58</sup> and Coordination et Initiatives pour et avec les Réfugiés et Étrangers (further: CIRE)<sup>59</sup>. Most of the Belgian organisations which defending the rights of irregular migrants are members of the umbrella organisation ‘Forum for Asylum and Migration’ (FAM), which generated in the past public pressure for regularisations campaigns. Concerning the respect of the fundamental rights of migrants in Belgium, including irregular migrants, the Belgium equality body Centre for Equal Opportunities and Opposition to Racism (further: CEOOR) is in charge.

CIRE together with the Flemish Refugee Action<sup>60</sup> coordinates the network of NGOs visitors of the detention centres. This network is composed by: Aide aux personnes déplacées (APD), Centre social protestant, Caritas International, Jesuit Refugee Service (JRS) – Belgium, Ligue des droits de l’Homme, Point d’appui and Service Social de Solidarité Socialiste (SESO). Additionally, CEOOR has accredited visitors for the detention centres and also the Federal Ombudsman has unlimited access to detention facilities.

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<sup>55</sup> <http://www.picum.org>

<sup>56</sup> <http://www.orcasite.be>

<sup>57</sup> <http://www.medimmigrant.be>

<sup>58</sup> [www.pointdappui.be](http://www.pointdappui.be)

<sup>59</sup> <http://www.cire.be>

<sup>60</sup> <http://www.vluchtelingenwerk.be>

### **3. PRACTICAL MEASURES TO REDUCE IRREGULAR MIGRATION**

#### **3.1. Pre-entry: practical measures undertaken to address irregular migration before migrants arrive in Belgium**

Belgian authorities have developed numerous measures in order to address irregular migration before migrants arrive onto Belgian territory. The main four types of practical measures for prevention are: (1) controls and checks prior to arrival at the national borders, (2) training activities of border staff and other responsible for carrying out practical measures, (3) identification of irregular migration routes into Belgium and (4) information campaigns and awareness raising in third countries to discourage irregular migration. These measures involve various actors, mainly ILOBEL, FPS Foreign Affairs (including embassies and consular posts) and the Federal Police.

##### *Controls and checks prior to arrival at national border*

IO is officially in charge of granting entry into Belgian territory to foreign nationals. This implies in particular the granting or refusal of visas. In practice, most of the visas are granted by the Consular Posts (130 Embassies, Consulate Generals and Permanent Representations) of the FPS Foreign Affairs, Foreign Trade and Development. At the principal visa posts, the consul is assisted for visa issues by a vice consul and/or by one or several visa officers. The position of visa officers was created some ten years ago in order to provide a necessary expertise in the very specific task of visa issuance. The visa officer is, under the authority of the Consul, responsible for the issuance of visas.

In Belgium, the Directorate General for Consular Affairs steers the activity of the consular posts. This entails the following aspects: the translation of acts and decisions into concrete instructions, the provision of permanent training to the persons on-site, the building up of expertise, the safeguarding of risks, monitoring the post's performance. The Visa Department (C4 Service – section of DG Consular Affairs) ensures that the consular posts receive clear instructions and correctly implement them.

When specific problems arise, IO's Immigration Liaison Officers are being sent to consular posts to assist them in file handling. For example, for students coming from Morocco and the Democratic Republic of Congo for whom many irregularities have been detected such Officers are sent on regular terms to the Belgian consulates of these countries in order to conduct second line interviews with visa applicants. On this basis, s/he takes the decision to grant or refuse student visas. Because of the accelerate decision making process, this approach is expected of having a discouraging effect on possible fraud. It has also been used in countries of origin where there problems with fraudulent practices were temporarily virulent as for example China and Cameroon. Also concerning student-visa IO organises information exchange with educational authorities; this in order to raise awareness with regard to existing problems and to point out the different responsibilities concerning the enlisting of foreign students .

With the support of the External Border Fund, and under the supervision of the FPS Foreign Affairs, Foreign Trade and Development, field workers (locally recruited) have been specifically trained in order to check the authenticity of documents in some countries, whose administrative practices considered as problematic. In the case that these local field workers have relevant doubts, they can implement additional tests to detect the use of false or forged documents. As a result of their work, visas are granted faster to “bona fide” applicants. The knowledge and expertise of these field workers are also available to other Schengen partners.

The fight against pseudo-legal migration begins at an early stage. Indeed, since 1<sup>st</sup> April 2005, the “Familial Reunification Visa” section is in charge of the authentication of marriages contracted in the countries of origin in order to issue familial reunification visas. Each application is considered individually. In case of serious doubts about the authenticity, it asks legal advice to the prosecutor on the recognition of the effects of marriage in Belgium. A decision will be finally taken in concordance with the circular of 17 December 1999 on the Act of 4 May 1999 amending certain provisions relating to marriage<sup>61</sup>. During the year 2010, the “Familial Reunification Visa” section asked prosecutors to review 1135 cases (7% of the decisions taken, against 6.7% in 2009). Prosecutors gave 1108 advices in total: 462 with a positive opinion; 614 had a negative outcome; 32 opinions in which they could not give any advice.

Moreover, in accordance with the provisions relating to family reunification defined in the Aliens Act (articles 40 bis/ter and 10/10 bis), proof of kinship is required to apply for family reunification. To overcome the lack of evidential value of some civil status records or their absence, a procedure to determine DNA parentage has been developed and implemented by the SPF Foreign Affairs and the Ministry of Home Affairs. Any applicant for family reunification may use this procedure on voluntary basis. In 2009, this procedure was organised in 33 diplomatic posts. Between September 2003 and December 2009 6590 of such DNA) requests (i.e. 3403 cases) were processed.

#### *Information and training activities of border staff and others*

Many initiatives have been developed in order to provide carriers (air carrier, shipping companies, road transporters) a maximum of legal information and advice to identify irregular migrants. For instance, carriers and checkpoints on the border have been informed of the existence of the specialised IO’s website on border control, which is operational since 1 January 2000.<sup>62</sup> Updated each week, it gives information on travel documents recognized by the Belgian authorities and conditions to enter the Schengen area. It also indicates the cases in which civil penalties may be imposed on carriers. This website is also useful for foreigners intending to stay in Belgium and provides information on visa-requirements and entry into the territory.

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<sup>61</sup> BS, 31 December 1999.

<sup>62</sup> <https://sif-gid.ibz.be/nl/Homepage.aspx>

Given that SN Brussels Airlines is the airline company that carries most passengers to Belgium and faces most “INADmissibles”<sup>63</sup>, a platform called “Forum INAD” has been implemented in 2005 to improve collaboration between the company, the IO and the “National Airport Security” section of the Federal Police concerning the specific issue. The discussions are conducted in working groups whose topics vary for each forum. The discussions always start with an objective analysis, followed by proposals to optimize the success rate of ‘refoulements’ (‘border removals’) that SN Brussels Airlines must carry out in accordance with the Chicago Convention of 12 July 1994 on International Civil Aviation and article 74/4 of the Aliens Act. The last meeting occurred in October 2010 and was chaired by Brussels Airlines. This last forum was also followed by a “Passport Day” with workshops on relevant topics.

In the end of 2010, the IO has organised a two-day conference for airline companies entitled “Developing preventative strategies towards undocumented persons”. During this conference, airliners were provided with information about (fake) documents and border controls, repatriation and non-accompanied minors. The main objective of the IO was to raise awareness with the companies on these topics, and by consequence, to reduce the number of inadmissible passengers (INAD’s), to increase the success rate for escorted returns and to reduce the inflow of unaccompanied minors.

Trainings to detect false travel documents are also provided to border control staff and airline companies in the countries of origin by the “Air police” section of the Federal Police. In addition, in collaboration with officers of border control, the “Air police” section also organises trainings of border inspection on control of access conditions prior to boarding. In 2010, the Federal Police has provided training to airliners in Kinshasa, Douala and Banjul. In cooperation with the Federal Police, the IO has given courses to airliners in Morocco, Turkey and India. These courses are aimed at limiting irregular immigration and the number of offenses committed by the airline companies.

#### *Information and awareness raising campaigns in third countries*

To reduce irregular migration flows, the Belgian Immigration Liaison Officers, sometimes in close collaboration with the IOM, have carried out many prevention campaigns in recent years. The information focuses on the risks and realities of irregular migration but also on the channel of legal migration in order to send a balanced message. To achieve these goals different media have been used (commercials on television, plays in theatres...). Various partners have been involved in these initiatives such as local authorities and NGOs. Since 2000, prevention campaigns have been organised, among others, in Albania, Cameroon, Congo, India (Punjab), Kazakhstan, Kosovo, Romania, Russia, Slovakia, South-Caucasus, Tunisia and the former Yugoslav Republic of Macedonia (FYROM).

In DR Congo for example, the dangers of irregular immigration are explained through Congolese popular actions such as distribution of brochures, posters and placards and by the

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<sup>63</sup> This term is used by the IO to refer to third country nationals who cannot enter the Belgian territory in so far as they do not possess a valid document (visa or residence permit) or do not fulfil the requirements linked to it (for instance sufficient means of subsistence).

organisation of debates on television and radio. Congolese citizens are encouraged to invest in their own country.

Moreover, the play “counter to zero” has been introduced in several districts of the capital. This play stages a young man who dreams to live in Europe. The script tells also the story of his older brother who left Kinshasa 20 years ago to live the same dream, but who was removed and returned penniless... The play is always followed by a discussion with the audience. Posters have also been plastered in strategic locations. The campaign was organised in the capital Kinshasa and in the provincial town of Matadi.

A similar information and awareness campaign was conducted between mid-July and mid-August aiming to reach out young people and their parents in five districts of Conakry and in the Institute of Fine Arts of Dubreka (Guinea).

It is interesting to notice that important Belgian policy makers have also participated in such campaigns. On 30 November 2009, the EU Council of Ministers for Interior and Justice abolished visa requirements for citizens of the Republic of Macedonia, Montenegro, and Serbia for stays of less than three months. A consequence of this decision was a significant influx of asylum seekers originating from the Balkans. Indeed in March 2010, the Belgian Secretary of State for migration and asylum polices and the Belgian Prime Minister went together to the Balkans to raise awareness of the Macedonian and Serbian citizens on the risks of this sudden migration movement.

