

2012

Annual Policy Report on Migration & Asylum in Belgium



European Migration Network
National Contact Point Belgium



The EMN Annual Policy Reports are aimed at reflecting the main political developments in the area of migration and asylum at Member State level.

The Belgian National Contact Point (NCP) of the EMN is financed both by the Belgian Government and the European Union. The Belgian NCP consists of three partners: the Immigration Office (as part of the Ministry of the Interior), the Office of the Commissioner General on Refugees and Stateless Persons (CGRS) and the Centre for Equal Opportunities and Opposition to Racism (CEOOR).

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The EMN has been established via a Council Decision and is financially supported by the European Union



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ANNUAL REPORT 2012 ON MIGRATION AND ASYLUM POLICY IN BELGIUM

EXECUTIVE SUMMARY

The current government came into power in December 2011, with Ms Maggie De Block (Open-VLD – Flemish Liberals) as State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty. For the first time all aspects of the migration and asylum policy (including both the asylum and reception procedures, as well as the entire return policy) are under the authority of a single member of the government.

The coalition agreement of December 2011 manifested high political priority and public attention to migration and asylum issues and stipulated the main policy priorities for the coming years. Amongst others, the government declared its will to combat fraudulent misuse of procedures for international protection and humanitarian regularizations, to accelerate the asylum procedure, introduce a ‘safe countries of origin’ list, reform the naturalisation law and persist in developing a more pro-active return policy.

After several years of almost continuous heated public and political debate about migration and asylum issues, the debate was equally vivid but less agitated in 2012. Anyway, a range of measures was put into place and implemented in 2012. Also, the campaigns for the 2012 local elections demonstrated that the broader domain of migration and integration remains a very sensitive and topical issue.

At the federal level the focus was put in 2012 on the following aspects (1) ending the crisis and shortage of reception places, (2) implementing the tightened rules on family reunification (law approved in 2011) (3) tackling misuses of existing legal migration channels; (4) enforcing more conditions (concerning e.g. income and integration) to acquire the Belgian nationality and (5) improving the policy on return. Some of these developments and more are hereafter summarized.

Legal migration and Integration

Throughout the year 2012, attention was largely paid to family reunification related issues. Firstly the implementation of the new law on family reunification from 8 July 2011, which entered into force on 22 September 2011, continued to be a topic of discussion. The need to examine to what extent the new provisions are reaching their goals emerged, while an action for annulment against the above mentioned law was introduced before the Constitutional Court in March 2012. Secondly the government put particular emphasis on the fight against misuse of the right to family reunification. In October 2012, a draft law aimed at intensifying the **fight against marriages of convenience** and expanding it to **legal cohabitations of convenience** was approved by the Council of Ministers. **False declarations of parenthood** were also targeted as the State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty requested to further examine the scale and nature of the phenomenon and to draft an action plan focusing on preventive measures. Belgium also committed to handling these issues at European level and contributed to the development of an **EU handbook on marriages of convenience**.

In 2012, integration was also back on the stage. The development of an “**integration pathway**” in the Walloon Region on the one hand and in the Brussels-Capital Region on the other hand (following the example of the “Inburgeringsbeleid” in the Flemish Region) generated intense debates. However progress was slow due to divergent views on whether the integration pathway should be mandatory or not and whether sanctions should be foreseen or not. At the time of writing this report, several elements still need to be clarified. **Pilot projects** related to the future pathway were in this regard launched with the support of the European Integration Fund (EIF) to test the feasibility of several of its components. For its part, the Flemish government approved, on 20 July 2012, an **integrated action plan** on the integration policy, formulating strategic and operational objectives as well as concrete actions and timelines for its

implementation. In December 2012 the Flemish responsible Minister also presented his draft for a renewed Decree on (civic) Integration.

The acquisition of the Belgian Nationality was subject to key developments in 2012. On 4 December 2012, a new Law aimed at **making the acquisition more neutral from an immigration point of view**, was approved, whose provisions are applicable as from 1 January 2013. While the former law of 1 March 2000 considered the acquisition of nationality as a step towards integration, the new law reversed this approach, determining integration requirements to start an acquisition procedure.

Next to the above mentioned key elements, other developments occurred in 2012. Through adoption of several Royal Decrees, Belgium transposed the EU Blue Card Directive aimed at attracting highly qualified migrants. The relevant Belgian provisions, which were introduced next to the already existing type B work permit, entered into force on 10 September 2012, allowing Belgian employers to **hire highly skilled non-EU nationals with an EU Blue Card**.

Border Monitoring and Biometrics

Early 2012, a pilot group bringing together the Federal Police, FPS Interior, Immigration Office, FPS Justice, FPS Foreign Affairs and private partner Brussels Airport Company, was created to outline a **project for Automated Border Control**, which aims to take place for both arrival and departure in 2014.

Also in 2012, Belgium started **biometric visa checks** upon arrivals at border crossing points and, based on a positive evaluation of this first stage, planned to apply the same procedure at departure gates as from 1 June 2013.

Furthermore, Belgium progressed in the field of **biometric residence permits** for third country nationals. The Royal decree of 19 July 2012 stipulated that such residence permits would be equipped with biometric data, i.e. two fingerprints. A pilot phase will take place in a number of municipalities in the course of the first semester of 2013 to test the new procedures for issuing biometric residence permits. The general roll-out phase will then later take place.

Irregular Migration and Return

The Federal government declared, in its coalition agreement, its priorities in the field of irregular migration. The focus was laid on the struggle against fraudulent misuse of legal procedures, on the enforcement of return measures after the end of legal procedures, the strengthening of measures against human trafficking and -exploitation (see below) and the regularization of irregular migrants on the basis of case-to-case decisions only.

In 2011 and 2012, the framework on return, removal and detention was modified. A lot more emphasis was put on **effective return of irregularly staying migrants**, preferably on a voluntary basis, coercively if necessary.

On the occasion of the transposition of the Return Directive (2008/115/EC), the period during which the orders to leave the country in principle have to be complied with, was prolonged from 5 days to currently 30 days and the possibility of combining it with an entry ban was introduced (in principle for 3 years, but in cases of fraud and public order also possible for 5 or 8 years).

A policy was put in place to better **follow-up return decisions**, for example through enhanced cooperation with local authorities. Furthermore, several concrete measures were initiated or extended to **increase the number of voluntary departures**, apparently not without success: in 2012, around 5.650 migrants returned on a voluntary basis compared with 3.870 in 2011. For failed asylum seekers a **“return track”** was put into place, which is a framework for individual counselling on return, whereby priority is given to voluntary

return. After a negative appeal decision, asylum seekers are now transferred to special (open) return places for the last part of their individual return project.

The authorities continued to carry out **prevention and awareness raising missions** in several countries of origin to talk about legal migration possibilities and the risks of irregular migration.

Concerning detention, the authorities further extended the capacity of the so called 'housing units', established in 2008 as an **alternative to the detention of illegally staying families with minor children**.

In 2012, 4.412 migrants received a positive decision on their regularization application, compared to 9.509 in 2011.

International protection

In 2012, the Belgian government managed to tackle the reception crisis¹ thanks to new reception places, legislative changes, a more integrated approach and several operational and practical measures. Since January 2012 all new applicants were offered a reception place and the capacity of emergency reception places was downsized.

For the first time in five years the number of asylum applications decreased compared to the previous year. The most remarkable measure to counter unfounded applications was the adoption of a **list of safe countries of origin**. In addition the asylum instances implemented specific measures to increase **efficiency within the process chain**, while simultaneously maintaining a high quality decision-making.

At the European level, Belgium has been very active during the second phase of the harmonization process and intensified its collaboration with EASO. A large number of Belgian experts were engaged in the **Asylum Intervention Pool** and the **EAC Expert Pool** providing trainer courses in Luxemburg, Greece and Malta.

The number of unaccompanied minors applying for asylum increased significantly during the previous years, but dropped in 2012. Also in 2012, the reception capacity for unaccompanied minors increased considerably. End of 2012, a new Protocol Agreement between the different bodies active with **unaccompanied minors** provided for a more systematic monitoring of (non-asylum seekers) unaccompanied minors. The Agreement stipulates concrete methods and a **roadmap for identification, age determination and reception**, this taking as little time as possible.

Regarding other vulnerable groups, the most important event was the signing of the Convention on preventing and combating violence against women and domestic violence (**Istanbul Convention**) on 11 September 2012.

Actions against Trafficking in Human Beings

On 22 June 2012, a new **Action Plan for the Fight against Human Trafficking 2012-2014** was adopted. The new plan is described as more pragmatic and is more in line with the coalition agreement. Prevention, protection of victims and prosecution and conviction of traffickers are the guidelines of the plan.

More details on the above mentioned issues and additional aspects, including migration and development, are covered in the following specific sections.

¹ At the end of 2011 and the beginning of 2012, Belgium was still faced with a 'reception crisis'. From 2008 onward, Belgium had seen a sharp increase in the numbers of asylum seekers and the reception network had become overcrowded. Between the end of 2009 and the beginning of 2012, more than 12.000 asylum seekers were not accommodated at all.

1. INTRODUCTION

This report covers migration and asylum developments in Belgium in the period **1 January 2012 to 31 December 2012**. It is the 9th Policy report that the Belgian Contact Point of the European Migration Network elaborates and disseminates to inform policymakers as well as a wider audience on the most significant political and legislative (including EU) developments, as well as public debates in the area of migration and asylum including relevant statistics.

A **wide range of sources** were used to draft this report, including published and adopted national legislation, government statements and reports, case law, publications and press releases². Key partners, whose input was particularly appreciated in the drafting of this report, were also contacted inter alia in the Immigration Office, the Office of the Commissioner General for Refugees and Stateless Persons, the Federal Agency for the Reception of Asylum Seekers, the Centre for Equal Opportunities and the Fight against Racism, the Development Cooperation Department as well as the C5 Unit dealing with Migration, Asylum and the Fight against Trafficking in Human Beings in the Federal Public Service Foreign Affairs.

This report was produced according to **common study specifications**³ for the production of the EMN Annual Policy Report 2012. It contains nine chapters and three annexes. Besides specific chapters dedicated to legal migration and mobility, irregular migration and return, international protection including asylum, unaccompanied minors and other vulnerable groups, actions against trafficking in human beings, migration and development, and implementation of EU policy, the report contains basic information on the asylum and migration policy and legal structure in Belgium (below) as well as terms and definitions used, relevant migration and asylum statistics, and bibliography (annexes).

This report, together with national contributions from other EMN National Contact Points, will serve to develop theme-based EMN Informs. It also aims to facilitate and further stimulate **information exchange between all stakeholders** active in the area of migration and asylum, such as governmental and non-governmental organizations, international organizations, universities and research organizations as well as within the wider public.

1.1 Structure of Asylum and Migration policy

For the general structure of the asylum and migration policy and institutional context, we largely refer to previous policy reports written within the framework of the EMN. Also, the EMN study "Organisation of Asylum and Migration Policies" provides concise yet comprehensive general information⁴.

The **Federal State** retains powers in several areas, including foreign policy, national defence, justice, finance, social security and the bulk of public health and home affairs. Migration and asylum policies are federal competences. The language-based **Communities** are responsible for culture and issues directly related to individuals and their language, such as aid to people, health and education, integration of foreigners and emancipation of ethno-cultural minorities,⁵ whereas the territory-oriented **Regions** are responsible for 'territorial' issues, such as farming, water policy, housing, public works, energy, transport, environment, land planning and town planning, rural development, nature conservation, economy & labour market management, the supervision of the provinces, municipalities and associations of local authorities and the issuance of work permit to foreigners.