According to the Immigration Liaison Officers the campaigns only prove to be efficient if the projects have specific goals and specified target groups. It also pointed out that repeated campaigns have better chances to generate a dissuasive effect. It also estimates that information and prevention campaigns should be part of a comprehensive strategy.

### **3.2. Entry: practical measures undertaken to identify and detect irregular migrants at the border<sup>64</sup>**

With the entry into force on 26<sup>th</sup> of March 1995 of the Schengen agreements, borders within the Schengen territory were abolished. Accordingly, border control is focussed on compliance with the entry conditions of persons who want to enter the Schengen territory via an external Schengen border. In Belgium, the controls are carried out at three types of external borders:

- air borders: Brussels National Airport, the regional airports of Bierset, Deurne, Gosselies and Oostende and the secondary airport of Wevelgem;
- sea borders: seaports for commercial shipping of Antwerp, Gent, Oostende, and Zeebrugge and seaports for leisure boats of Blankenberge and Nieuwpoort;
- land border: TGV terminal of Brussels-South railway station.

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<sup>64</sup> See also: EMN Policy Report 2010, Belgium, chapter 6 “Border Control”, [http://www.emnbelgium.be/sites/default/files/publications/be\\_policy\\_report\\_on\\_asylum\\_and\\_migration\\_2010\\_e\\_mn1.pdf](http://www.emnbelgium.be/sites/default/files/publications/be_policy_report_on_asylum_and_migration_2010_e_mn1.pdf)

In order to detect the entry of irregular migrants onto Belgian territory, three types of measures have been elaborated and implemented in Belgium: (1) border controls and use of surveillance technology, (2) intelligence gathering and (3) risk assessment.

#### *Border controls and use of surveillance technology*

Within the Federal Police, the air police service, and more especially its “Border control” section, ensures border controls in the six airports in the broad sense of the term, i.e.: (1) carrying out checks at external frontiers; (2) enforcing the Schengen rules; (3) enforcing the national immigration policy and (4) searching for false and falsified travel documents. These last years, annual reports of the IO and the Federal Police pointed out that TCNs who want to enter onto Belgian territory without the required authorizations have developed various strategies: “look-a-like”, fake European passports....

Navigation police is in charge in respect of the Schengen regulations in harbours, on inland waterways and on the North Sea. To fight irregular immigration, the Federal Police conducts also targeted controls on the main transport lines of the country. These are controls on trains (railway police), highways and car parks (highway police) that border these routes.

The use of new technologies (among others, X-ray, heartbeat detection and passive millimetric wave detectors) has facilitated the work of Federal Police officers. Moreover, biometric visas issued by various Belgian posts help them to fight against fraud and to speed up control at the border.

#### *Intelligence gathering and risk assessment*

Various actors involved in the fight against irregular migration have developed their own system of data collection. For instance, the “Immigration/Border control” section of the Federal Police collect data generated by the various actions carried out by the Federal Police. This section elaborates newssheets weekly for its agents and they issue monthly and annual reports. This information is also sent to the IO. To give only one example, in 2010, information was given concerning Moroccan citizens travelling with a Spanish Schengen visa, warning about fake Belgian and French visas.

The Federal Police has also established liaison officers in EU and non-EU countries. These police officers work in Belgian foreign representations (embassies or consulates). In collaboration, as far as possible, with the authorities of the countries (of the region) where they are located, they participate in the fight against irregular immigration. Meetings are organised by the Directorate of International Police Cooperation (CGI) designed to promote the exchange of information between the liaison officers.

Within the IO, since 2004, a round table on irregular immigration and human trafficking is organised each month. The purpose of these meetings is double: (1) to obtain a global picture of the phenomena (to discover new phenomena and trends in migration flows) and (2) to formulate comprehensive solutions to reduce these flows. These round tables put together representatives of the various relevant sections.

Relevant information for this round table focus on the following elements: (1) legal information (including convictions, , exposing networks...), (2) Modi Operandi (e.g. new

routes, role of different actors as travel agencies in the organisation of networks, fraudulent means to obtain visas; use of false documents, abuse of administrative procedures...), (3) impact of changes in the regulatory field (both proactive and reactive) and (4) cooperation with external partners (at national, bilateral and multilateral levels).

The information collected during these round tables is used to contribute to some other important networks/agencies: Fran Tactical (Frontex), IGC (Intergovernmental Consultation on Migration, Asylum and Refugees - Geneva), the (Belgian) Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in human beings, Belgian embassies, the Liaison Officers-network of the Federal Police and the 'Forum for Information Exchange and Consultation with Regard to Irregular Immigration'<sup>65</sup>.

### **3.3. Stay: practical measures undertaken to control irregular migration in Belgium's territory**

Different measures have been developed in order to monitor and ensure migrant compliance with the respective conditions of their visa and/or permission to stay in Belgium and to detect irregular migrants. Four main types of measures can be identified: (1) apprehension of irregular migrants and control on the street, (2) controls at the address to avoid overstaying, (3) measures to prevent irregular work and (4) detection of fraudulent means of residence on Belgian territory.

#### *Apprehensions and control on the street*

In order to detect irregular migrants in transit or residing in Belgium, spontaneous controls are organised by the local police. These controls can occur everywhere in the country but a peculiar attention is given to special "hot spots". For example, since the closure of the irregular camp in Sangatte (France) and in order to travel to the United Kingdom, more irregular migrants stay near the harbours of Oostende and Zeebrugge.

In case the police is confronted with a person suspected to reside irregularly on Belgian territory, the Office C (Clandestines) (or the "Permanency Unit") is contacted in order to take an administrative/executive decision<sup>66</sup>. The Office C also provides administrative support to the police during control actions (announced or not), or at major events that attract many foreigners (such as international football matches or music festivals). If the police or social inspection wishes, it can appeal to the Judicial Committee for support during these actions and for an accelerated procedure.

Based on the administrative report prepared by the police, the Office C (or the permanency unit) will check the immigration status of the controlled foreigner in his/her personal history file. They will send instructions to the police as soon as possible. If the foreigner is a regular

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<sup>65</sup> Federaal Informatie-uitwisseling- en Overlegorgaan op het gebied van Illegale Migratie (FIOM) / Forum d'échange d'informations et de concertation en matière d'immigration illégale (FICIM)

<sup>66</sup> Outside the normal working hours the Permanency Unit takes over.

resident in Belgium, or if a suspension procedure is pending against a decision, the police will release the concerned person.

### *Measures to prevent irregular work*

As aforementioned (see 2.1.), any employer hiring irregular migrants may incur financial sanctions. This dissuasive measure is usually imposed after the carrying out of inspections at workplaces by the Social Inspectorate, in accordance with Act of 30 April 1999 on the employment of foreign workers<sup>67</sup>. This Act lists two kinds of irregularity: irregular employment of regularly staying foreigners (article 12, paragraph 2) and irregular employment of irregularly staying foreigners (article 12, paragraph 1). The foreigner working without work permit and residence permit risks receiving an order to leave the territory or being kept in a detention centre before being removed to his country of origin.

In Belgium, the fight against illegal work and social fraud is primarily under the responsibility of federal social inspections: social inspection of FPS Social Security, control of social laws of FPS Employment, Labour and Social Dialogue, and the inspection of the National Employment Office. Concerning the detection of foreigners employed irregularly, the departments of 4 regional and community entities are also involved (Walloon Region, Region of Brussels-Capital, the Ministry of the Flemish Community, the German-Speaking Community). These entities are also in charge of the granting of work permits to TCN's.

The programme Law of 27 December 2006<sup>68</sup> (article 312) created the Department of Information and Social Research (DISR) in order to arrange actions undertaken by the aforementioned inspection services. DISR supports these inspection services and districts' cells. It also prepares collaboration-protocols between the Federal Government and the Regions to organize the fight against irregular work and social fraud. Concretely, on the basis of information collected from all inspection services, it elaborates action plans focussing on some activity sectors. Moreover, DISR may submit proposals to the relevant ministers to develop the legislation in this matter and deliver opinions on projects and bills on this topic.

### *Detection of fraudulent means of staying*

In the fight against irregular migration, Belgian authorities are more and more confronted with so-called pseudo-regular migration. In order to identify the potential fraud related to identity, marital status, etc., one section is of particular importance within the IO, the "Fraud" section, and the collaboration has been strengthened between the different partners involved in this fight, especially via the "Europa project".

After having detected irregularities during the application of the Law of 22 December 1999 on regularisation<sup>69</sup>, the "Fraud" section has been created. Since 2006, its main task is to

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<sup>67</sup> BS, 21 May 1999.

<sup>68</sup> BS, 28 December 2006.

<sup>69</sup> BS, 10 January 2000.

decide whether a residence permit has to be withdrawn on the basis of fraud detection. This section deals only with cases of foreigners who already have a right of residence.

Frauds detected by this IO's section are generally of four types. The first one is fraud discovered after regularisation. IO has discovered that some people who have received an authorization of stay had made false statements and/or had given fake documents. The second is the use of a false or a forged EU identity document. These foreigners pretend to be nationals of the European Union in order to fraudulently take advantage of the rights associated with that status (free movement of persons within the EU, extended family reunification, social benefits, access to the labour market...). Fraud is suspected in the case that the migrant has an identity document under a different identity than the one indicated in his first statement or information obtained from the police. The third is linked to the marital status (marriage of convenience or declaration of nullity of marriage). In Belgium a marriage contracted with a regular resident (national or not) can give an authorization of stay on Belgian territory. This authorization is closely linked to the one of the person regularly living in Belgium. That means that the duration of the work permit limits also the duration of the legal stay of his/her partner. At last, the "Fraud" section can decide to withdraw a residence status after the CGRS has withdrawn the refugee status to a TCN.

In 2010, the "Fraud" section took 2,598 decisions. 203 cases have resulted in the withdrawal of residence permits, representing approximately 270 persons. The same year, the "Fraud" section ended the stay of 81 foreigners convicted of marriage fraud. The court annulled the marriage of those people who have obtained a residence permit on the basis of a marriage of convenience. Most cases concerned persons originating from Morocco (32 cases) and Turkey (32 as well).

The identification of fraud and the search for evidence involve many institutions. In the past, many local authorities have been confronted to various abuses committed by foreigners who used false or forged EU identity documents in order to register in Belgian municipalities. To facilitate the collaboration of these partners, IO has developed the so called 'Europa project' in which local authorities, Federal Police and various IO's sections work together. IO's "Inquiries Section" coordinates the project.

In case the municipal authorities have doubts about the authenticity of some documents (identity documents, marriage contract...) they send a report to the Central Office for the Suppression of Counterfeit of the Federal Police. They then check the authenticity of the documents. If the document used to register in a Belgian municipality is forged or false, a report is directly sent to the IO's "Inquiries" section.

These findings give rise to both judicial and administrative proceedings insofar as the foreigner has committed some unlawful facts: forgery, use of false documents, fraud, etc. His/her removal is also treated with priority. Since the true identity and, in particular, the nationality of the irregular migrant are not sure, the IO's "DID/Identification of migrants in prisons" section must follow a specific identification procedure in order to obtain the required travel documents from the competent embassy.

To explain the objectives and procedures of the Europa project, the IO organises searches on sites, briefings included, led by experts of the IO in collaboration with the Federal Police.

#### *Control at the address to avoid overstaying*

Controls at the foreigners' address are also organised when an irregular migrant has received an OLT. The local police execute these checks at the request of the Office C. If an irregular migrant does not comply with an OLT and still resides in Belgium, the mayor sends a notification to the relevant authority. Police agents check the foreigner's address in order to eventually carry out a removal procedure.

In 2010, the Office C handled 1.405 cases. For 557 cases (40%), a control at the address was carried out. For 848 cases (60%), no check has been carried out since it was not possible to organise a removal. For 557 records, the police carried out 233 arrests including 137 cases for which an effective removal could be achieved. The main challenge of the "Control" section is to improve cooperation with the police in order that checks to the address can be made more regularly.

In order to favour voluntary returns and to prevent that migrants overstay their visa, the project Sefor (Sensibilisation, Follow-up and Return) has been elaborated. This project intends to inform migrants in order that they leave Belgium on a voluntary basis after they receive an order to leave the territory. This project based on the Circular of 10 June 2011 on the Mayor's competence concerning the removal of a TCN<sup>70</sup> takes also into account the regulations planned by the Return Directive. The website of the project is available in 22 languages.<sup>71</sup>

### **3.4. Pathways out of irregularity**

#### *Regularisation possibilities*

##### a) Regularisation mechanisms

There are mainly two possibilities for irregular migrants residing in Belgium to obtain a legal status: regularisation for humanitarian reasons or regularisation for medical reasons. These two options refer respectively to the articles 9bis and 9ter (formerly article 9, paragraph 3) of the Aliens Act.

The original article 9.3 initially was not a regularisation mechanism. It stipulated only that a TCN already living in Belgium could in "exceptional circumstances" apply for a residence permit in the country itself and not in his/her country of origin or –residence as the law demanded. The measure was aimed on foreign workers with short term residence who had before return to their country of origin or –residence to apply for a long term permit.

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<sup>70</sup> BS, 16 June 2011.

<sup>71</sup> [www.sefor.be](http://www.sefor.be)

However, the article 9.3 was increasingly used as a regularisation mechanism for foreigners applying for a residence permit because they were or pretended to be unable to return to their country of origin. The “exceptional circumstances” were therefore interpreted as humanitarian reasons<sup>72</sup>. In response to widespread criticism of the lack of transparency and absence of clear criteria for eligibility, a number of circulars were issued, in particular in 1997, 1998 and 2002 to clarify the categories and circumstances under which irregular migrants might apply for a regularisation according to art. 9.3. Eventually, an amendment of the Aliens Act (Mammoth I - 2006) has defined two “regular” regularization mechanisms for irregular migrants.

It is important to stress that there is no legal title to regularise irregular stays in Belgium. The act of regularisation on the grounds of art. 9.3 and its successors art. 9bis and 9ter remains in the discretionary jurisdiction (*pouvoir discrétionnaire/discretionaire bevoegdheid*) of the authorized minister and constitutes therefore a favour, not a right.

#### Regularisation for humanitarian reasons (article 9bis)

According to article 9, paragraph 2, of the Aliens Act TCN's must apply for a long-stay visa at the Belgian diplomatic or consular posts competent in their country of origin or their country of residence. However, article 9bis (and the former article 9.3) envisages an exception to this general rule in the case of “exceptional circumstances”, although without providing a definition of this term. According to the Council of State, the migrant must “demonstrate that it is particularly difficult to go back to his country of origin or to a country where he or she is allowed to stay in order to ask the relevant authorization; the exceptional circumstances alleged by the migrant shall be considered by the authority in each case”<sup>73</sup>. The admissibility of the application is mainly based on the following motives: (1) an unreasonably long asylum procedure, and (2) some urgent humanitarian situations. The urgent humanitarian situation concerns a situation that could violate international treaties on children's rights or human rights if the removal would be executed. Special attention is given to vulnerable groups.

Any foreigner who stays in Belgium and has an identity document can lodge an application in order to be regularized under the article 9 bis. If the IO considers an application admissible and well founded, it may grant a residence permit for an indefinite or limited duration. The residence permit of limited duration may be extended under certain conditions specified in the IO's decision.

#### Regularisation for medical reason (article 9 ter)

Article 9ter stipulates that any foreigner who suffers from such a disease that it entails (1) a real risk to life or physical integrity or (2) a real risk of inhuman or degrading treatment when there is no adequate treatment in his country of origin or country of stay. The foreigner must

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<sup>72</sup> KRALER, A. & al. (2009) *op cit.*

<sup>73</sup> Council of State, 26 November 2002, n°112,863.

provide information about his illness to the IO. In particular, he has to produce a standard medical certificate as the one attached to the Royal Decree of the 24<sup>th</sup> January 2011<sup>74</sup>, which mentions the disease, its severity and the necessary treatment.

The migrant authorized to stay in Belgium on the basis of Article 9ter receives a residence permit valid for one year. This one becomes unlimited at the expiration of a period of five years after the application. The first ten years, the Minister of Home Affairs and the IO can withdraw the residence permit and issue an order to leave the territory if fraud, crucial in the granting of the authorization, is detected.

#### b) Exceptional regularisation campaigns

After prominent pressure from the civil society,<sup>75</sup> based among others on long pending asylum procedures (a result of a massive influx of asylum seekers) and the global rise of a migrant population living in irregularity, the Belgian government reacted in 1999 with a “one-shot” regularisation programme. The programme was launched by an especially drafted law, the Law of 22 December 1999 (the so called “Regularisation Law”). The law stipulated that migrants living in Belgium before 1 October 1999 may be granted regularisation of their irregular stay in the case they would fulfil one of the following criteria:

1. Those who had applied for the status of refugee without having received an applicable decision within a four-year period (3 years for families with school-attending minors)
2. Impossibility to return to the country of origin or previous regular residence, because of reasons beyond their control/
3. Serious illness;
4. Those who could assert humanitarian reasons and/or had developed durable social linkages, including having lived in the country for at least six years

While the first and the fourth criteria are rather based on integration features and the residence duration, the second and the third criterion were rather based on the impossibility or rather problematic nature of the return.

The application process lasted for three weeks during January 2000. A especially set up independent regularization commission was in charge to treat the applications and to formulate an individual advice for the minister who formally decided. With the implementation of the ‘Regularisation Commission’, the government fulfilled a central demand of pressure groups of the civil society. During the programme, a total of about 33.000 files were lodged.. Although exact numbers are not available, at least 40.000 persons were regularised on grounds of the ‘Regularisation Law’ between 2000 and 2005.

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<sup>74</sup> Royal Decree amending the Royal Decree of 17 May 2007 laying down rules for the implementation of the Act of 15 September 2006 amending the Act of 15 December 1980 on the Access to the Territory, Residence, Settlement and Removal of Foreign Nationals (*BS*, 29 January 2011).

<sup>75</sup> Besides specialised NGO’s, the trade unions are prominent advocates of regularisation programmes.

It is obvious that the “one-shot” campaign could not solve the problematic of irregularity on long terms and therefore public pressure demanded anew legal criteria for regularisation. The public debate for further measures lasted for years, reflecting the dividing of the public opinion concerning the topic. Especially the assessment of the regularisation programme in 2000 varied widely, expressing the demand of further programmes on one side of the scale and on the other side the rejection of any further regularisations measures, pointing amongst others to overtraining-risks for the social security system. The alleged pull factor of regularisation for further irregular migration is one of the most mentioned arguments against new programmes. Although there is no direct evidence for the pull factor theory<sup>76</sup>, a memorandum of the Belgian minister in charge for migration and asylum linked the decline of voluntary returns in 2006 and 2007 to persistent rumours about new regularisation measures.<sup>77</sup>

However, in 2009 the Belgian government agreed upon a new regularisation programme but implemented it this time not via a law but via new instructions on regularisation criteria. The new instructions were issued on 19 July 2009 under the title: “Instruction on the application of former Article 9.3 and Article 9 bis of the Aliens Act”. Like the title indicates the new instructions added new criteria to the already existing ones as stipulated in former instructions concerning article 9.3 and its successor article 9 bis. The following “old” criteria remained in force and were repeated in the instructions under the following articles:

The criteria for this regularisation campaign, planned between 15 September and the 15 December 2009 inclusive, were as follows:

1. Lengthy procedures:

- 1.1. Pending asylum procedure during 3 years (asylum seekers with children) respectively 4 years (asylum seekers without children);
- 1.2. Pending asylum procedure, including proceedings before the Council of State (4, respectively 5 years);

2. Pressing humanitarian situations

- 2.1. Parent of a Belgian child;
- 2.2. Parent of a child born in the European Union;
- 2.3. Extended family of a European citizen;
- 2.4. Foreigners who cannot invoke a right of return (to Belgium);
- 2.5. Spouses of different nationalities who originate from countries who do not permit their family reunification (in particular when having a common child);
- 2.6. Foreigners receiving a pension in Belgium and who have lost his/her right to return;

Article 2.7 of the new criteria was a repetition of new instructions on the regularisation, already issued on March 26, 2009 concerning asylum-seekers or former asylum seekers

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<sup>76</sup> Also the ICMPD could not find such evidences during its REGINE research project on regularisation programmes in Europe. More about the REGINE project 2007/2008 and downloads of the concerning publications are available under: <http://research.icmpd.org/1184.html>

<sup>77</sup> House of Representatives of Belgium (2008) “Note de Politique Générale de la Ministre de la Politique de Migrations et d’Asile”, 21 Avril 2008, DOC 52 0995/020, p. 12.