Entry, residence, establishment and removal of foreign nationals are the responsibility of the federal Minister or State Secretary for Migration and Asylum Policies and his delegate, the Director-General of the **Immigration Office (IO)**. The Immigration Office is also in charge of applying the Dublin II Regulation and of

² More details on sources in the bibliography (annex 3).

³ EMN Specifications for Annual Policy Report 2012 are presented in MIGRAPOL Doc 274 dated from 22 October 2012.

⁴ All reports are available on: www.emnbelgium.be

⁵ The repartition of fields of competences is in reality more complex since some competences have been transferred from one entity to another (e.g. integration was transferred from the French Community to the Walloon Region in Wallonia and to the COCOF in the Brussels-Capital Region).

managing asylum applicants' residence requirements throughout the asylum procedure. The **Office of the Commissioner General for Refugees and Stateless Persons (CGRS)**, an independent body, is the key-player in processing asylum applications. In December 2011, the new State Secretary⁶ for Migration and Asylum Policy, Social Integration and the Fight against Poverty, Ms Maggie De Block (Open-VLD) was sworn in. She is attached to the Minister of Justice, Ms Annemie Turtelboom (Open-VLD). In contrast with her predecessor in office, Mr Melchior Wathelet (CdH), who was attached to the Minister of Employment and Equal Opportunities, Ms De Block is also in charge of the reception of asylum seekers and the national return policy (forced and voluntary return). In this way the political decision to concentrate the competences for all aspects of migration and asylum in one cabinet has been implemented into the structure of the current government. According to the coalition agreement of the Federal Government, the State Secretary is requested to present an annual report on migration and asylum to the Parliament.

Since 2007, the **Council for Alien Law Litigation (CALL)** has acted as an appeal court competent to hear appeals against decisions taken by asylum agencies with regard to the granting of protection statuses, and against other decisions taken by the Immigration Office (e.g. decisions on visas, residence permits, etc.).

Fedasil, an agency under the supervision of the federal State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty, is the institution in charge of the reception of asylum seekers in Belgium. Fedasil acts also as coordinating body for the Belgian policy on assisted voluntary return. Fedasil delegates the practical organization of the AVR-programmes mainly to IOM.

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

1.2 General structure of the legal system

The central law regarding migration and asylum issues in Belgium is the **Law of 15 December 1980** on entry, stay, settlement and removal of foreign nationals⁷ (hereafter called 'Aliens Act') which has been modified many times since its adoption. The Law of 15 December 1980 also governs the asylum procedure and the competencies of asylum institutions. The **Royal Decree of 8 October 1981** pertaining to entry, stay, settlement and removal of foreign nationals implements the Law of 15 December 1980. Both the Aliens Act and the Royal Decree have been modified many times since their adoption. In addition, many directives or internal regulations have been adopted by the administration for the implementation and the interpretation of the Aliens Act and of the Royal Decree of 1981. Reception conditions for asylum seekers and for certain other categories of foreigners is regulated by the Law of 12 January 2007. Other implementing decrees and circular letters organize other matters related to migration law, such as transporters' sanctions, unaccompanied minors, victims of human trafficking, etc. Foreigners' access to work is regulated by the **Law of 30 April 1999** and its implementation **Decree of 9 June 1999**. Belgium is also a signatory party to the **1951 Geneva Convention** relating to the Status of Refugees and the 1967 Additional Protocol, as well as to the **European Convention for the Protection of Human Rights and Fundamental Freedoms** and the **1954 Convention Relating to the Status of Stateless Persons** and the **United Nations Children's Rights Convention**.

The Council for Alien Law Litigation (CALL)⁸ is an administrative court responsible for individuals-related decisions made in application of the Aliens Act (administrative decisions related to the stay of foreigners and asylum-seekers). **In the field of asylum**, the CALL is the competent instance to confirm or reform the decisions of the CGRS. Lodging an appeal with the CALL will suspend the execution of the contested decision. That is why the asylum seeker cannot be removed before the CALL rules on the case. **In non-**

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

⁷ A consolidated version of the [Law of 1980](#) (FR) and the [Royal Decree of 1981](#) (FR) are accessible on the website of the Immigration Office: <https://dofi.ibz.be>

⁸ More on the Council for Alien Law Litigation on: www.rvv-cce.be

asylum issues, the CALL has more limited competences as it can only annul decisions of the Immigration Office (order to leave the territory, decisions of detention, refusal of family reunification, etc.) because of violation of rules of procedure. The **Council of State**⁹ can intervene in last resort (cassation) against decisions of the CALL. Appeals before the Council of State have no suspensive effect. The law provides the Council of State with a screening procedure (leave to appeal) to stop dilatory annulment appeals aimed only at extending procedural time limits. In case the foreigner/asylum-seeker is administratively detained, an appeal against the detention can be lodged with the **Tribunal of First Instance** and with the **Court of Appeal**, so that the judicial instance can order the immediate release of the detained foreign national, if needed. The **Court of Cassation** and the **Constitutional Court** are frequently called to rule on cases related to foreign nationals, e.g. cases of breach of the constitutional principle of equality of treatment.

⁹ More on the Council of State on: <http://www.raadvst-consetat.be/>

2. OVERVIEW OF ASYLUM AND MIGRATION POLICY DEVELOPMENTS

2.1 Political developments

After the federal elections of June 2010, the current government was sworn in on 6 December 2011. A coalition agreement was found on a state reform which in principle also affects the national policy on migration and asylum. In January 2012 and January 2013, the current State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty, Ms Maggie De Block (Open-VLD) outlined in the Parliament her policy papers on asylum and migration as well as on the reception of asylum seekers and other entitled beneficiaries.

In her policy papers¹⁰, the State Secretary specified the planned implementation of the policy aims as described in the coalition agreement. The general vision and guiding principle of the asylum and migration policy were characterized as follows:

- A human policy which provides international protection to those in need of this protection
- A proper policy countering fraud and abuse of procedures
- A coherent policy integrating the various asylum, migration and reception processes.

Prime Minister Elio Di Rupo also made concrete announcements regarding the asylum and migration policy in his general policy statement before the Parliament on 21 November 2012, referring specifically to:

- Further streamlining the asylum procedure to enhance its effectiveness
- Further struggling against misuse of family reunification and legal cohabitations of convenience.
- Developing a new procedure for the recognition of stateless persons

The year 2012 was, in the field of asylum and migration, also a continuation of the in 2011 programmed policy, inter alia: managing and solving the asylum reception crisis, promoting and encouraging return (measures) and implementing (since September 2011) the law on family reunification.

Local Elections

Municipal and provincial elections took place on 14 October 2012. Although the (possible) role of local authorities in the management of migration and asylum flows is rather limited, migration and asylum related issues had a not to underestimate share in the electoral campaigns. Integration issues and the impact the federal (immigration) policy can have on societal life in larger cities are some examples of key themes debated in the election context. The forced return of irregular migrants involved in criminal activities or causing nuisance, was another debated issue. One remarkable result of these elections was a further push back of far-right parties.

2.2 Overall developments in asylum and migration

One State Secretary one policy

As explained earlier, Ms Maggie De Block (Open-VLD – Flemish Liberals), State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Racism, was sworn in on 6 December 2011. In contrast with her predecessor in office, Ms De Block is also in charge of the reception of asylum seekers and the national return policy (both forced and voluntary return). In this regard the political decision to

¹⁰ The policy paper on asylum and migration from 20 December 2011 is available on:

http://www.emnbelgium.be/sites/default/files/attachments/beleidsnota_asiel_en_migratie_de_block_0.pdf

The policy paper on the reception of asylum seekers and other beneficiaries from 20 December 2011 is available on:

<http://www.emnbelgium.be/sites/default/files/publications/notepolitiqueaccueil.pdf>

The policy papers on asylum and migration and on reception from 21 December 2012 are available on:

<http://www.emnbelgium.be/news/secretary-state-maggie-de-block-presents-her-policy-papers-asylum-migration-and-reception>

concentrate the competences for all aspects of migration and asylum in one cabinet has been implemented into the structure of the new government.

2012: A pivotal year for the Belgian asylum, migration and reception policy

In her **policy papers**¹¹ from 21 December 2012, the State Secretary characterized the year 2012 as a pivotal year for the Belgian asylum, migration and reception policy, specifically referring to the decline in asylum applications and in residence applications on medical grounds and the control of the reception crisis. She highlighted the following specific results achieved through emergency and structural measures taken in 2012:

Asylum:

- Strengthened decision-making capacity within asylum authorities (productivity & processing times).
- Improved coordination of the asylum procedure (audit's first findings and proposals).
- Introduction and implementation of a safe country of origin list.
- New provisions to address subsequent asylum applications.
- Several prevention campaigns in the Balkans, Cameroon, Morocco, Guinea, Armenia and Russia.
- Contribution to the European asylum policy and commitment to resettlement programs for 2013.

Migration:

- Transposition of the Blue Card Directive and future plans relating to the Single Permit Directive.
- Further implementation of new family reunification conditions based on the Law of 8 July 2011.
- Provisions to fight marriages and legal cohabitation of convenience.
- Attention paid to and planned measures against false declarations of parenthood.
- Actions undertaken to counter fraud in procedures
- Fast and efficient processing of residence applications based on humanitarian grounds
- Introduction of medical filters to focus on admissible applications based on medical grounds (9ter).
- Actions against human trafficking and protection of unaccompanied minors.
- Efforts to stimulate (especially voluntary) returns and negotiations for readmission agreements.

Reception

- Better control of access (inflow and outflow) to the reception system.
- Progressive decrease in emergency places.
- Reception network's management optimization and appointment of the new Fedasil director.
- Adjustment of reception capacity and plans aimed at evaluating the reception model
- Better risk management to prevent future reception crisis.
- Better quality support for asylum seekers during the procedure.
- Measures to improve assistance in case of return and exit of asylum procedure.

Other new provisions, which are presented in further detail later in this report, relate inter alia to the:

- Return of illegally staying third-country nationals
- Detention of illegally staying families with minor children
- Conditions for acquiring the Belgian nationality

¹¹ More information on key elements of the policy notes from 21 December 2012 on:

In French: <http://www.deblock.belgium.be/fr/asile-%E2%80%93-migration-%E2%80%93-accueil>

In Dutch: <http://www.deblock.belgium.be/nl/asiel-migratie-opvang>

3. LEGAL MIGRATION AND MOBILITY

3.1 Economic migration

3.1.1 Specific context

The Belgian labour migration regime is not specifically designed to combat labour shortages. Given the fact that Belgium has a significant labour reserve of both unemployed Belgians and unemployed migrants, there is little enthusiasm to go beyond modest demand-driven labour migration.

3.1.2 Developments within the national perspective

As from 1 October 2012 the Flemish government is able to recruit people on the basis of their experience, even if they do not have the required diploma. The general rule is still that one needs the required diploma, but in the future candidates with “competences acquired elsewhere” can be recruited. The Flemish public employment service¹² assesses the competences and can give a certificate (valid during 7 years) to enable someone to participate in selection procedures. Candidates with a foreign diploma that is not recognized in Flanders can participate in this way.