(whose procedure lasted at least 1 year) with school-attending children (school-attendance since at least 2007), who proved to be living in Belgium for a minimum of 5 years.

Only article 2.8 of the instructions was new. Nevertheless article 2.8 A formed the most important one due to its expected recourse to it. The concerning articles are formulating the following criteria:

- 2.8 A; sustainable local anchoring (a.o. condition of uninterrupted stay of five years);
- 2.8 B employment: applicants with an uninterrupted stay of at least 2,5 years, who were able to produce an employment contract of at least 1 year duration.

The government declared this new case-by-case regularisation as temporarily, only applicable during a period of three months (between 15.09.2009 and 15.12.2009). On 9<sup>th</sup> December 2009 the instruction has been annulled by the Council of State, stating that the instructions would have the legal character of a decree and not of administrative instructions as the Secretary of State declared<sup>78</sup>. However, the Secretary of State has still the discretionary power to grant regularisations in a case-to-case procedure and declared to use this power to continue the regularisation on base of article 2.8 as foreseen.<sup>79</sup> In consequence, all criteria mentioned in the instructions remained in force, except article 2.8, which was not applicable any more after 15 December 2009.

Like predicted, article 2.8 A, “sustainable local anchoring” formed quantitatively the most important criterion during the regularisation programme. According to the IO, in 2010 11.791 persons (representing 7.939 files) were regularised on grounds of article 2.8 A. Overall, 24.199 persons were regularised in 2010.

### *Practices of removal*

The Belgian authorities promote the voluntary return of irregular migrants. With this aim Fedasil organises two programmes: “Return and Emigration of Asylum Seekers ex Belgium” (REAB) and a Reintegration Fund. The IOM’s Belgian office is responsible for the practical organisation of the REAB programme.<sup>80</sup> Together with failed asylum seekers and asylum seekers who withdrew their asylum application, irregular migrants are one of the most prominent group of person for which the REAB programme is designed. In the past, also organisations as CARITAS-Belgium, Flemish Refugee Action and CIRE<sup>81</sup> have developed alternative projects under the supervision of Fedasil.<sup>82</sup>

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<sup>78</sup> Council of State, 9 December 2009, n° 198,769.

<sup>79</sup> In depth-information on the regularisation of 2009 are available under the specialised website “Aliens Law”: [http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=81#nieuwe\\_instructies](http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=81#nieuwe_instructies)

<sup>80</sup> More information on REAB (in English) available at: <http://avrr.belgium.iom.int/en/about-reab.html>

<sup>81</sup> The pilot project elaborated the Flemish Refugee Action in cooperation with Ciré and Caritas was operational between 2005/2006 until the end of 2008.

<sup>82</sup> For more information, please consult: <http://avrr.belgium.iom.int/fr/a-propos-du-programme-reab.html>.

Beside this optional voluntary return, the IO is in charge of forced removals. The “CID/Identification” section plays a crucial role in order to allow these repatriations. In case the identity of some irregular migrants is not established or these migrants do not have the required documents to travel, the CID negotiates with the authorities of the country of origin to establish the identity of these people and obtain the appropriate travel authorizations. DID ensures these tasks concerning individuals who had received an order to leave the territory and who are being detained in Belgian prisons following their conviction because of criminal facts.

In order to remove persons residing irregularly on Belgian territory and who often have no identity documents and/or travel documents, Belgium has concluded a number of readmission agreements (and is striving to conclude further such agreements) with countries of origin, on bilateral level or within the framework of both the Benelux partnership and the European Union. These agreements will be listed in a next point (see 4.1.).

As aforementioned, irregular migrants might be held in detention centres awaiting forced removal, according to the number of available places. A set of priorities was thus established for the detention of irregular migrants: (1) non-nationals whose entry to the country was refused at the border, (2) those who are considered as a threat to public order or national security, (3) those arrested during checks by the police, the Public Prosecutor’s department or social inspection and (4) those who received an order to leave the territory and were subject to control at their address by the IO.<sup>83</sup>

Belgium distinguishes two types of detention facilities: “closed centres” and “border zones”. Persons held at border zones are not considered to have officially entered Belgian territory, whereas closed centres accommodate persons who have already entered the territory but are in an irregular situation (Aliens Act 1980, art. 74/5, art. 74/6 paragraph 1). However, in some cases, persons who have been detained “at the border” and thus are being considered not to have formally entered the country, can be confined in a detention centre when lengthy detention is deemed necessary. Royal decrees (1994, 1998 and 1999) have extended the legal framework allowing certain detention centres (Steenokkerzeel, Brugge, Merksplas, and Vottem) to also be used as border zone detention sites for detention of “INADmissible” migrants.

Belgium has six detention centres (often called “closed centres”): (1) INAD (INADmissibles) in the transit zone of Brussels Airport, (2) Transit centre 127 near Brussels Airport, (3) Repatriation centre 127bis near Brussels Airport, (4) ‘Centre for Illegal Migrants in Brugge’ (CIB), (5) ‘Centre for Illegal Migrants in Merksplas’ (CIM, near Antwerp), (6) ‘Centre for Illegal Migrants in Vottem’ (CIV, near Liège).

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<sup>83</sup> OUALI, N. & CARLES, I. (2007) *Undocumented Worker Transitions. Belgium: Country Report* (Brussels: European Commission), retrieved August 2nd, 2011, from [http://www.undocumentedmigrants.eu/londonmet/library/q65044\\_3.pdf](http://www.undocumentedmigrants.eu/londonmet/library/q65044_3.pdf).

Irregular migrants detained in a detention centre may appeal against the detention decision, whether held in a centre based on the Belgian territory<sup>84</sup> or in the transit zone<sup>85</sup>. It is the same for families hosted in family units<sup>86</sup>.

In order to shorten the detention period, the work of the CID starts even before any detention decision is taken. As soon as a foreigner has received an OTL (f.i. failed asylum seekers, people whose application for regularisation has been rejected, overstayers) the CID contacts the embassy, consulate or other foreign representative to establish the identity and nationality of the irregular migrant before potential detention. In a test phase, the CID has decided to carry out pre-identification inquiries for a limited number of nationalities (people originating from the Balkans). It wants, if possible, to generalize this pre-identification procedure to a maximum of nationalities in the future (in accordance with the Sefor project).

Belgian detention practices have been at the core of many debates at both the national and international level. Civil society groups, human rights defenders, and international organisations have criticized the country for some controversial practices, including the detention of children, the use of transit zone detention centres, and inadequate information to detainees about their legal rights. In their critics they have been bolstered by rulings issued by the European Court of Human Rights.

In recent years, many measures have been implemented in order to “humanize” these detention centres. Developments take into account recommendations explained in detail in the report of the Commission Vermeersch II. These measures are, among others: better information for detainees thanks to a brochure describing their rights, psychological assistance and implementation of a legal advisory panel.

In the same vein, the project 'Special Needs' follows up specific categories of residents of the detention centres. This project includes the following:

- Transfer to specialized psychiatric institutions for people who cannot receive adequate medical supervision in a detention centre;
- Specific training for psychologists working in detention centres;
- Access to information about the rights of persons staying in a detention centre has been enhanced by the creation of a DVD explaining their rights in an audio version (16 languages). This initiative was developed to enable illiterate residents free access to this information;

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<sup>84</sup> Royal Decree laying down the rules and regulations applicable to sites located in Belgium, operated by the Immigration Office, where a foreign national is detained, placed at the disposal of the Government or maintained, under the provisions cited in the article 74/8, paragraph 1, of the Act of 15 December 1980 on the entry, residence, establishment and removal of foreigners (*BS*, 22 September 2002).

<sup>85</sup> Royal Decree of 8 June 2009 amending the Royal Decree of 2 August 2002 on the arrangements and operating rules applying to sites located in Belgium, managed by the Immigration Office, where a foreign national is detained, place at the disposal of the Government or maintained, under the provisions cited in article 74/8, paragraph 1, of the Act of 15 December 1980 on the entry, residence, establishment and removal of foreigners (*BS*, 26 June 2009).

<sup>86</sup> Royal Decree of 14 May 2009 laying down the rules and regulations applicable to places of accommodation as defined by article 74/8, paragraph 1, of the Act of 15 December 1980 on the entry, residence, establishment and removal of foreigners (*BS*, 27 May 2009).

- Specific additional support for the return (For instance, medical supervision by a doctor and a psychologist during the return flight);
- Specific support after removal. For some people with special needs (mostly medical), a follow-up is planned after the return in the country of origin (monitoring during a given period). In the past, Belgian authorities have also been firmly criticized because its practice of the detention of children. In 2006, in the “Tabitha case,” the ECHR condemned Belgium for violations of articles 3 (prohibition of inhuman treatment), 5 (right to liberty and security) and 8 (right to respect for private and family life) of the European Convention on Human Rights. This case, dating back to 2002, concerned the decision by Belgian authorities to detain a 5-year-old Congolese girl who was trying to join her mother in Canada. The girl was confined in a closed centre for two months without an appointed guardian and was then deported back to her country of origin.<sup>87</sup>

In accordance with the Law of 12 January 2007 concerning the reception of asylum seekers and certain other categories of foreigners<sup>88</sup>, unaccompanied minors are in principle no longer sent in one of these detention centres, but are sent to a so-called Observation and Orientation Centre (OOC)<sup>89</sup>, which are open for all unaccompanied minors regardless of their administrative status. Although these centres are open facilities, they are secured. The regime of these open centres is designed to offer the most appropriate reception to the particularly vulnerable category of unaccompanied minors.