Flemish welcome offices continue to receive financial support for assisting newcomers in their procedure for the validation of their diplomas. Regarding diploma-recognition, in the Dutch-speaking community, where recognition of a diploma takes in general about 4 to 5 months, a project is launched which should shorten the procedure to 2 months (in average). Also the French-speaking Community has taken steps to further facilitate the recognition of foreign diplomas¹³

3.1.3 Developments from the EU perspective

The Blue Card system implemented¹⁴

The transposition of the **European “Blue Card” Directive** for highly qualified third-country nationals (Directive 2009/50/EC) into Belgian law entered into force on **10 September 2012**. As from this date, the Foreigner Card H is issued to high qualified workers from third countries who successfully apply for a Blue Card in Belgium. This card is a combined residence and work permit. The foreigner card H, which is initially valid for 13 months, can be renewed once for another 13 months and after that for 3 years. In the case the employee changes his/her employment, the permit has to be renewed.

For obtaining a Blue Card, an applicant must be able to provide documents attesting higher education of at least 3 years (at a recognised institution) and must have a work contract with a minimum annual salary of 49.995 EUR gross. The minimum annual income will be adapted annually. The Belgian Immigration Office has a maximum of 3 months to process a request.

Blue Card holders have specific rights concerning mobility and family reunification, and they have access to the status of long term resident after 5 years legal stay in the EU and 2 years in Belgium.

The Belgian Blue Card system was introduced next to the already existing type B work permit, which can be obtained without prior labour market test by third country nationals who at least finished higher education (i.e. university studies or equivalent) and if their gross salary is higher than 37.721 EUR per year (for the year 2012).

¹² VDAB: de Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding.

¹³ See : <http://studyinbelgium.be>

¹⁴ More details on the Blue Card system (application, procedure, status and legal basis) on the website of FPS Employment: in French: <http://www.emploi.belgique.be/defaultTab.aspx?id=37215> in Dutch: <http://www.werk.belgie.be/defaultTab.aspx?id=37215>

No full access yet to the labour market for Romanians and Bulgarians

By **Royal Decree of 8 January 2012**¹⁵, it was decided that Bulgarian and Romanian nationals could, upon presentation of a work permit B, claim an electronic card type E, a registration statement specifically for EU citizens. Before that, they received an electronic card type A, which was in principle intended for third-country nationals. Members of the family of Romanians and Bulgarians now receive a residence permit as a family member of an EU citizen. Transitional measures aiming at restricting workers access to the labour market are however extended by Belgium until 31 December 2013, which means that Romanians and Bulgarians still need a work permit to work in Belgium.

Negotiating a Mobility Partnership with Morocco

Belgium is to date involved in two Mobility Partnerships, respectively between the European Union and Armenia and between the EU and Georgia. In 2012, Belgium was involved in the negotiations for a Mobility Partnership with Morocco.

3.2 Family Reunification

3.2.1 Specific context

The new law on family reunification from 8 July 2011¹⁶ entered into force on 22 September 2011. The new Law amended substantive and procedural aspects regarding family reunification both with third-country nationals and with EU and Belgian citizens. Among other changes, the new law introduced an **income requirement** whereby third-country national and Belgian sponsors have to prove that they have stable, regular and sufficient resources to maintain themselves and their family members and not become a burden for public authorities. Stable, regular and sufficient resources must at least be equivalent to 120% of the social integration income and not consist of resources from additional assistance schemes (social welfare benefits, family allowances, etc.).

The new Law didn't foresee any **transitional provisions** and the Immigration Office applied the new law to new applications but also to applications lodged before 22 September 2011 which hadn't been decided upon yet. Many Belgian and foreign citizens filed a complaint to the Federal Ombudsman who released in December 2011 a report disapproving the lack of transitional provisions in the new law and the implementation of the new rules on pending applications¹⁷.

3.2.2 Developments within the national perspective

Evaluating the new law on family reunification

Beginning of 2012, the above mentioned new law on family reunification continued to be subject to criticism. In March 2012 six associations (CIRÉ, ADDE, Liga voor Mensenrechten, Ligue des Droits de l'Homme, MRAX, Siréas) introduced **actions for annulment before the Constitutional Court**. In their opinion, the new law contains discriminatory provisions (discrimination between different European citizens - Belgians subject to more stringer conditions - and discrimination based on wealth - sufficient resources) and undermine the fundamental right to family life¹⁸. The immigration authorities also engaged in 2012 in an evaluation of the new provisions to examine to what extent they are reaching their goals. It

¹⁵ See the Belgian Official Gazette from 8 January 2012:

In French: <http://www.ejustice.just.fgov.be/cgi/api2.pl?lg=fr&pd=2012-01-19&numac=2012000014>

In Dutch: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2012010808&table_name=wet

¹⁶ The Law from 8 July 2011 amending the Aliens Act regarding the conditions for family reunification, as published in the Belgian Official Gazette on 22 September 2011, is available in French and Dutch on: http://www.ejustice.just.fgov.be/mopdf/2011/09/12_3.pdf#Page5

¹⁷ More information in French or Dutch in the Federal Ombudsman's report on:

<http://www.federaalombudsman.be/fr/content/rapport-du-mediateur-federal-dispositions-transitoires-en-matiere-de-regroupement-familial>

¹⁸ The action is still pending at the time of writing this report.

would appear that certain provisions may at times have adverse effects, i.e. the conditional termination of residence right¹⁹.

Putting emphasis on misuse of the right to family reunification

In 2012, the government paid particular attention to **misuses of the right to family reunification**. While efforts in the fight against marriages of convenience started to bear fruits, they went along with a shift towards other types of misuse, namely marriages concluded abroad (where previously on the territory), legal cohabitations of convenience and false declarations of parenthood. In this regard, the EMN study on “Misuse of the right to family reunification: Marriages of convenience and false declarations of parenthood” proved useful and timely to inform law and policy makers as well as experts and the wider public.

At the beginning of 2012, while presenting her **policy paper**²⁰ in the House of Representatives, the State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty, Maggie De Block, put particular emphasis on “intensifying the fight against marriages and legal cohabitations of convenience”. She specifically referred to (1) Setting up a database gathering relevant information for authorities concerned²¹, (2) Dealing with legal cohabitations of convenience in the same way as marriages of convenience, (3) Sharing optimal information with persons facing misuses, (4) Better integrating criminal, civil and administrative procedures, (5) Creating a national register including recognized/refused foreign certificates²², (6) Reinforcing and intensifying controls during the three-year period following the granting of a residence permit.

Pursuant to the government agreement, a **draft law aimed at intensifying the fight against marriages of convenience and expanding it to legal cohabitations of convenience** was approved by the Council of Ministers in October 2012²³. The draft law provides for control measures at administrative, judicial and criminal levels to better fight the two phenomena. The proposed changes consist inter alia in²⁴:

- Introducing a definition of “legal cohabitation of convenience” in the Civil Code. With such a definition, civil registrars and public prosecutors can decide to carry out an investigation when there are doubts about the real intentions of cohabitants. The draft law also determines timelines to conduct investigations.
- Increasing imprisonment sentences and fines against authors of marriages and legal cohabitations of convenience. A progression of sanctions is foreseen in the case of aggravating circumstances.
- Possibly ordering a 5-year entry ban against persons whose residence permit is terminated based on a conviction of marriage or legal cohabitation of convenience.

In addition to the above mentioned developments, **cooperation activities** aimed at strengthening the fight against marriages of convenience were undertaken in 2012. Consultations between naturalization and immigration services focused on identifying naturalization applicants who might use a relationship of convenience with Belgian or EU nationals to obtain the Belgian nationality. In this regard more than 200 cases were taken into consideration by public prosecutors, dozens of investigations initiated and several annulments ruled. The Immigration Office, municipalities, detention centres and the local police also

¹⁹ According to the new law on family reunification (see above), the period during which family reunification conditions can be verified and residence rights possibly terminated, is extended from two to three years. However such a decision must now take into account, inter alia, the family and economic situation as well as the socio-cultural integration of the concerned person.

²⁰ The policy paper is available in French or in Dutch on: http://www.emnbelgium.be/sites/default/files/attachements/beleidsnota_asiel_en_migratie_de_block_0.pdf

²¹ At the time of writing this report, this project is still under consideration.

²² This project is part of a larger project aiming at modernizing civil registrars, and coordinated by the Agency for Administrative Simplification (ASA).

²³ On 1 February 2013, the draft law was approved in second reading by the Council of Ministers. The draft has been adapted to the opinion of the Council of State. More information on: <http://www.presscenter.org/fr/pressrelease/20130201/lutte-contre-les-mariages-de-complaisance-et-la-cohabitation-legale-de-complai> and on the website of the House of representatives: <http://www.lachambre.be/kvvcr/showpage.cfm?section=/flwb&language=fr&rightmenu=right&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=53&dossierID=2673>

²⁴ More details in French or Dutch on the proposed changes regarding marriage and legal cohabitation of convenience on: <http://debloc.belgium.be/fr/de-nouvelles-dispositions-%C3%A9gales-pour-mieux-prot%C3%A9ger-les-victimes-de-mariages-et-de-cohabitations>

cooperated to effectively implement removal operations shortly after notifying decisions to refuse the celebration of marriage. An **evaluation process** was initiated by the national interdepartmental working group which developed Circular n° COL 10/2009²⁵ and the national Handbook on marriages of convenience with a view to assessing the implementation of the said instruments. The result of the evaluation²⁶ will provide a better insight into the phenomenon, the difficulties encountered by stakeholders and possible actions to better tackle it.

With regard to false declarations of parenthood, the State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty, requested the Immigration Office to further analyse the phenomenon, focusing inter alia on statistics. To this end, “best practices” were implemented, leading immigration services dealing with false declarations of parenthood to register cases in a shared statistical table and to enhance contacts with Public Prosecutors. A **working group**, under the leadership of the FPS Justice, was required to draft an action plan focusing on preventive measures. Preventive actions should be undertaken through better **cooperation** between services (Immigration Office, FPS Justice, registry offices in municipalities, family allowance offices) whose role will be clarified.

Several of the above mentioned family reunification related issues were debated on the occasion of the Round Table on Migration and Asylum organized by the Belgian Contact Point of the EMN on 15 March 2012. In this framework, questions relating to conditions for and restrictions on family reunification were particularly raised (income requirement/threshold, family members, application processing times, etc.).

3.2.3 Developments from the EU perspective

Belgium contributed to the **Public Consultation on the right to family reunification of third-country nationals living in the EU (Directive 2003/86/EC)** which ended on 1 March 2012. In its answer, Belgium didn't consider it necessary to review the current Directive but pleaded for further cooperation and exchange of “best practices” between Member States and with third countries, inter alia to better fight against misuses of the right to family reunification. Belgium also highlighted the challenges related to data collection and analysis in this field²⁷.

Based on the experience gained with the Circular n° COL 10/2009 from the College of General Attorneys as well as with the national “Handbook” on marriages of convenience, Belgium committed itself at the 14th Free Movement Expert Meeting (FREEMO) to actively contribute to the development of an **EU Handbook on marriages of convenience**. In this regard, Belgium handed over to the Chair of the FREEMO working group two contributions which, together with the input of some other Member States, allowed elaborating a first draft of the EU Handbook. Belgium furthermore requested to put legal cohabitations of convenience and false declarations of parenthood on the agenda as well.

3.3 Students and Researchers

As such no major developments occurred in this field during the year 2012, although the Immigration Office noticed that legal migration provisions are not adapted anymore to the new educational system “created” by the Bologna-system. More specifically it becomes more and more difficult to correctly assess the progress students make during their studies.

The Immigration Office invoked in its annual report other problems, inter alia relating to the sometimes unclear/hybrid categories “student” and “researcher” and the use of fraudulent documents to register in Belgian universities and colleges and to consequently request a residence right as foreign student.

²⁵ The Circular n° COL/2009 identifies applicable standards and the roles of stakeholders dealing with marriages of convenience.

²⁶ The intermediary and final reports are still under development and/or revision at the time of writing this report.

²⁷ The exhaustive Belgian answer to the Consultation on the right to family reunification of third-country nationals living in the EU can be accessed on: http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2012/consulting_0023_en.htm

A preliminary proposal for new legislation has been submitted to the State Secretary, to resolve among others the above-mentioned issues.

3.4 Other legal migration

Restriction on social welfare for EU citizens and family members

The Belgian Public Centre for Social Welfare (CPAS/OCMW) has restricted its support to EU citizens and their family members since 27 February 2012. The government's Public Planning Service for Social Integration explained in a circular letter how the new provisions of the social welfare law should be interpreted:

- All EU citizens and their family members are excluded from entitlement to CPAS/OCMW social services, (urgent) medical assistance and employment provisions during the first 3 months of their stay in Belgium.
- After the first 3 months, EU citizens and their family members are entitled to CPAS/OCMW social services, medical assistance and employment provisions, provided that they are not job seekers. Irregularly staying individuals are only entitled to urgent medical assistance.
- Once they obtain an E or F card, all EU citizens and their family members qualify for social integration (income support and employment provisions) if they meet the conditions regarding the Right to Social Integration provided by Belgian Law.

3.5 Integration

3.5.1 Specific context

In Belgium, the integration policy falls within the **competences of Regions and Communities**. The Flemish Community, the Brussels-Capital Region and the Walloon Region, each of them, define their vision and projects based on their experiences and perceptions of migratory flows as well as reception and social/cultural cohesion related issues. As a consequence, legal aspects, practices and budgets attributed to integration differ from one Region to the other. Developments presented below are, if necessary, be distinguished accordingly²⁸.

At the federal level, the authorities have two instruments to support integration policies in the Communities and Regions: a Federal Fund for the Policy of Migrants and the Large Cities Policy.

3.5.2 Developments within the national perspective

As mentioned above, main integration related matters remained under the competences of Regions and Communities in 2012, making it difficult to address national developments as such. However some developments received national attention:

- **Provincial, municipal and district elections** took place on 14 October 2012²⁹. "Upstream", information was provided by public authorities³⁰, (regional) integration centers³¹ as well as community-based organizations and the media to encourage foreign persons to register on voter's

²⁸ More details on this specific context are available in Belgium's EMN Policy Report 2011 and the EMN study "Organization of asylum and migration policies in Belgium (2012)"

²⁹ Municipal and provincial council elections take place every six years. Voters vote for the parliaments and councils in their region only. For example residents in Flanders vote for candidates in the Flemish parliament, but not those in the Brussels-Capital region.

³⁰ See for example the press release from the Deputy Vice Minister, Minister for the Interior and Equal Opportunities on http://www.ibz.rn.fgov.be/fileadmin/user_upload/Elections/20120531-Vote-des-etrangers-elections-communales.pdf, the Wallonia portal - election 2012: http://elections2012.wallonie.be/faq_electeurs_vote_des_etrangers.html or the brochure from the Brussels Capital Region on elections 2012: http://bruxelselections2012.irisnet.be/sites/default/files/Brochure_Elections%20communales.pdf

³¹ 8 integration centers in the Flemish Community, 6 regional integration centers in the Walloon Region and the Foyer regional integration centre in the Brussels Capital Region support policy development and implementation at local level.

lists and to vote on 14 October 2012. Awareness campaigns³² were supported; training tools developed; brochures distributed; local activities organized by various associations and basic services provided by municipal administrations to invite **foreign persons to exercise their voter's right**. According to official statistics from the FPS Interior, EU and non-EU voters in 2012 were in numbers higher but in proportions slightly less than in 2006. The number of naturalizations between 2006 and 2012 may partly explain this slight decrease³³. Obstacles to voting may also be found in the voter registration requirement and in the level of priority given to the vote among migrants and/or migrants' associations. "Downstream", the results of the elections, i.e. the provincial, municipal and district councils composed on this basis, oriented future policy developments inter alia on integration related issues (see below).

- In December 2012, the Constitutional Court **rejected actions for annulment** against the Law of 1 June 2011 (so-called "**anti-burqa**" or "**anti-niqab**" law), which bans wardrobes that completely or largely cover the face³⁴. The Court legitimized the law which has three objectives: public safety, equality between men and women and a certain conception of living together. It is worth noting in this regard that the arrest of a woman wearing the niqab and following riots in Brussels in June 2012 remained on top of the headlines in Belgium.

Integration pathways in development in the Walloon Region and the Brussels Capital Region

In 2012, the development of an integration pathway³⁵ in the Walloon Region on the one hand and in the Brussels-Capital Region on the other hand (following the example of the "Inburgering"³⁶ in the Flemish Region) generated intensive debates and led to extensive press coverage. However progress was slow, mainly due to divergent views on whether the integration pathway should be **mandatory or not** and whether **sanctions should be foreseen or not**. On 20 December 2012, the College of the French Community Commission (Cocof) in the Brussels-Capital Region approved in first-reading a draft decree laying the foundation for an integration pathway in its area. On 24 December the Walloon government approved in turn a draft decree in this matter. The following elements emerge:

- Integration pathways will be **multistage**: In the Walloon Region, the integration pathway would include four stages: (1) social investigation and assistance in administrative procedures, (2) training in French language, (3) citizenship module and (4) social and professional orientation. In the Brussels-Capital Region, it would be twofold: (1) social investigation, language testing and information on rights and duties and (2) depending on the needs: citizenship module, language/literacy courses and socio-economic integration.
- Integration pathways will be **partially mandatory**³⁷: In the Walloon Region, only the first phase would be mandatory. Fines from 50 to 2500 Euro would be collected by the municipality in the case the foreign person doesn't present him/herself to the front office to be informed on his/her rights and duties and to undergo the social investigation. In the Brussels-Capital Region, there is a will to make the first part and the language component of the second part compulsory.³⁸ There is no indication so far of a sanction system in the latter.
- Integration pathways will be "**contractualized**": In the Walloon Region, the beneficiary would sign an up to two years integration contract with the regional integration centre or its partners. In the

³² See for example « Ma commune j'y vis, j'y vote » on : <http://jyvisjyvote.be/>, the Objectif campaign (poster, flyer, information sessions): <http://www.allrights.be/campagne> or "Lire et Ecrire Communauté française asbl" Campaign: <http://communaute-francaise.lire-et-ecrire.be/content/blogsection/30/158/>

³³ See official statistics - Elections from 14.10.2012 & 08.10.2006:

[http://www.ibz.rn.fgov.be/index.php?id=1649&tx_ttnews\[tt_news\]=955&tx_ttnews\[backPid\]=1622&cHash=1c18aca334217e20acd3827629abc208](http://www.ibz.rn.fgov.be/index.php?id=1649&tx_ttnews[tt_news]=955&tx_ttnews[backPid]=1622&cHash=1c18aca334217e20acd3827629abc208)

³⁴ More details in the Court ruling on <http://www.const-court.be/public/f/2012/2012-145f.pdf> and additional information on the Law in the Annual Policy report 2011.

³⁵ The term "integration pathway" is subject to controversy as some argue it is rather a "welcoming pathway" than an "integration pathway", the latter being considered as much longer and complex..

³⁶ More information on "Inburgering" on: <http://www.inburgering.be/inburgering/en?lang=en>

³⁷ One of the reason for not making it fully compulsory relates to the estimated budget (the "means requirement").

³⁸ Different associations questioned this approach: Couleur Café referred to the principle of individual freedom and emancipation. Ciré referred to a "right rather than an obligation". More on this on: <http://www.labiso.be/?page=VisualiserContenuOuvrage&Id=3028>

Brussels-Capital Region, the beneficiary would also be invited to sign an integration contract with the front office or its partners.

Several elements of the integration pathways still need to be clarified, inter alia in relation to the **target group**, which should take into consideration both needs in the field and financial constraints. Overall the target group consists of foreign persons who have been residing in Belgium for less than three years and who are in possession of a residence permit of more than three months. In the Walloon Region, EU/EEA/Swiss citizens and members of their families are explicitly excluded. Several associations are worried about a too narrow definition, raising questions as to whether inter alia refugees, beneficiaries of subsidiary protection and asylum seekers are included³⁹.

Integrated Action Plan approved by the Flemish Government

The Commission on Integration Policy prepared the 'Integrated Action Plan on the Integration Policy' that was approved by the Flemish Government on 20 July 2012.

The action plan contains:

- Strategic and operational objectives that are formulated within each policy area;
- An analysis per policy area of the social context within which these objectives have to be realized
- Concrete actions to achieve the objectives which are laid down
- Timelines for undertaking actions
- Indicators which are used for progress measurement
- Resources and instruments to put in

Draft decree on the reform of the Flemish "civic integration policy"

On 21 December 2012, the Flemish government approved a draft Decree concerning the Flemish (civic) integration policy, and submitted it to the Flemish Parliament. The draft decree sets the objectives and a broad outline of the planned reform of the civic integration policy. An external autonomous "(civic) integration agency" is thereby called to implement the said policy⁴⁰.

As a priority action in 2013, the Flemish Government wants to facilitate the directing role of the local authorities to pursue a local integration policy.

Civic integration of asylum seekers no longer compulsory or a priority

Since 16 March 2012, based on the Decree of 17 February 2012 amending the Civic Integration Decree, asylum seekers hosted in Flanders are no longer obliged to participate in the training "civic orientation". They still have the right to participate in this course, but are no longer a priority target group.

3.5.3 Developments from the EU perspective

In 2012, the European Integration Fund (EIF) effectively contributed to the development of integration related projects in Flanders and in Wallonia. In the latter Region, the EIF mainly supported the implementation of **pilot projects related to the future integration pathway** (see 3.5.2 above). Three regional integration centers (La Louvière, Liège, Namur) undertook pilot projects co-financed by the Walloon government, to test the feasibility of the first stage (social investigation). The Coordination and Support Association for Regional Integration Centres (DISCRI), in partnership with all regional integration centres, also initiated a several year project centred on the third stage (citizenship) and aimed at

³⁹ More details on target group related issues on: <http://www.labiso.be/?page=VisualiserContenuOuvrage&Id=3028>

⁴⁰ See the decision taken by the Flemish government on 21 December 2012 on:

http://www.vlaanderen.be/servlet/Satellite?c=NB_KortBestek&pagename=nieuwsberichten/NB_KortBestek/Kortbestek&cid=1337436305683

developing (1) a civic integration training programme for newcomers and (2) civic integration workshops for non-French speaking newcomers⁴¹.

EIF projects co-funded by the Flemish government aimed at promoting the **socio-economic contribution of migrants**, including with a view to:

- Promoting ‘Integrated language approach on the training floor’, which is a ‘train the trainer’ project to make sure that, during vocational training, trainers use clear language on the floor so that all participants can understand instructions (e.g. avoid jargon, use simple sentences, etc.)
- Rising higher educational attainment
- Rising educational attainment among young migrants

Furthermore the “Minderhedenforum” initiated a EIF-funded project called “Change makers” aiming at strengthening **migrants’ participation in policy making** through networking and training.

In 2012, the EIF also contributed to the publication of **information packages**. In May 2012, a pre-departure information package for family migrants, called “Starterskit Migrating to Flanders”, was elaborated with the support of the Flemish government and the EIF and in cooperation with the King Baudouin Foundation⁴². An easy-to-use first-step pack, “Living in Belgium - A Handbook for newcomers in Brussels and Wallonia”, providing non-EU newcomers in French speaking Belgium with basic information on the functioning of the Belgian society and places where to find support was also released⁴³.