In October 2008, the Minister of Migration and Asylum Policy announced in a Circular Letter her intention to reduce the number of detentions of families with children and to assign them to alternative residences (housing units) prior their removal. A number of housing units equipped to accommodate families in normal surroundings have been put at the IO’s disposal. Families are free to leave the residence, as far as one adult member is still present in the unit. “Return coaches” assist families to prepare them for their removal.

In January 2010, the ECHR ruled in a second case involving the detention of children in Belgium. In the case *Muskhadzhiyeva and others vs. Belgium* which is dating back to 2006, the ECHR again condemned Belgium for violating articles 3 and 5 of the ECHR for detaining four Chechen children along with their mother. The family had been detained in Centre 127 bis in order to remove them to Poland under the EU’s Dublin II Convention. Although the court found the detention of the adult person justifiable, it ruled that in the particular case of the detention of the children a violation of Article 3 took place due to the fact that the centre in question had insufficient facilities appropriate for children and due to the poor health situation of the concerned children. Additionally, the court ruled that generally a violation of Article 5 (right to liberty and security) took place.<sup>90</sup>

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<sup>87</sup> *Affaire Mubilanzila Mayeka et Kaniki Mitunga c. Belgique* 2006.

<sup>88</sup> *BS*, 7 May 2007.

<sup>89</sup> Article 41 of the Law of 12 January 2007.

<sup>90</sup> *Affaire Muskhadzhiyeva et autres c. Belgique* 2010.

I However, the court ruled, that although the mother was lawfully detained, the detention of her children was not lawful. Article 3 (prohibition of inhuman treatment) was violated because the centre was not designed to hold children and because of the poor state of health of the children at the time of their detention. Article 5 (right to liberty and security) was violated based on similar grounds. It is foreseen that specific family units within a closed environment will be constructed in order to detain families who for example do not comply to the rules of staying in the “open” family units. These new family units will fulfil the requirements as stated in the EHRC ruling.

### *Specific cases*

#### Non-removable persons

Although different measures have been developed in order to remove irregular migrants, some of them stay on the Belgian territory and are somehow “tolerated” The reasons why these people are non-removable are various. This can be de facto elements, for instance in case that there is no possibility of identification or technical impediments such as lack of transport capacity or closed airports prevent the forced removal. It can also be due to a negative advice – taken by the CGRS- on the conformity of the removal order with the Geneva Convention, subsidiary protection or article 3 ECHR in the case of an asylum seeker (although this advice is legally non-binding)

Non-removable persons in Belgium (e.g.) do not receive a residence permit, although some get a suspension of their removal order. During their ““tolerated”” stay, these irregular migrants only benefit from minimal basic rights: in principle, irregular migrants do not have a right to social aid (cf. 2.1.). However, Belgian social policy legislation does contain certain exceptions to this principle.

Two important remarks have to be made in this respect:

The term “tolerated illegals” is not an official term of which no trace can be found in official documents. Besides, the position of the competent authorities is that “non-removable” does not always mean that the person in question may not return on a independent basis. Some make themselves “non-removable” (for instance in the case of identity concealment).

In addition, the CID now provides more qualitative monitoring and more effective identification records after the release of an irregular migrant from a detention. If the IO receives a positive response from the foreign authorities after the liberation of the irregular migrant, the case will be examined to determine whether the irregular migrant is still residing and if his address is known in Belgium, in order to take the necessary measures for his effective removal. In 2011, the procedures for pre-and post-identification continue to be developed and agreements on the matter will be concluded with the competent foreign authorities.

## Unaccompanied minors

Given the increasing number of foreign minors entering Belgium without being accompanied by a legal representative (parent or guardian), Belgian authorities have developed a special system of representation and assistance for these young migrants who intend to apply for asylum in Belgium, who are deprived of visa or who are victim of human trafficking or human smuggling.

The main mission of the Guardianship Service (in place since 2004) is to support the implementation of a durable solution in the interests of unaccompanied minors. This service is part of the central administration of the Federal Public Service Justice.

The various tasks of the Guardianship Service can be resumed as follows:

- to support unaccompanied minors and contact the authorities responsible for accommodation;
- to identify these minors;
- to recruit, approve, appoint and train tutors;
- to coordinate contacts with the authorities in charge of asylum and stay, and those in charge of reception and accommodation;
- to coordinate and support the implementation for a durable solution for these children as fast as possible.

## 4. TRANS-NATIONAL COOPERATION IN REDUCING IRREGULAR MIGRATION

### 4.1. Cooperation Agreements

In order to facilitate the return of migrants and the attendant formalities (identification and issuing of travel documents), cooperation between authorities of host countries and countries of origin is essential. Belgium has therefore concluded readmission agreements, Memorandums of Understanding (MOU) or other administrative agreements with several third countries to improve the effectiveness of its return policy.

#### *Benelux readmission agreements*

Together with the Netherlands and the Grand-Duchy of Luxembourg, Belgium has concluded numerous agreements in order to facilitate migrants' returns and harmonise procedures leading to repatriation. So-called Benelux readmission agreements were signed with the following countries:

- Armenia (signing 03/06/2009 – still not ratified by Belgium on March 2010),
- Austria (signing 15/02/1965, ratification 01/04/1965),
- Bosnia-Herzegovina (signing 19/07/2006, ratification 01/10/2008),
- Bulgaria (signing 07/10/1998, ratification 30/05/2002, entry into force 01/02/2005),
- Croatia (signing 11/06/1999, ratification 22/07/2004, entry into force 01/02/2005),
- Estonia (signing 03/02/1999, ratification 30/05/2002, entry into force 01/02/2005),
- (Former) Federal Republic of Yugoslavia (signing 19/07/2002, ratification 29/04/2004, entry into force 29/05/2004)
- France (signing 16/04/1964, ratification 16/05/1964),
- Germany (signing 17/05/1966, ratification 01/07/1966),
- Hungary (signing 23/01/2002, ratification 26/03/2003, entry into force 01/12/2003),
- Kosovo (administrative agreement, signing 12/05/2011)
- Latvia (signing 09/06/1999, ratification by Belgium 22/03/2006 – not entered into force),
- Lithuania (signing 09/06/1999, ratification 30/05/2002, entry into force 01/02/2005),
- Macedonia/FYROM (signing 30/05/2006, ratification 18/09/2008),
- Slovakia (signing 21/05/2002, ratification 17/03/2004, entry into force 01/05/2004),
- Slovenia (signing 16/11/1992, ratification 29/04/2004 – not entered into force),
- Switzerland (signing 12/12/2003, ratification by Belgium 15/02/2006, entry into force 01/03/2007),
- Romania (signing 06/06/1995, ratification 29/04/2003, entry into force 01/10/2006),

Removals of irregular migrants are also facilitated by the readmission agreements negotiated at the EU level.<sup>91</sup>

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<sup>91</sup> List of agreements concluded at the European level (till March 2010): Hong Kong (signing 27/11/2002, entry into force 01/03/2004), Macao (signing 13/10/2003, entry into force 01/06/2004), Sri Lanka (signing 4/06/2004, entry into force 01/05/2005), Albania (signing 14/04/2005, entry into force 01/05/2006), Russia (signing

### *Bilateral readmission agreements*

At the bilateral level, Belgium has concluded some MOUs on readmission. The basic principle of a MOU is formally the same as a readmission agreement, with the exception of the ratification process which leads to a faster implementation of the measure.<sup>92</sup> MOUs have been signed with the Democratic Republic of Congo (10/03/2006), Guinea (17/10/2008), Ecuador (13/01/2009), Vietnam (19/01/2009), Burundi (04/05/2009) and Kosovo (29/10/2009). The latter one, which foresees the return of Kosovo citizens who reside irregularly in Belgium, found wide response in the Belgian media due to the fact that it was the first administrative (readmission) agreement which independent Kosovo signed. Since then a Benelux agreement has been signed on 12<sup>th</sup> May 2011. Belgian authorities are currently in negotiation with the political authorities of other countries in order to conclude MOUs, among others with Cyprus, Czech Republic, Algeria, Sri Lanka, Russia, the Balkans, Moldova, Ukraine and Pakistan.<sup>93</sup>

On 9 June 2005, a readmission agreement at national level has been signed with Albania. . Belgian authorities have also negotiated a police cooperation agreement linked to readmission with Malta. Signed on February 21<sup>st</sup>, 2006, it has still not entered into force.

Moreover IO has also concluded informal agreements of cooperation with administrations of some other countries of origin, in particular Nepal, Poland, Niger and Togo.<sup>94</sup>

### *Cross-border cooperation*

On 27 May 2005, Belgium signed together with Germany, Spain, France, Luxemburg, the Netherlands and Austria, the so called Prüm Convention to step up cross-border cooperation, particularly in combating terrorism, cross-border crime and irregular migration. The main aim of this Treaty is to enable the signatories to speed up the exchange of information. Concerning the fight against irregular migration, the main objectives of the signatories are: (1) information exchange and employment of common document advisers to prevent irregular migration, (2) enhancing operational cooperation in relation to joint removal measures of irregular immigrants, and (3) joint operational activities in the framework of police cooperation, such as joint patrolling, person checks, analysis teams and surveillance groups.

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25/05/2006, entry into force 01/06/2007 - execution protocol between Belgium and Russia signed on 17/12/2009), Ukraine (signing 18/09/2007, entry into force 01/01/2008), Bosnia, Serbia, Montenegro, Macedonia (signing 18/09/2007, entry into force 01/01/2008), Moldova (signing 10/10/2007, entry into force 01/01/2008, Pakistan (signing 26/10/2009 - not yet entered into force), Georgia (initialed on 26/11/2009 - signing procedures in preparation).

<sup>92</sup> BERGANS, K., CRUYSSBERGHS, W., VERBAUWHEDE, G., VERSTRAELEN, K. VERSTRAETE, B. & al. (2010) *Het verwijderingsbeleid* (Migratie en Migrantenrecht, XIII, Brugge, Die Keure), p. 111.