In 2012, **consultation and cooperation** mechanisms were further developed at different levels. Building on earlier cooperation projects with the Andalusia Region, the Walloon Region cooperated with the Pablo de Olavide University of Seville in the framework of the **IN-EMPLEA Project** (co-financed by the European Social Fund). The latter project allowed participating regions (Andalusia, Catalonia and Basque Regions in Spain, Lombardy Region in Italy and Walloon Region in Belgium) to share experiences relating to the decentralized management of welcoming and integration policies. The Federal and Flemish authorities were also invited to present their policies in the matter at the occasion of workshops organized in 2012.

3.6 Citizenship and Naturalisation

The coalition agreement of 1 December 2011 devoted a section to the reform of the conditions for acquiring the Belgian nationality⁴⁴. The government announced that the reform would aim at making the **legislation more neutral from an immigration point of view** and that language and integration requirements would be introduced, taking into consideration the economic participation of the applicant. In addition to this, acquiring the Belgian nationality through the procedure for the House of Representatives would still be possible but exceptional.

On this basis, a political agreement was found mid 2012 on a bill to tighten the conditions for acquiring the Belgian nationality. On 4 December 2012, a new law modifying the Belgian Nationality Code was approved, whose provisions are applicable as of 1 January 2013⁴⁵. While the former law of 1 March 2000 considered the acquisition of the Belgian nationality as a step on the way to integration, the new law of 4 December

⁴¹ More information on this pilot project on <http://www.fecri.be/parcoursintegration.html>

⁴² The starterskit, which includes four components, namely a brochure/presentation of Flanders, a language guide, a document checklist and testimonies, can be found on: <http://www.migreren.inburgering.be/>

⁴³ View the pdf brochure in French on :

http://www.educationpermanente.cfwb.be/fileadmin/sites/edup/upload/edup_super_editor/edup_editor/documents/Judith/Brochure_primo_V1_3_DEF_28032012_web.pdf

⁴⁴ In its Declaration regarding its general policy, dated from 13 October 2009, the Belgian government had already announced that naturalization conditions and procedures would be adapted. The federal elections of 13 June 2010 brought the proposed draft bill

⁴⁵ The Law modifying the Belgian Nationality Code to make the acquisition of nationality neutral from an immigration point of view, date from 4 December 2012 and published on 14 December 2012, is available on:

French: http://www.ejustice.iust.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2012120404
Dutch: http://www.ejustice.iust.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2012120404&table_name=wet

2013 reversed this approach, determining integration-requirements to start an acquisition procedure. According to the latter, the Belgian nationality may now only be requested in Belgium and not from abroad. As announced (see above), naturalisations granted by the naturalization commission of the Parliament were also made exceptional and restricted to persons who have demonstrated or could demonstrate “exceptional merits”.

Based on the above mentioned law reform, foreigners over the age of 18 can (in general) from now acquire the Belgian nationality using one of the following procedures:

- Procedure for the person who is **born in Belgium** and has been living in Belgium ever since: no integration requirements.
- **Short procedure:** after five years of legal residence, the concerned person needs to prove its knowledge of one of the three languages of the country; show evidence of its civil integration and of its economic participation (exceptions for the person married to a Belgian, for handicapped or retired persons, ...)
- **Longer procedure:** after ten years of legal residence, the concerned person needs to prove its knowledge of one of the three languages and its participation to the life of the host community.”

Besides acquisition related issues, changes were also brought to provisions relating to deprivation of nationality. Legal conditions to deprive someone from the Belgian nationality were extended, inter alia to persons who acquired the nationality by a marriage which was then annulled because of marriage of convenience.

Discussions to reform the legislation had been on-going for the last couple of years, and also the last developments were closely followed up and commented by different stakeholders. The changes, which were a compromise between the political parties in the majority, were considered as too harsh for some while not enough for others. The first ones, who negatively reacted to the changes, put forward the following arguments: (1) the new law may potentially harm vulnerable persons who may not be able to prove their economic participation to the host community, (2) new requirements in conjunction with the length of stay appear too demanding, (3) administrative procedures and costs increase. Such reactions were disseminated through awareness campaigns⁴⁶. The second ones, who welcomed the strengthening of conditions of acquisition of nationality, mainly raised three elements: (1) the previous law was too flexible and resulted in increasing unhandled applications, (2) the new law is likely to encourage possible applicants to participate in the life of the host community and (3) the new law is now in line with relevant EU legislation.

3.7 Managing Migration and Mobility

The number of border refusals fell slightly in 2012 compared to 2011. This decrease only occurred at the air borders. This slight fall was not related to cases for which penalties were enforced (failure to produce the documents necessary for entry and the use of fake documents), but resulted from a fall in the number of people presenting themselves at the border without meeting other entry conditions (such as valid travel documents, valid visa or residence permit, sufficient resources, proof of accommodation and living conditions, not listed in the Schengen Information System (SIS), not being a threat to public order). The most represented nationalities affected by border refusals were: Albania, Morocco, Turkey, DR Congo and Serbia.

In 2012, 53 TCN declared at the border that they were unaccompanied minors. After age assessment 17 of them appeared to be adult. The most represented nationalities among those 36 UM are: India (5), Ghana (4), FYROM (4) and Morocco (4).

⁴⁶ For example, see the flyer from Objectif - Movement for Equal Rights on http://www.allrights.be/sites/www.allrights.be/files/Affiche_Objectief_nov2011FR.pdf

3.7.1 Visa Policy and 3.7.2 Schengen Governance

In 2012, Belgium further progressed in **representation arrangements** and consular cooperation in Kinshasa. It continued to coordinate the “**Schengen – House**”, a common visa application centre open to the public since 5 April 2010, in Kinshasa⁴⁷, and started to represent new States in the reference period. It received Schengen visa applications respectively for Hungary as from 1 February 2012, for Estonia as from 10 April 2012, for Slovenia as from 1 June 2012, for Sweden as from 1 October 2012 and for the Czech Republic as from 3 December 2012.

Belgium’s **consular cooperation** also progressed in Conakry. As the competent Belgian embassy for Guinea (Conakry) is situated in Senegal (Dakar), Belgium has cooperated with the French embassy in Conakry. From the beginning of 2012 onwards, a Belgian visa expert is working in the said visa office situated in the French embassy to handle visa applications introduced there.

VIS Fingerprint readers

In the framework of the implementation of the Visa Information System at national external borders, Belgium has equipped and started **biometric visa checks** in 2012 at all border crossing points (air – sea – land) upon arrivals. Based on a first evaluation of biometric checks implemented upon arrivals, no major problems were encountered. It is planned that the same procedure will apply at departure gates as from 1 June 2013 onwards, also at all border crossing points. If the planning is maintained as such, Belgium will be processing biometric visa checks at all border crossing points, arrival and departure, as from 1 June 2013.

Schengen Information System (SIS) alerts⁴⁸

Before 2 July 2012, only third-country nationals subject to a removal order with a 10-year entry ban could be listed in the SIS under Article 96. Following the implementation of the return directive in Belgian law, the SIS can now include third-country nationals who are illegally staying in the country’s territory and are subject to a removal order accompanied by an entry ban under the return directive.

Proof of sponsorship: new annex and new procedure for certain foreign nationals⁴⁹

In order to comply with the Visa Code, and in particular with Article 14 §4 stipulating formal requirements for the proof of sponsorship form and with Article 41 providing for procedures relating to the handling of visa applications introduced in other or common application centres, Belgium adopted a **Royal Decree on 16 July 2012**⁵⁰.

The Royal Decree of 16 July 2012 addressed the above mentioned elements as follows:

- The Annex 3bis (proof of sponsorship form) in the Royal Decree of 8 October 1980 was modified, inter alia to include the **contact details of the guarantor** (first name, last name, address) for the purpose of a visa application examination.
- The procedure for establishing a formal sponsorship obligation in the case of visa applications introduced **in diplomatic or consular posts of other Member States representing Belgium** was foreseen: In such case, the guarantor, who has to sign the Annex 3bis in the municipality, provides

⁴⁷ The Schengen House, which was created by a Belgian-Portuguese initiative, is operational since 5 April 2010 and led by Belgium.

More information in French: <https://5002.fedimbo.belgium.be/fr/content/information-generale>

Or in Dutch: <https://5002.fedimbo.belgium.be/nl/inhoud/algemene-informatie>

⁴⁸ Under Article 96 of the Convention implementing the Schengen Agreement, aliens who are not authorized to enter the Schengen area, shall be entered in the Schengen Information System. The aliens concerned are then refused entry in all Schengen Member States.

⁴⁹ According to the Schengen Border Code and the Visa Code, any third-country national must in principle show that he/she has sufficient resources to cross the external borders of the Schengen Member States with a view to short-term staying or transiting in the Area as well as to obtaining a visa for this purpose. The Visa Code authorizes Member States to develop an ad hoc form establishing the proof of sponsorship to prove the said condition of sufficient resources.

⁵⁰ The Royal Decree of 16 July 2012, which was published on 19 September 2012, is available in French on: <http://www.ejustice.just.fgov.be/cgi/api2.pl?lg=fr&pd=2012-09-19&numac=2012205151>

a proof of sponsorship for the foreigner abroad and indicates the consular or diplomatic post in which the visa application is to be introduced. The municipality forwards the legalized original proof of sponsorship form and supporting documents to the Immigration Office which assesses the guarantor's financial capacity. Once the Immigration Office accepts and returns the proof of sponsorship form to the municipality, the latter invites the guarantor to collect the formal obligation. Counting from the date of the legalization of the formal obligation, the formal obligation and the documents required to substantiate this formal obligation need to be introduced within a term of six months.

3.7.3 Border Monitoring

In 2012, the Immigration Office continued to second one expert to the "Task Force for Greece" to help providing technical assistance. Belgium also finances a project in RD Congo for strengthening border control.

SCHEVAL⁵¹

In 2012 Belgium participated in three evaluations: air border evaluation in Slovenia and Malta (February), peer-to-peer evaluation in Greece (May) and air border evaluation in Poland, the Czech Republic and Slovakia (November).

ABC: e-gates at Brussels International Airport

Early 2012, a pilot group was created (Federal Police, FPS Interior, Immigration Office, FPS Justice, FPS Foreign Affairs and private partner Brussels Airport Company) to outline a **project for Automated Border Control**. Early September the government's financial inspector gave the go-ahead for starting up an e-gates project, including the installation of six e-gates in the arrival pier (pier B) of Brussels Airport.

In 2013, these e-gates will be installed next to the smart boxes in a man-trap configuration (lock) for those passengers with a passport chip. According to a study commissioned by the Federal Police, the lock will need to be equipped with for example: electronic passport readers (EPR which capture e-passport data and then process biometric match), camera and illumination (to capture live-face images), sensors, information displays (to alert and instruct travellers and border guard), software (biometric driver software) and e-gate server (to process the e-gates – various databases match).

In 2014, a central security check for the A and B peers will be installed, after which automated border control will take place for both arrival and departure.

In terms of financing, the total cost is estimated at 2-3 million Euro. Belgium is looking into EU co-financing mechanisms, and for the remaining amount an agreement was reached between the Federal Police and BIAC, the Brussels Airport Company.

Border control with the UK⁵²

On 15 February 2012, a **Schengen Separate Lane**⁵³ was opened at the Eurostar terminal in order to facilitate Intra-Schengen traffic (for passengers travelling to Lille, Calais or Fréthun on Eurostar trains with the UK as final destination)) and reduce the risk of illegal transit at the same time. Only passengers with a

⁵¹ The Schengen evaluation is the control of the correct execution of the Schengen acquis. The implementation of the Schengen Borders Code by the Schengen Member States is controlled by the Schengen Evaluation Commission (SCHEVAL).

⁵² Belgium only has one land border with the UK: the Eurostar terminal where passengers check in to travel to the United Kingdom. At the Brussels South railway station, the exit inspection by the Federal Police is followed immediately by the entry inspection for the United Kingdom, which is executed by the British officials of the United Kingdom Border Force (UKBF). Arriving Eurostar trains are no longer inspected by the Belgian police services. When passengers leave the United Kingdom, they are checked by the French police, who perform the Schengen entry inspection.

⁵³ According to the Schengen Border Code, separate lanes should be provided at border crossing points to reduce the waiting times of persons enjoying the Community right of free movement.

ticket bound for Intra-Schengen destination can use this separate lane. Immediately after going through the Belgian Federal Police inspection, travellers are funnelled towards a waiting room without passing through inspection boxes manned by the UK Border Force.

In 2012, progress was also made on a new **bilateral agreement** between Belgium and the United Kingdom regarding British border controls. The existing legal framework for British entry controls in Brussels South railway station, the Tripartite Agreement of 1993, only applies to direct trains between Belgium and the United Kingdom. However, in practice almost all Eurostar trains make a commercial stop in France. The objective of the new bilateral agreement is thus to provide a legal basis to British entry controls at Brussels South railway station for trains making such commercial stops in France.

3.7.4 Frontex

The Belgian Federal Police participated in several **joint missions** organised by Frontex:

- JO Focal Points Air: Participation during 2 months and 3 weeks (3 Border Guards in total)
- Pulsar Programme – Flexi Force : Participation (1 Border Guard in total)
- Pulsar Programme – Visa Integrity : Participation during 6 weeks (2 Border Guards in total)
- JO Eurocup Land: Participation during 2 months (2 Border Guards in total)
- JO Focal Points Land: Participation during 3 months (3 Border Guards in total)
- JO Indalo: Participation during 5 ½ months (6 Border Guards in total)
- JO Focal Points Sea: Participation during 1 month (1 Border Guard in total)
- JO Minerva: Participation during 5 ½ months (6 Border Guards in total)

The Federal Police also participated in the development of **EU-training programmes** (coordinated by Frontex), in particular in the “Common Core Curriculum for EU Border Guard Basic Training”, Border management courses, European Qualification Framework and Sectoral Framework, Erasmus-style exchange of border guards students, eLearning applications, Training Tool focused on Fundamental Rights and Trafficking in Human Beings.⁵⁴

3.7.5. Biometrics

In order to comply with Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals⁵⁵, a new Royal Decree modifying the Royal Decree of 8 October 1980 was published on 9 August 2012. The latter **Royal Decree of 19 July 2012** introduces biometric data in residence permits for third-country nationals.

Besides a contact chip, **biometric residence permits** will be equipped with a contactless chip (called “RFID” chip) in which the following biometric data will be stored:

- The photograph of the holder and
- Two fingerprints (in principle two indexes but in cases of wounded indexes or insufficient index image quality, major, ring or chip)

⁵⁴ More detailed information on training activities and tools developed in 2012, in Frontex programme of work 2012 on:

http://www.frontex.europa.eu/assets/About_Frontex/Governance_documents/Work_programme/2012/frontex_pow_2012.pdf

⁵⁵ Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country national, force Member States to store biometric data on a RFID chip on residence permits that are provided to nationals of third-party countries. This data includes the holder’s fingerprints (generally both index fingers) and a photo (according to ICAO standards). The Council Regulation is available on: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:115:0001:01:EN:HTML>

Such change affects the following Belgian residence permits: the certificate of entry in the register of foreign nationals (A or B card), the identity card for foreign nationals (C card), the residence permit granted to long-term residents (D card) and the European blue card (H card).

The above mentioned still valid residence permits of third-country nationals will be replaced by biometric residence permits at the time of renewal.

Through cooperation between the Immigration Office, the Belgian General Directorate of Institutions and Population and the Federal Public Service for Foreign Affairs (responsible for issuing the biometric passports) a pilot phase will take place in a number of municipalities in the course of the first semester of 2013 in order to test the new procedures for issuing and manufacturing these biometric residence permits. This pilot phase will then be followed by an evaluation and a roll-out in all municipalities of the country.

Considering the amount of third-country nationals reporting the loss or theft of their residence permit, the new biometric residence permits are considered as beneficial both for the purpose of security and saving money.

4. IRREGULAR MIGRATION AND RETURN

4.1 Irregular Migration

Detention of families with minor children

Already in 2008 the authorized Minister decided not to detain irregular migrants with children of minor age and to assign them to alternative residences, the so called 'housing units'. These housing units are individual houses and apartments where the concerning families can stay temporarily. Formally, these families are detained in the housing units but in practice they have certain liberties of movement.

The **Law of 16 November 2011**, which was published in the Official Gazette on 17 February 2012,⁵⁶ further specifies the possibilities of **detention of illegally staying families with minor children**. The aim of the law is to avoid detention of families, and when detention is necessary, this must be for a period as short as possible and in an adapted place. A distinction must be made between families at the border and families irregularly staying on the territory:

- 1) Families, whose access to the territory is refused on grounds of defined criteria⁵⁷, may be detained for an as short as possible period and only in facilities in the border region adapted to the special needs of families. The detention has to have as aim the removal of the concerned persons from the territory.
- 2) Families without legal stay and already living on the state-territory are generally⁵⁸ allowed to remain in their own private housing. The family is obliged to fulfil certain preconditions, listed in an individual agreement between the family and the Immigration Office. In the case the family has no own private housing, it may be detained in a facility adapted to the special needs of families with minor-age children (the so called housing units). In the case the family disrespect the agreed preconditions, the concerned persons may still be detained in units adapted to the special needs of families inside a regular detention facility.

All the families concerned are assisted by a supporting officer (coach), appointed by the Immigration Office.

Concerning the housing units, **extra space was created in 2012** for three new apartments in Zulte and a small apartment in Tubize. This expansion meets the need for small housing units, as 54% of families are single mothers with an average 3.1 individuals per family unit. The 2012 expansion brings the total capacity to 19 units on 4 different locations and approximately 115 available beds. This project is supported by the European Return Fund.

Concerning the units inside regular detention facilities, **one such unit became in 2012 operational** for families with minor children, pending their effective return or awaiting their transfer to another adapted family unit. There is not yet a specifically adapted infrastructure for families where detention could be longer than 48 hours.

New Transit Centre 127 (Caricole)

In 2007, the government approved the replacement of Transit Centre 127. The Immigration Office had requested this for several years due to the poor existing infrastructure. A new centre was built next to Repatriation Centre 127bis. The building was given the name 'Caricole' because of its shape. It is owned by the airport operator of Zaventem, is rented to the state buildings operator (Régie des Bâtiments/Regie der

⁵⁶ Law of 16 November 2011 (BS/MB 17 February 2012):

NL: http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&pub_date=2012-02-17&numac=2012000080&caller=summary
FR: http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&pub_date=2012-02-17&numac=2012000080&caller=summary

⁵⁷ Criteria: a) being not in the possession of documents allowing the access to the territory, b) inadequate means of living, being not able to explain the purpose of travelling;

⁵⁸ They are not allowed staying in their private housing in the case that one of the concerned persons a) is seen as a danger for the national security or the public order, b) is blacklisted on the access to Schengen-list, c) is seen as a danger for the international relations of Belgium

Gebouwen) and is used by the Immigration Office. The centre was **officially opened in early May 2012** in the presence of State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty (Maggie De Block). The 'INAD' centre for inadmissible passengers (border refusals) also moved to the new centre for infrastructural and operational reasons (fresh air, visiting facilities, etc.).

Prevention campaigns

The 2012 prevention campaigns in the **Balkans** have, according to the Immigration Office, significantly reduced the influx of nationals from that particular region towards Belgium. It concerned shorter campaigns in Kosovo, Serbia and Albania, led by the State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty, on the one hand, and longer information campaigns in Macedonia and Kosovo aimed at minors and minorities, on the other hand. One of the reasons behind these campaigns was to spread information on measures recently taken by the government (list of safe countries, acceleration of residence application procedure on medical grounds, entry bans, etc.).

Similar campaigns were conducted in **Guinea**: shorter campaigns led by the Director General of the Immigration Office and longer campaigns by the IOM. During 2012, a project to offer extra support and make the repatriation of Guineans returning from transit countries to North Africa, where they were stranded while en route to Europe, more permanent, was also approved.

A similar approach was also taken in respect of **Morocco**: 2012 saw the approval of a project offering reintegration support to sub-Saharan migrants who are prepared to leave Morocco and return to their country of origin voluntarily. This ensures that people who return to their home country are more likely to stay there because they are less inclined to organize/fund a second (irregular) trip to Europe. The project, which has been running for a number of years now, is considered as a success: since 2005, 3,500 people have returned to their own country with this support.

The State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty furthermore led a campaign in **Cameroon**, linked to a lengthier campaign aimed at tackling the influx of bogus asylum seekers and the not-to-be-underestimated phenomenon of student-status abuse.

Following a number of short campaigns, a media-assisted campaign was launched in **Armenia**, with a view to raising awareness amongst potential Armenian migrants about the risks and consequences associated to illegal migration. There has been a marked decrease in the number of asylum seekers from Armenia: from 986 in 2010 to 445 in 2012.

In **Russia**, a project was launched to inform the population of the Caucasus about their genuine "chances of asylum" (the chance of obtaining a residence permit on the basis of an asylum application) in Belgium and to make them aware of the fact that handing over money to smugglers and fraudulent networks is money down the drain and that these funds would be far better spent at home.

4.2 Return

In 2011 and 2012, the framework on return, removal and detention was redrawn, putting more emphasis on effective return of irregularly staying migrants: legal modifications were taken as well as practical initiatives for a better follow-up of return decisions, a strict cooperation with local authorities and the promotion of voluntary return.⁵⁹

⁵⁹ The coalition agreement of the government explicitly stresses the willingness to increase the return of irregular migrants and failed asylum seekers and the policy paper of the responsible State Secretary stated in January 2012 that, "...a maximal interest will be focused on return, voluntarily if it is possible, forced if it is necessary."

Transposition of the Return Directive into Belgian Law

An important legal development concerning return is the transposition of the Return Directive⁶⁰ into Belgian law, more precisely by the **Law of 19 January 2012** amending the Aliens Law (Belgian Official Journal of 17 February 2012). The law came into force on 27 February 2012. The main new elements are:

- **An extension of the period foreseen for voluntary departure:** an order to leave the country in principle now provides for a period of 30 days (instead of 5 days) for voluntary departure (subject to exceptions). Upon request and when necessary for the preparation of the voluntary departure, the period can be extended.
- **Removal decisions can be accompanied by an entry ban:** an order to leave the territory is accompanied by an entry ban of 3 years if no period for voluntary departure has been granted, or if the obligation to return has not been complied with. In cases of fraud, the length of the entry ban can be up to 5 years, and even more than 5 years if the person involved is a serious threat to public order or security. There are possibilities to suspend or withdraw the entry ban.
- **Closer cooperation between the Justice Department and the Immigration Office** to faster remove convicted illegal foreign residents from the territory.

The changes of the rules are limited. The maximum term of 8 months is maintained. The use of detention as a last resort is explicitly mentioned. Priority must be given to other suitable safety measures that are less invasive. However, if there is a risk that the foreign national will go into hiding or if a previous order to leave the territory was ignored, detention may be used.