<sup>93</sup> For more information about bilateral readmission agreements concluded by Belgium, please consult the following websites : Return Migration to the Maghreb (MIREM) ([http://www.mirem.eu/datasets/agreements/belgique?set\\_language=en](http://www.mirem.eu/datasets/agreements/belgique?set_language=en)) and SPF Foreign Affairs, Foreign Trade and Development Cooperation ([http://diplomatie.belgium.be/en/treaties/belgium\\_as\\_depository/](http://diplomatie.belgium.be/en/treaties/belgium_as_depository/)).

<sup>94</sup> BERGANS, K. & al. (2010) *op cit*, p. 111.

Although established outside the EU legal framework, the Prüm Convention was later incorporated into the EU legal framework on the basis of two Decisions: (1) Council Decision 2008/615/JHA of 23 June 2008 on the Stepping up of Cross-border Cooperation, Particularly in Combating Terrorism and Cross-border Crime<sup>95</sup> and (2) Council Decision 2008/616/JHA of 23 June 2008 on the Implementation of Decision 2008/615/JHA on the Stepping Up of Cross-border Cooperation, Particularly in Combating Terrorism and Cross-border Crime<sup>96</sup>.

## **4.2. Other forms of (non-legislative) cooperation with countries**

### *Co-management practices of border crossings*

Since 2003, the Belgian Federal Police only perform Schengen border controls on trains that travel outside the Schengen area to the United Kingdom. Incoming *Eurostar*-trains from the UK are no longer controlled by the Belgian police. When they leave the UK, passengers are screened by the French police who carry out audits on entry into the Schengen area. Since the 1<sup>st</sup> of April 2004 there are no checks of entry at the *Eurostar* station of Brussels-South: French authorities carried out such checks in London at the “Waterloo Station” and since 2007 in Saint-Pancras International station.

An agreement was concluded between the British Immigration Service and the IO by which both services support each other with identification and expulsion files. At the Brussels *Eurostar*-terminal the Federal Police carries out personal checks before the trains leave for London. Additionally, agents of the UK Border Agency carry out checks at the Brussels terminal.

### *Networks of Immigration Liaison Officers*

Belgian Immigration Liaison officers have elaborated, in partnership with their French, German, Dutch and Swedish colleagues, the “Common Planning and Evaluation Platform” (CPEP). This platform aims to develop a common evaluation methodology to monitor individual reintegration projects. Achievements of the CPEP Evaluation Network, are among others: common monitoring sheets to interview beneficiaries in the countries of origin, a frame to document the operational capacity of local reintegration partners and a method to conduct peer reviews and to compare the outcomes of different projects.

Since 2009, joint police operations on the motorway linking the French with the Belgian coast have been intensified. Coordination between French and Belgian police has also been strengthened in order to dismantle smuggling organizations attempting to organize the departure of migrants to the UK. Joint patrols of railway police in high-speed trains on the routes Brussels-Paris and Brussels-Lille, in particular on the trains of the Thalys-company, are organised.

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<sup>95</sup> OJL 210, 06.08.2008, pp. 1-11.

<sup>96</sup> OJL 210, 06.08.2008, pp. 12-72.

### *Other forms of cooperation*

IO actively takes part in many other activities, for example in the framework of the program “Transit Migration in the Mediterranean” (MTM) coordinated by ICMPD. It for instance collaborates in the joint project of Europol, Frontex and ICMPD: “Towards a Comprehensive Response to Mixed Migration Flows”. IO attended the conference of the project and followed up with a sub-project to create a platform for information exchange between European countries and Arab countries around the Mediterranean.

### *Bilateral/multilateral country agreements to aid removals*

In accordance with the Council Decision 2004/573/EC concerning the organisation of joint flights for removals<sup>97</sup>, negotiations have been made on this topic at the Benelux level to organise joint return flights (the first removal at the Benelux level took place in March 2004).

Belgium is also partner of the “Core Group Country for Return Matters” (a group of core countries for joint return operations). Several other member states are members of the group like Germany, Austria, Spain, France, Britain, Italy, the Netherlands, Poland, Switzerland, Ireland and Sweden. This group exchanges information regarding the operations of national and joint return operations, cooperation with embassies or the practices of third countries. It represents a platform to identify needs and opportunities for joint flights, destinations and sets to develop the operational planning. It provides the necessary assistance in organising joint return operations. It aims to develop the capacity of participating states to deter third-country nationals residing irregularly, to develop assistance to participating states during the pre-trip and encourage participating states to be proactive in their role of joint operations.

Finally, we notice that the adoption of a protocol between Belgium and the Grand Duchy of Luxembourg regarding the transit through their territory is being negotiated.

### *Exchange of know-how*

Another important form of cooperation is the transfer of competencies, for example in the form of twinning projects. One project is especially relevant in the framework of this study. After the European Commission had chosen the IO as project leader, the second European Twining project began in June 2009. The objective of this project was to strengthen Bulgarian immigration policy practices, including the implementation of new EU directives on procedures and methods regarding apprehension and removal of irregular migrants.

One IO’s officer worked as “Resident Twinning Advisor” in Sofia. IO’s officers also conducted short-term missions to Bulgaria to organise seminars, provide assistance in interceptions and special flights, issue instructions and internal disseminations during training

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<sup>97</sup> Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (*OJ L 261/28*, 06.08.2004, pp. 28-35).

courses organised in all regional sections of the Bulgarian Immigration Office. On the other hand, Bulgarian officers have visited Belgium.

Two major projects, involving the IO, are under way in Georgia. Firstly, the project “Support Reintegration of Georgian Returning Migrants and the Implementation of EU-Georgia Readmission Agreement” aims to strengthen migration management by increasing the building capacities of competent authorities in Georgia. This project, elaborated and implemented in collaboration with the Czech Republic, France, Germany, Italy, the Netherlands, Poland, Romania and Sweden, is based on three components:

- Capacity building of the competent Georgian authorities regarding the management of return migration and readmission;
- Supporting the social and economic reintegration of Georgian citizens who return on a voluntary or forced basis from a EU member state or other geographic regions;
- Design and implementation of information campaigns for the Georgian Diaspora, the relevant Georgian agencies and the Georgian public opinion.

Together with Czech Republic, the Netherlands and Poland, Belgium (IO), is also part of the project “Support to the Government of Georgia for the implementation of the Readmission Agreement with the European Union”. This project aims to favour the capacity building of different Georgian actors in charge of the effective implementation of readmission agreements with the EU: the Georgian National Register (CRA), the Georgian Ministry of Internal Affairs and the Georgian Ministry of Foreign Affairs (MFA). To this end, various actions were undertaken, among others the formalization of administrative procedures for the identification of Georgian citizens residing irregularly in a Member State, the development of appropriate software for handling requests for readmission or the elaboration of a training manual and staff training institutions (CRA and MFA).

### *Information sharing*

The communication of reliable information is essential for the countries that are part of the Schengen zone. On Belgian initiative, a shared database has been set-up in Kinshasa, a location which was chosen due to (1) the high migratory pressure from the DRC towards Belgium (2), to the fact that in accordance with article 22 of the new Visa Code, the Belgian authorities must be consulted on any visa application introduced by a Congolese citizen<sup>98</sup>. This database includes the names of persons (1) who, on account of an irregular stay or a rejected asylum application, were sent back to their country of origin, (2) who have already received a negative answer to a visa application, or (3) who had submitted false or forged documents in their visa application. Various Schengen partners also present in Kinshasa, like Dutch, French, German, Greek, Italian, Portuguese, Spanish and Swiss embassies, can consult this database. They have also the possibility to encode new data.

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<sup>98</sup> Belgian authorities must also be consulted before issuing visa to Rwandan citizens.

### **4.3 Cooperation with EU or international organisations**

Created by the Regulation of 26 October 2004, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) plays a major role as a platform for the exchange of good practices concerning joint flights and to obtain travel documents. The past two years, Belgium took part in 4 secured flights: two flights in 2009 with Nigeria as destination, of which one was organised by the Netherlands and a second one by Austria; and again two flights in 2010, both organised by the Netherlands. Of the latter ones, the first flight was destined for Nigeria and the second both for Cameroon and again for Nigeria. In total, 73 people were removed.

For many years Belgian authorities work in close collaboration with the IOM. Together they have developed the project REAB that aims to facilitate the voluntary return of (irregular) migrants and their successful reintegration in their countries of origin. IOM is also a privileged partner of the Immigration Office for the implementation of prevention campaigns in the countries of origin.

## 5. IMPACT OF EU POLICY AND LEGISLATION

EU policy and legislation have an important impact on measures developed in Belgium to prevent, address and detect irregular migration. As country within the Schengen area, Belgium has nowadays “only” 13 external borders (six air borders, six sea borders and one land border). Consequently, staff resources and technical equipment are focussed on these locations.

As aforementioned, Belgian policy towards irregular migration has been enforced since the beginning of the 1980s and by enforcement of the Alien’s Act. The use of detention became a cornerstone of the Belgian policy in the fight against irregular migration. EU policy developments have had a clear impact on this issue. For instance, in accordance with EU policy, Belgian authorities have created a commission for complaints intended exactly to receive complaints of people kept in detention centres. Decisions of the European Court of Justice have had also an impact on this issue, among others concerning the detention of children pending their removal.

As already mentioned, article 22 of the new Visa Code allows States, regardless of any prior notification, to refuse entry or visa issuance, notably on the basis of preliminary consultation. Belgium has asked to be consulted in case of citizens of Democratic Republic of Congo and Rwanda, two countries from which an important migratory pressure to Belgium is noticeable. Given the specific political context in Belgium, transposition of more recent European directives in Belgian legislation has been delayed. It’s in particular the case for the EU directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of irregularly staying third-country nationals. However this directive has already drawn the attention of several Belgian social actors’. They fear that the obligation of employers to control the residence permits of their workers shall increase the vulnerability of undocumented workers.<sup>99</sup> The purpose of this directive is to reduce employment opportunities for undocumented workers, with the hope of reducing the number of irregular migrants tempting to come to the EU.

Concerning the Return Directive, the Belgian Council of Ministers approved a bill on 1<sup>st</sup> July 2011 transposing the European Return Directive on the expulsion of irregular residents into Belgian law. In accordance with the European directive, Belgium already favours for some years assisted voluntary returns. On Belgian level, the 2 main changes will be the introduction of (also for non-public order cases) a re-entry ban and the prolongation of the period during which an order to leave the territory can not be executed (the latter has to allow a better preparation for a AVR or independent return).

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<sup>99</sup> Common position of PICUM, ENAR and SOLIDAR on the proposal for the directive: “Employers’ Sanctions Directive: Will migrant workers pay the price of their exploitation?”, retrieved 24 August 2011, from <http://www.orcasite.be/?id=105>.

Implementation of some important practical measures has been achieved thanks to EU financial support, especially by means of two specific funds: the Return Fund and the External Borders Fund (as part of the general programme “Solidarity and management of migration flows”).

The general objective of the Return Fund is to support the efforts of Member States to improve the management of return in all its dimensions through the use of the concept of integrated return management, with a preference for voluntary return and with a view to support a fair and effective implementation of common standards on return.

The European Return Fund supported important projects developed these last years in Belgium. In the framework of the programme “Solidarity and management of the migration flows” the implementation of the Observation and Orientation Centres (OOC) and alternative accommodation for families in detention centres are most noteworthy. The program “Special needs” has helped the IO to develop concrete and sustainable projects for some families in their country of origin. Also as part of the European Return Fund, training was given to courts and social services in prisons, together with many other initiatives. The External Border Fund aims to: (1) improve the efficiency of the administrative organisation, especially thanks information exchange, statistical collection and coordination between border crossing points, (2) improve the management of migration flows at external borders, especially by effective consultation of the European information systems (SIS and VIS) and collaboration in detection of forged or false travel documents, (3) standardize the implementation of EU legislation, for instance through promotion of the use of the practical handbook for border guards and (4) enhance the activity of consular services, including reinforcement of the operational capacity of the network of immigration liaison officers and the development of common consular offices. Actions that have been sustained by this fund are among other the implementation of the “Maison Schengen Kinshasa”, the Organisation of a ministerial conference on “Unaccompanied minors/ children crossing the external borders of the EU in search of protection” organised by the Belgian presidency of the EU and the installation of “field workers” to support consular staff, the implementation of the VIS, Finally, we can mention that some European legislative and political developments have had unexpected pernicious effects in Belgium. On 30 November 2009, the EU Council of Ministers for Interior and Justice abolished visa requirements for citizens of the Republic of Macedonia, Montenegro, and Serbia for stays of less than three months. In consequence, many migrants originating from these countries came into Belgium in order to apply for asylum. Transposition of directive 2004/38/EC introduced the concept of “legal cohabitation” in Belgian legislation. Since then, IO’s civil servants have noticed the fraudulent use of this legal provision by some irregular migrants in order to obtain a residence permit.

## 6. STATISTICS ON THE IRREGULAR MIGRANT POPULATION

**Remark:** A part from table 7 (irregular employment), the source of all data is the Immigration Office. For tables 1 to 5 and as from 2008, the same data has been sent to Eurostat in the framework of the 'Regulation on Community Statistics on migration and international protection'. NA means "not available".

**Table 1: Third country nationals found to be illegally present**

**Table 1.1: Overall trend**

	2005	2006	2007	2008	2009	2010
Total number of third-country nationals found to be illegally present	18 400	17 323	11 642	13 800	13 710	12 115

**Table 1.2: Age of migrants found to be illegally present**

	2005	2006	2007	2008	2009	2010
Fewer than 14 years	NA	NA	NA	145	170	115
From 14 to 17 years	NA	NA	NA	805	850	755
From 18 to 34 years	NA	NA	NA	9 260	9 025	8 175
35 years or over	NA	NA	NA	3 590	3 660	3 065

**Table 1.3: Sex of migrants found to be illegally present**

	2005	2006	2007	2008	2009	2010
Male	NA	NA	NA	12 325	11 915	10 695
Female	NA	NA	NA	1 470	1 790	1 415

**Table 1.4: Main 10 countries of citizenship**

	2005		2006		2007	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	MA	2 148	MA	1 954	MA	1 690
2nd main	DZ	1 649	DZ	1 772	DZ	1 648
3rd main	IN	1 509	IN	1 488	IN	1 186
4th main	RO	1 315	PL	1 175	RS	1 111
5th main	PL	1 233	BG	899	BR	735
6th main	BG	1 153	BR	854	IQ	681
7th main	BR	674	IQ	616	AF	449
8th main	IQ	564	PS	436	PS	374
9th main	CS	469	CS	425	RU	301
10th main	TR	384	RU	363	PK	255

	2008		2009		2010	
Position of the country of citizenship	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	DZ	2 425	MA	2 465	DZ	2 605
2nd main	MA	2 035	DZ	2 255	MA	2 180
3rd main	IN	1 615	IN	965	IN	560
4th main	IQ	865	AF	805	PS	510
5th main	BR	570	BR	560	IQ	455
6th main	PS	560	PS	520	BR	415
7th main	AF	440	IQ	435	TN	410
8th main	TN	340	TN	405	AF	350
9th main	RS	325	TR	300	IR	265
10th main	RU	315	CL	270	TR	250

**Table 2: Third country nationals refused entry at the external borders**

**Table 2.1: Overall trend**

	2005	2006	2007	2008	2009*	2010
Total number of third-country nationals refused entry	1 187	1 365	1 112	1 170	2 055	1 855

\* Number of grounds for refusal (number of TCN refused entry: 1 383)

**Table 2.2: Grounds for refusal**

	2005	2006	2007	2008	2009	2010
No valid travel document	NA	NA	NA	85	365	500
False/counterfeit/forged travel document	NA	NA	NA	345	195	25
No valid visa or residence permit	NA	NA	NA	225	450	210
False visa or residence permit	NA	NA	NA	0	65	0
Purpose and conditions of stay not justified	NA	NA	NA	375	590	820
Person already stayed 3 months in a 6-months period	NA	NA	NA	5	30	40
No sufficient means of subsistence	NA	NA	NA	55	275	140
An alert has been issued	NA	NA	NA	80	75	115
Person considered to be a public threat	NA	NA	NA	0	5	5

**Table 2.3: Type of border where refused entry**

	2005	2006	2007	2008	2009	2010
Land						
Sea	128	116	65	105	60	85
Air	1 059	1 249	1 243	1 065	1 990	1 770
<b>TOTAL</b>	1 187	1 365	1 308	1 170	2 050	1 855

**Table 2.4: Main 10 countries of citizenship of third-country nationals refused entry**

Position of the country of citizenship	2005*		2006*		2007*	
	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	UNK	391	UNK	509	UNK	409
2nd main	BG	164	RO	192	MA	114
3rd main	RO	148	BG	142	TR	103
4th main	CD	101	CD	111	CD	80
5th main	CN	96	TR	91	CN	49
6th main	TR	94	CN	75	AO	45
7th main	AO	42	SN	49	SN	39
8th main	SN	40	CM	48	CM	35
9th main	CI	38	AO	47	GN	34
10th main	RW	31	MA	37	LI	29

\* EU-citizens included and possibility of multiple refusals (for same persons).

Position of the country of citizenship	2008		2009		2010	
	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	CD	95	CD	230	MA	235
2nd main	MA	90	TR	205	TR	120
3rd main	CN	85	MA	190	CD	120
4th main	TR	85	LK	140	RS	100
5th main	SN	80	SN	115	CL	95
6th main	GN	50	IQ	95	IQ	95
7th main	CL	35	CN	75	MK	85
8th main	CI	30	GN	65	AO	70
9th main	IN	30	IN	65	GN	70
10th main	LK	30	AO	60	SN	60

**Table 3: Third country nationals ordered to leave (after being found illegally present)**

**Table 3.1: Overall trend**

	2005*	2006*	2007*	2008	2009	2010
Total number of third-country nationals ordered to leave (after being found to be illegally present)	37 549	42 947	30 532	32 680	27 980	28 195

\* Not possible to distinguish between persons (multiple removal orders included); not possible to exclude EU-citizens; accompanied minors not included (not available). As a consequence, the data of the period 2005-2007 are not comparable to the period 2008-2010.

**Table 3.2: Main 10 countries of citizenship of third-country national ordered to leave**

Position of the country of citizenship	2005		2006		2007	
	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	NA	NA	NA	NA	NA	NA
2nd main	NA	NA	NA	NA	NA	NA
3rd main	NA	NA	NA	NA	NA	NA
4th main	NA	NA	NA	NA	NA	NA
5th main	NA	NA	NA	NA	NA	NA
6th main	NA	NA	NA	NA	NA	NA
7th main	NA	NA	NA	NA	NA	NA
8th main	NA	NA	NA	NA	NA	NA
9th main	NA	NA	NA	NA	NA	NA
10th main	NA	NA	NA	NA	NA	NA

Position of the country of citizenship	2008		2009		2010	
	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	MA	3 785	MA	4 075	MA	4 615
2nd main	DZ	2 895	DZ	4 015	DZ	4 455
3rd main	IN	2 080	IN	1 675	RU	1 150
4th main	CD	1 505	AF	1 545	IQ	1 035
5th main	RU	1 445	IQ	1 185	IN	870
6th main	IQ	1 430	RU	975	XK	865
7th main	BR	1 300	PS	820	CD	845
8th main	RS	1 175	BR	815	RS	815
9th main	IR	1 025	CD	775	AF	795
10th main	AF	975	IR	755	PS	785

**Table 4: Third country nationals returned following an order to leave**

**Table 4.1: Overall trend**

	2005*	2006*	2007*	2008	2009	2010
Total number of third-country nationals returned following an order to leave	6 565	6 629	4 311	3 965	4 060	4 415
Number of third-country nationals returned <i>to a third country</i> following an order to leave	NA	NA	NA	3 845	3 905	4 200

\* EU-citizens and Dublin-cases are included, while assisted voluntary returns are excluded. As a consequence, the data of the period 2005-2007 are not comparable to the period 2008-2010.