Follow-up on return decisions

By lengthening the period given in an order to leave the country (from 5 to 30 days), emphasis is put on voluntary departure. At the same time, the Immigration Office increases its efforts to follow-up on whether people effectively execute the order.

As mentioned in the previous policy report, in June 2011 a new service 'SEFOR' (=SEnsitization, **F**ollow-up & **R**eturn) inside the Immigration Office was put into operation. SEFOR is responsible for the follow-up of all files concerning an order to leave the territory. Via the website www.sefor.be, SEFOR provides concerned and/or interested TCN's and other social assistant services with information, in 22 languages, on the consequences of an 'order to leave the territory' and the possibilities for voluntary return. SEFOR intends also to coordinate and interlink voluntary and forced return more efficiently. For that purpose, SEFOR works closely with local authorities.

When a negative decision is taken, the TCN is summoned to present himself before the local authorities, where he/she has to sign the order to leave the country. Local authorities are obliged to inform the person about removal procedures and the possibilities for voluntary return. Additionally, the municipality has the obligation to transfer an identification-form about the person concerned to SEFOR. The TCN concerned must inform the municipality about date and destination of his/her return and additionally has to provide a copy of his return-ticket.⁶¹ The municipality is obliged to verify if the person left his place of residence and has to send a report to SEFOR. In the case individuals do not obey such orders, SEFOR actively tries to identify and localize these persons with the aim of forced removal.

⁶⁰ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

⁶¹ In the case the TCN does not provide himself to the local authorities after issuing an order to leave the territory or the date of the order has elapsed, the municipality (the local police) has to initiate a control of the dwelling of the TCN, which is carried out by the local police. The municipality has the duty to transfer this information to SEFOR.

Return accompaniment for failed asylum seekers and special (open) return centre/places

Another **Law of 19 January 2012** modified the Asylum Seekers Reception Act (Belgian Official Journal of 17 February 2012). This law introduced the concept of a “return track” for asylum seekers. This is a framework for individual counseling on return, offered by Fedasil, whereby priority is given to voluntary return.

The return track starts with informal counseling: asylum seekers are informed about the possibilities of voluntary return. This is done from the moment they file their asylum request. At the moment a negative decision is taken on their asylum request, a more formal phase follows, which consists of two parts:

- Within five days following a **negative first instance decision**, asylum seekers in the reception facilities are formally offered return accompaniment (during the period to introduce appeal or the period foreseen by the order to leave the country). An individual project of return must be elaborated and signed by the person involved. The Immigration Office must be informed.
- At the moment a **negative appeal decision** is taken by the Council for Aliens Litigation, the person is transferred to special (open) return places, where the return accompaniment continues. During the period of validity of the order to leave the country (in principle 30 days), the authorities don't carry out a forced return and all effort are placed on voluntary return. When the period foreseen by the order to leave the country elapses and the return project is evaluated in a negative way (no willingness to voluntarily return), the Immigration Office can start a forced return (including administrative detention).

As mentioned, after a negative appeal decision, asylum seekers are transferred to special return places for the last part of their individual return project. Fedasil and the Immigration Office collaborate to provide these places. Two categories can be distinguished.

- **Open return centre** (Immigration Office)

The Immigration Office was already responsible for closed return centres, but following the **Law of 22 April 2012**, also open return centres can be created under its responsibility. After searching for a long time the adequate location for an open return centre, a former hotel in the town of Holsbeek (near Leuven) was designated. It became operational in the beginning of May 2013 and has a maximum capacity of 100 (candidate-) returnees.

- **Open return places** (Fedasil)

Fedasil created in 2012 ‘open return places’ inside 4 reception facilities (4 times 75 places, counting for a total capacity of 300 places). Starting from September 2012 failed asylum seekers were allocated to these places.

The Immigration Office has a liaison officer in each of the 4 facilities. The Liaison officer, which gathers information for identification, follows up newly submitted procedures and ensures fast processing and approval. He is in constant contact with the implementation services. Together with Fedasil, the Liaison officer assesses whether a voluntary return is a realistic option.

If residents are still in open places of return when the order to leave the territory expires and they have failed to register for voluntary return, SEFOR follows the Liaison officer's indication to invite the police to detain them to be repatriated or to issue a new order to leave the territory with an entry ban. Residents who do not present themselves after being called are removed by the police.

Assisted Voluntary Return (AVR)

As mentioned above, Fedasil, together with the Immigration Office, is responsible for the follow-up of individual “return tracks” of failed asylum seekers. Moreover, Fedasil is responsible for the coordination of programs for Assisted Voluntary Return (AVR)⁶², and implements these in collaboration with IOM and other partners.

In 2012 5.656 people returned to their country of origin making use of AVR (Fedasil and its partners organized the AVR of 4.694 people, and the Immigration Office⁶³ of 962 people). This is a substantial rise compared to previous years (see annex 2).

In Belgium there are 3 AVR-programs.⁶⁴ **The basic program** mainly provides logistical support (including a flight and reimbursement of travel documents) and a financial aid of 250 EUR per adult. In some cases **complementary reintegration assistance (reintegration assistance level 1)** can be requested (material support representing 700 EUR per adult). With the support of the European Return Fund, **additional reintegration assistance (reintegration assistance level 2)** can be given to a maximum of 500 returnees (1.500 EUR per capita) to support the setting up of a small business.

In May 2012 some important modifications occurred with regard to eligibility criteria for the programs to receive reintegration assistance. These modifications⁶⁵ fit within the aim of the government to promote voluntary return and to combat abuses:

- Nationals of countries who are visa-waived (Western Balkan, Brazil, etc.) are only eligible for the basic program.
- Asylum seekers or persons who received an order to leave the territory during the past 12 months (with an exception for vulnerable groups) can ask for reintegration level 1. Irregular migrants (unknown to the Belgian authorities) or people who received an order more than 12 months ago, cannot get reintegration assistance.
- Asylum seekers who decide to return during the asylum procedure or people who decide to return within the 30 days of validity of the order to leave the territory, are eligible for reintegration support level 1 and 2.

Readmission Agreements: national, BENELUX and EU-level

In 2012, the Immigration Office initiated and facilitated negotiations with certain countries in view of the identification and return of their nationals illegally staying in the country. In that sense, initiatives were taken with regard to the following countries: Morocco, Peru, Ivory Coast, Mongolia, China, Tunisia, Cameroon, Gambia and Jordan. These initiatives hadn't yet led to the conclusion of an agreement in 2012.

⁶²The legal basis for AVR is Art. 54 of the so-called ‘Reception Act’ of 2007 (Law of 12 January 2007). The political responsibility for developing policies concerning such programs belongs to the State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty. The means for AVR-programs are allocated to the annual *Fedasil* budget.

⁶³ In 2012, the Immigration Office returned almost 700 persons ready to leave voluntarily to the Balkans by bus, using methods such as a ‘hotline’. The line was open all year in 2012 and provided information in Dutch, French, English, Albanian, Macedonian, Romani and Serbo-Croatian. The aim of the hotline is to organise voluntary returns to the Balkan countries quickly. The Office for the Commissioner General for Refugees and Stateless Persons, Fedasil, IOM and SEFOR promoted voluntary returns by bus.

There was also an initiative of the Immigration Office for people from Bangladesh and Nepal who had applied for asylum. Brochures and posters were made for them in their language. A separate brochure was also made in the languages of people requesting asylum from the Balkans and the EU to promote voluntary returns. An asylum seeker map promoting voluntary returns was created in 22 languages.

⁶⁴ For more information, see: http://www.fedasil.be/en/return/the_return

⁶⁵ Kruispunt Migratie-Integratie, www.vreemdelingenrecht.be

BENELUX

Attention was also devoted to reworking the **standard text for repatriation and readmission agreements in the Benelux** and the reflection exercise regarding the **future of the Benelux cooperation** in terms of repatriation and readmission. This resulted in a vision paper that will be adopted officially in 2013. In the context of the Benelux, **implementation protocols** are also being negotiated as a result of community (European) readmission agreements.

Implementation protocols with the **Former Yugoslav Republic of Macedonia** and **Montenegro** were signed in 2012. The negotiations with **Serbia** and **Moldavia** were concluded; the protocols were signed in January 2013. Negotiations with **Bosnia-Herzegovina** were completed as well.

In 2012, initiated negotiations with **Kazakhstan, France and Ukraine** were continued. The readmission agreements with these countries will probably be signed in the course of 2013. The negotiations with Georgia, Pakistan and Sri Lanka are still on-going. Preliminary contact was established with **Oman**.

European Union

In 2012, the following concrete results were achieved in terms of readmission agreements at European Union level. Agreements were tentatively approved with **Cape Verde** and **Armenia**, although they were not officially signed in 2012 because of the 3-month opt-in period for the UK and Ireland. In the course of 2013, approval of a readmission agreement and the corresponding visa simplification agreement is expected with **Azerbaijan**. **Turkey** is still refusing to sign the readmission agreement. New council conclusions in June 2012 (promising an official start of a visa dialogue as soon as the agreement is signed) only led to a tentative approval of the agreement. Little or no progress was made in the negotiations with **Morocco, Algeria, China** and **Belarus**. The implementation of the readmission agreement with **Pakistan** - which has been in effect since 2010 – leaves much to be desired.

Special Flights

In 2012, Belgium organized **11 secured flights** to remove illegal immigrants to DR Congo, Guinea, Kosovo, UK and Albania. Other European countries participated in 2 of these 11 flights. In March 2012 Belgium organized a flight to Kinshasa in which the Netherlands also participated. 18 people were removed from Belgium and 1 person from the Netherlands. Another flight was organized to Kinshasa in December, this time with the participation of Ireland and Germany. This flight removed in total 17 persons. Belgium also participated in one secured flight organized by Germany in cooperation with Frontex, with destination Serbia.

Cooperation with the Federal Public Service for Justice

The discussion or disagreement (about the disposal of places in prisons for convicted irregular migrants) between the Immigration Office and the Directorate General for Penitentiary Institutions of the FPS Justice that had been on-going since February 2010 led to two law amendments in 2012 (the Law of 19 January 2012 and the Law of 15 March 2012) forcing prisons to make all documents that can be used for identification (of irregular TCN, condemned for or suspected of criminal activities) available to the Immigration Office.

The Immigration Office's ability to hold foreign nationals in prison is further curtailed. The law includes the general principle that administrative detention by the Immigration Office cannot take place in prison.

European Court of Human Rights

On **31 January 2012**, the European Court of Human Rights **condemned Belgium in the MS case** for violating Articles 3 (prohibiting torture and inhuman or degrading treatment) and 5 (providing the right to liberty and security and the right to a speedy decision on the lawfulness of detention). The MS case concerned an Iraqi asylum seeker who was irrevocably convicted in 2005 for having links with the terrorist organisation Al-Qaeda, and who was eventually sent back from Belgium to Iraq. The Court ruled that there were no diplomatic guarantees for the safety of the person in Iraq (violation article 3) and the administrative detention was not legal during certain periods (violation article 5) because it was not grounded on the preparation for the repatriation of the person involved.