**Table 4.2: Main 10 countries of citizenship of person returned**

Position of the country of citizenship	2005		2006		2007	
	Name of the country of citizenship	Total	Main country of citizenship	Total	Main country of citizenship	Total
1st main	RO	1 422	RO	1 426	BR	567
2nd main	BG	1 374	BG	920	MA	278
3rd main	PL	1 013	PL	861	AL	216
4th main	BR	1 008	BR	619	RU	145
5th main	AL	367	RU	300	TR	118
6th main	MA	326	MA	276	CS	101
7th main	SK	318	AL	269	IQ	78
8th main	UA	295	SK	208	CD	70
9th main	TR	277	CS	152	UA	63
10th main	RU	270	TR	143	NG	59

Position of the country of citizenship	2008		2009		2010	
	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	BR	1 125	BR	1 265	BR	1 150
2nd main	RU	285	UA	345	UA	365
3rd main	MA	275	MA	265	MA	325
4th main	UA	265	MN	170	XK	310
5th main	AL	170	RU	155	MK	210
6th main	AM	150	AL	135	RU	200
7th main	RS	140	XK	125	AM	140
8th main	MN	130	AM	85	GE	135
9th main	NG	125	MD	85	RS	125
10th main	TR	105	TR	85	AL	110

**Table 5: Third country nationals whose application for asylum has been rejected**

**Table 5.1: Overall trend**

		2005	2006	2007	2008	2009	2010
Total number of third country nationals whose application for asylum has been rejected	in the first instance	13 732	10 430	NA	10 115	12 400	13 160
	following a final decision	1 602	2 485	NA	4 840	7 270	8 135

**Table 5.2: Sex of migrant whose application for asylum has been rejected**

		2005	2006	2007	2008	2009	2010
Applications rejected in the first instance	Male	NA	NA	NA	6 530	8 140	8 455
	Female	NA	NA	NA	3 585	4 260	4 705
	Unknown						
Applications rejected following a final decision	Male	NA	NA	NA	3 075	4 425	5 095
	Female	NA	NA	NA	1 765	2 845	3 040
	Unknown						

**Table 5.3a: Main 10 countries of citizenship of applicants whose application has been rejected in the first instance**

Position of the country of citizenship	2008		2009		2010	
	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	RU	1 725	RU	1 785	XK	1 680
2nd main	RS	1 170	AF	960	AM	1 620
3rd main	AF	660	XK	959	RU	1 420
4th main	CD	625	AM	845	RS	840
5th main	IR	575	IR	650	AF	750
6th main	IQ	545	CD	625	GN	635
7th main	SK	470	RS	590	CD	475
8th main	GN	405	IQ	575	IQ	460
9th main	AM	275	SK	465	MK	365
10th main	SY	235	GN	440	IR	345

**Table 5.3b: Main 10 countries of citizenship of applicants whose application has been rejected following a final decision**

Position of the country of citizenship	2008		2009		2010	
	Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
1st main	CD	540	RU	1 485	RU	955
2nd main	RU	485	XK	470	AM	835
3rd main	RS	370	CD	460	RS	725
4th main	AF	245	AM	410	CD	560
5th main	IQ	230	AF	405	XK	515
6th main	CM	220	IQ	365	MK	460
7th main	IR	220	IR	335	GN	335
8th main	GN	210	RS	300	AF	275
9th main	RW	165	CM	185	CM	240
10th main	AO	150	GN	170	IQ	215

**Table 6: Humanitarian regularisations**

**Table 6.1: Overall trend - People regularised**

	2005	2006	2007	2008	2009	2010
Total number of third-country nationals regularised	11 630	10 207	11 335	8 369	14 830	24 199

**Table 6.2.: Number of regularisation applications by procedural type**

	2005	2006	2007	2008	2009	2010
Article 9 bis			535	12 959	17 657	30 289
Article 9 ter			1 338	5 426	8 575	6 559
Former article 9.3	15 927	12 667	12 010			
Total	15 927	12 667	13 883	19 371	26 232	36 848

**Table 7: Third country nationals employed irregularly**

**Source:** Department of Information and Social Research (Service d'Information et de Recherche Sociale/ Sociale Inlichtingen- en Opsporingsdienst)

**Table 7.1: Overall trend**

	2005	2006	2007	2008	2009	2010
Total number of third-country nationals employed irregularly	NA	NA	2 886	2 693	2 805	3 648

**Table 7.2: Type of offence in accordance with Act of 30/04/1999**

	2005	2006	2007	2008	2009	2010
Total number of third-country nationals employed irregularly - offence 12, 1 (irregular stay)	NA	NA	2 284	2 308	2 178	2 879
Total number of third-country nationals employed irregularly - offence 12, 2 (regular stay)	NA	NA	602	385	627	769

**Table 7.3: Offences according to activity sectors**

	2005	2006	2007	2008	2009	2010
Agriculture & horticulture	NA	NA	204	129	62	51
Food industry	NA	NA	44	19	49	55
Metalworking	NA	NA	4	4	5	28
Construction	NA	NA	853	760	565	333
Garage	NA	NA	66	49	80	78
Wholesale	NA	NA	34	55	22	34
Retail business	NA	NA	180	176	216	233
Catering	NA	NA	647	648	562	525
Land transport	NA	NA	44	35	12	15
Telecommunication	NA	NA	31	26	16	17
Cleaning	NA	NA	77	79	48	829
Sports, entertainment & recreation	NA	NA	11	24	29	16
Households as employers of domestic personnel	NA	NA	NA	34	33	36
Other	NA	NA	236	158	114	171
Unknown	NA	NA	455	497	992	1 227
Total	NA	NA	2 886	2 693	2 805	3 648

**Table 7.4.: Main 10 countries of citizenship of third-country nationals employed irregularly** (article 12/1 of the Act of 30 April 1999 on the employment of foreign workers, employment of irregularly staying foreigners)

Position of the country of citizenship	2005		2006		2007	
	Name of the country	Total	Name of the country	Total	Name of the country	Total
1st main	NA	NA	NA	NA	PL	557
2nd main					BR	337
3rd main					BG	298
4th main					RO	183
5th main					CN	148
6th main					IN	140
7th main					MA	109
8th main					TR	95
9th main					PK	63
10th main					NE	29

Position of the country of citizenship	2008		2009		2010	
	Name of the country	Total	Name of the country	Total	Name of the country	Total
1st main	PL	487	RO	402	BR	784
2nd main	BR	284	BG	394	RO	326
3rd main	BG	270	BR	238	MA	289
4th main	RO	267	PL	209	BG	224
5th main	CN	155	MA	187	EC	223
6th main	MA	142	CN	154	CN	185
7th main	TR	91	IN	96	IN	90
8th main	IN	83	TR	91	PK	90
9th main	DZ	43	PK	68	TR	77
10th main	PK	40	DZ	46	DZ	44

**Table 7.5.: Main 10 countries of citizenship of third-country nationals employed irregularly** (article 12/2 of the Act of 30 April 1999 on the employment of foreign workers, employment of regularly staying foreigners)

Position of the country of citizenship	2005		2006		2007	
	Name of the country	Total	Name of the country	Total	Name of the country	Total
1st main	NA	NA	NA	NA	PL	447
2nd main					BR	331
3rd main					BG	253
4th main					RO	157
5th main					IN	113
6th main					CN	95
7th main					MA	84
8th main					TR	61
9th main					PK	57
10th main					RU	27

Position of the country of citizenship	2008		2009		2010	
	Name of the country	Total	Name of the country	Total	Name of the country	Total
1st main	PL	364	BG	320	BR	773
2nd main	BR	279	RO	285	RO	250
3rd main	BG	244	BR	232	MA	242
4th main	RO	201	MA	172	EC	221
5th main	CN	127	PL	137	BG	166
6th main	MA	118	CN	126	CN	152
7th main	IN	77	IN	87	IN	86
8th main	TR	76	TR	69	PK	84
9th main	DZ	42	PK	59	TR	72
10th main	PK	38	DZ	40	DZ	43

## 7. CONCLUSIONS

In Belgium, the legislative framework foresees different legal ways of entry onto the national territory. However some third-country nationals stay or reside in Belgium irregularly, that means that they do not meet (anymore) the criteria for entry, stay and/or establishment as defined by the Aliens Act.

Indeed, the expression “irregular migrant” refers to many different migratory trajectories and categories of people: people who entered clandestinely in Belgium, overstayers, rejected asylum applicants, people who obtained authorization by fraudulent means, unaccompanied minors, victims of human trafficking, migrants working irregularly... Various amendments, decrees, circulars or instructions have tried to improve the means to combat the phenomenon of irregular migration. Especially, we can highlight in this context the legislative developments to detect various fraudulent misuses of legal regulations. Regulations have also been adopted in order to offer protection to vulnerable categories of migrants like sick persons or unaccompanied minors.

Beside legislative aspects, the fight against irregular migration is also based on effective practical measures. These measures are essentially based on six different approaches: (1) prevention, (2) coordination between the various national actors, (3) detection of pseudo-legal migration, (3) efforts to reduce the informal economy, (4) removals (voluntary or forced), (5) regularisation and (6) international cooperation.

Effectiveness of these measures is constantly evaluated and improved by the different partners. Within their administration itself, or during round tables gathering them, they share information and elaborate strategic action plans. Besides this rationalist logic, irregular migration is composed of individuals with different life courses and migratory trajectories. Many Belgian civil society organisations point out this reality and plead for a more comprehensive approach of this phenomenon.

The impact of EU developments on the Belgian framework and situation on irregular migration is considerable, not only via the adoption of numerous legal EU instruments but also via practical and administrative cooperation forms. Also the ECHR had via its jurisprudence an important role and let in some cases even (indirectly) to the adaptation or creation of new legislative norms and/or structures, in particular for vulnerable groups (unaccompanied minors; families with children;...).

Return remains one of the key issues in the policy development towards (the reduction of) irregular migration. The fact is that an incomplete return policy causes in two ways a rise in the number of irregular migrants: a regression in the reduction of the stock of irregular migrants and possible pull-factor for new irregular migrants. Also in this sense it is important to further support AVR-programs and to pursuit optimal cooperation with countries of origin and transit, and this not only to resolve the documentation issue in the return process.

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