Common Planning and Evaluation Project

The Immigration Office, which is the lead agency in the project “Common Planning and Evaluation Project” (CPEP), co-operates with other EU Member States for the development of common projects in the field of return. Currently the Immigration Office is implementing two projects developed under this framework:

- **ERI:**

The EU awarded a financial grant for the implementation of the European Re-integration Instrument (ERI) in several countries. The beneficiaries of the grant are the Dutch Repatriation and Departure Service (R&DS, leading partner), the Belgian Immigration Office and the Federal Agency for the Reception of Asylum Seekers (Fedasil), the French Office for Immigration and Integration, the German Federal Office for Migration and Refugees (BAMF), and the Swedish Migration Board. The main aim of the ERI project is the sustainable return and re-integration of third country nationals who no longer have the legal right to reside in the EU Member States.

The five EU Member States work within the framework of one reintegration project, not only sharing the services of the service provider but also implementing their different national policies in the field of reintegration. Evaluation and benchmarking of these policies will be a first step towards harmonization. All service providers are selected in the NGO/IO community in each third country.

Third country returnees from the Netherlands, Belgium, Germany, France and/or Sweden are eligible for the reintegration assistance in the following countries: Afghanistan, Azerbaijan, Iraq, Morocco, Nigeria, Pakistan and Russia.

- **EURINT:**

The European Initiative on Integrated Return Management (EURINT), which is a four Member State initiative funded by the European Return Fund, foresees a series of integrated return measures. The EURINT project was developed by the Dutch Repatriation and Departure Service (R&DS) in cooperation with the German Zentrale Ausländerbehörde Bielefeld, the Belgian Immigration Office and the Romanian Immigration Office. The aim of this project is to contribute to structural co-operation between Member States and relevant authorities of third countries in the area of return by improving the process of identification and establishing nationality (for example, via the organization of common missions to countries of origin to meet the competent stakeholders and to set up common procedures at practical level for the identification and return process).

5. INTERNATIONAL PROTECTION INCLUDING ASYLUM

5.1 Specific context

In 2012, for the first time in five years, the number of asylum applications decreased compared to the previous year. In 2012 there were 28.285 asylum applications (21.463 cases). By comparison, there were in 2011 more than 32.000 asylum applications (25.479 cases) registered in Belgium.

Due to the high asylum influx, a lengthy asylum-procedure and somewhat problematic outflow, there was a saturation of reception centres for asylum seekers in 2008, 2009, 2010 and 2011. During the past years several thousands of asylum seekers could not be provided with accommodation in a reception facility. In some cases the instance responsible for reception, Fedasil, was sentenced by Court rulings for denying asylum seekers and other eligible persons the legal right to shelter. In 2012, the Belgian government managed to tackle this reception crisis via the creation of new reception places, legislative changes towards a more integrated approach and several operational and practical measures.

5.2 Developments within the national perspective

Integrated approach

The new Federal government outlined its political aims, amongst others concerning the asylum policy, in its coalition agreement from December 2011. These were specified by State Secretary for Asylum and Migration Policy, Social Integration and the Fight against Poverty, Ms Maggie De Block, in two policy papers presented to the Parliament in January 2012.

As mentioned above, **additional reception places** were created to tackle the reception crisis. Such places were found in military facilities, in Red Cross, federal and other reception centres as well as in hotels. The number of reception places increased from about 15.000 (July 2007) to around 25.000 (2012). The capacity for the reception of unaccompanied minors increased with 194 places in 2012.

To **tackle the influx**, the State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty conducted several **prevention campaigns** in the Western Balkans. In parallel, the government **reinforced the return policy**, including assisted voluntary return and forced return. Several initiatives were developed to better organize the return of failed asylum seekers and irregular migrants, including the implementation of an **individualized return path** where voluntary return is the preferred option. Under the latter path, rejected asylum seekers are first transferred to a so-called 'return place' in designated reception centres. The Immigration Office and Fedasil work closely together and return coaches provide the necessary information. In case of insufficient cooperation from the asylum seeker, forced return is envisaged. This approach resulted in a clear increase in the number of voluntary returns (up to 5.454 returns).

In 2012 a lot of progress was achieved with regard to the "**Asylum Improvement Project**" (launched upon request of the Federal Government). The project analysed the efficiency of each authority involved in the asylum process (Immigration Office, CGRS, Council for Aliens Law Litigation) as well the various possibilities to improve the efficiency within the process chain. It also focused on a uniform, integrated reporting on the performances of and within the asylum chain. The objective was to identify opportunities to further reduce processing times of asylum claims while maintaining high quality standards. Methodological support was provided by consultants of Deloitte Belgium. An international benchmark with four countries also took place.

The first results of the Asylum Improvement Project and benchmarking showed differences but also similarities with other countries (e.g. with regard to the realisation of objectives). Overall it was concluded that the internal processes of and between the three authorities in the asylum process are fairly well

organised. Improvement opportunities were identified and will be further developed and implemented throughout the year 2013: e.g. the reinforcement of transversal structures with e.g. due attention to the organisation of quality control; an improved monitoring mechanism and better information sharing within the asylum chain.

In line with the above mentioned project, the asylum instances adopted specific measures to **increase efficiency**, while simultaneously maintaining a high quality decision-making (participation in UNHCR's CREDO project⁶⁶, reflection about the development of a quality control mechanism, etc.). In 2012, the CGRS was able to increase its output (19.731 decisions, which is a rise of about 17% compared to 2011), and to significantly reduce its backlog. This was mainly due to the fact that the newly recruited personnel in 2011 became fully effective in 2012, but also due to internal measures aimed at efficiency and the decision to focus almost exclusively on the core business. Furthermore during 2012 a better coordination was established between the CGRS, the Immigration Office and Fedasil in order to shorten timeframes. The Council for Aliens Law Litigation focussed on the handling of appeals against asylum decisions in order to limit the duration of the asylum procedure.

The integrated approach and all the initiatives to improve the efficiency of the process chain, proved capable of decreasing the number of asylum applications, increasing the output and lowering the pressure on the reception system. Since January 2013 a reception place can be assigned to each new applicant and the capacity of emergency reception places can be downsized.

Legislative developments

In October 2011 a bill was adopted that allowed Fedasil to **exclude asylum seekers who file a subsequent application** from reception and material aid, unless their asylum claim is taken into consideration by the Immigration Office. The effect of this new legislative provision was reflected in 2012. Further on, the Reception Act no longer explicitly states the right to reception during the appeal procedure before the Council of State.

Following the constantly rising number of asylum applications, also from countries with a limited number of well-founded asylum claims, the Belgian Parliament approved mid-November 2011 the concept of **'safe countries of origin'**. On 11 May 2012, the government decided to put the following countries on such a list: Albania, Bosnia-Herzegovina, Montenegro, FYROM, Kosovo, Serbia and India. The list was established based on advice provided by the CGRS. This list came into force after the publication of the **Royal Decree on 1 June 2012**. The list will be revised at least once a year. The asylum procedure for applicants from these countries is shortened: the CGRS has to take a decision within 15 working days and the burden of proof is higher. The appeal possibilities are limited to an annulment procedure, which has no automatic suspensive effect. The acceleration of the asylum procedure for safe countries of origin lowered the pressure on the reception structures.

Parliamentary debates and legislative changes pending

Beginning of October 2012 the Council of Ministers agreed on a proposal for further legislative changes to the Aliens Act, and transferred it to the Belgian Parliament for approval. The changes were approved by the Parliamentary Commission on 6 February 2013 and now only await the approval of the plenary session of Parliament. The following changes have been proposed:

1. The competence to assess new facts and circumstances presented by an asylum seeker during a **subsequent application** will shift from the Immigration Office towards the CGRS. There will be a clearer description of the concept of 'new element' and it is considered that the CGRS is in a better position to assess the new element. This should allow an accelerated handling of unfounded subsequent applications. Subsequent applications made up around 30% of all asylum applications in 2012.

⁶⁶ The overall aim of the CREDO project is to contribute to better structured, objective, high quality and protection-oriented credibility assessment practices in asylum procedures conducted by EU Member States.

2. The introduction of the **'first country of asylum'** concept as described in the Asylum Procedures Directive will be introduced in the Aliens Act. This should allow rejecting an asylum application based on the assumption that the asylum seeker already enjoys sufficient protection and refugee status in another country.
3. Some new concepts of the recently approved **Qualification Directive** (2011/95/EU) will be clarified: e.g. social group and gender based persecution, actors of protection.

More strict procedure for residence permits on medical grounds⁶⁷

Given the amount of misuse of the "regularisation for medical reasons" procedure, several aspects were modified and a **"medical filter"** was introduced in February 2012: an application can now be declared inadmissible when the medical condition put forward is clearly not serious enough.

The medical filter was applied very strictly and some decisions taken on this basis were appealed and annulled by the Council for Aliens Law litigation. The Council judged that an application cannot be refused only because the illness put forward is not life-threatening or critical. This interpretation is too limited. The administration must also check if the illness constitutes a real risk to the physical integrity, or a real risk of inhuman or degrading treatment because of a lack of adequate treatment in the country or origin/residence.

National Case law

A few important policy changes of the CGRS were confirmed by the Council for Aliens Law Litigation. The latter confirmed that there is **no longer, in Iraq, a situation of generalised violence** according to article 15C of the Qualification Directive. Furthermore the Council confirmed that there might be an **Internal Flight Alternative available in Kabul** for asylum applicants from Afghanistan.

5.3 Developments from the EU perspective

Common European Asylum System

2012 was a crucial year in the framework of the development of a Common European Asylum System (CEAS). As in previous years, Belgium actively participated in the second phase of the harmonization process and envisioned a CEAS with high standards for those in need of international protection. Belgium also actively engaged in practical cooperation activities, mainly through the European Asylum Support Office (EASO). In 2012 Belgium volunteered to join the Prague Process targeted initiative as a peer partner for one of the non-EU countries involved. Finally Belgium seconded a national expert to the Commission, as part of the Task Force Greece, in order to support the Greek authorities in the development of capacity to absorb EU funding.

Collaboration with EASO and intra-EU solidarity

Belgium seconded a national expert to EASO, who took on the drafting of the first two (i) EASO Afghanistan Country of Origin Information (COI) report and (ii) COI methodology report. A large number of Belgian experts remained active in the **Asylum Intervention Pool** and the **European Asylum Curriculum (EAC) Expert Pool**.

From 30 January until 9 February 2012 a Belgian national expert in the EAC Interview Techniques training module offered training to newly hired staff in Luxembourg. Luxembourg requested the deployment of an asylum support team in order to increase the capacity to face the pressure on their asylum system. In

⁶⁷ Besides the asylum procedure, the Aliens Act (art.9 ter) provides a specific protection status and procedure for medical reasons ("regularisation for medical reasons"). It concerns foreigners who suffer from an illness that constitutes a real risk to their life or physical integrity, or for which there is a real risk of inhuman or degrading treatment because of a lack of adequate treatment in his country or origin/residence.

March 2012 another Belgian national expert in the EAC Inclusion training module was deployed in Greece in accordance with Article 16 of the EASO Regulation. Sixteen Greek civil servants received the EAC-training on inclusion through an e-learning phase followed by a face-to-face training.

During the year 2012 other Belgian national experts in EAC training gave trainer courses in Malta on the following EAC modules: Evidence assessment, Inclusion, Interviewing Children, Interview techniques and Drafting and Decision making. These training sessions entailed mostly an e-learning phase followed by a face-to-face training. The Belgian experts also contributed to the updating of EAC modules (Inclusion, Exclusion, Drafting and Decision making, Interviewing Children and Interview Techniques). The Belgian experts also assisted EASO in the framework of the annual Didactics Seminar for the EAC trainers' pool. In November 2012 a Belgian national expert joined the EASO expert team for the development of a new EAC module on the CEAS. The CGRS also went on with the training of its own staff by making use of the various EAC-modules.

As member of the Task force on practical cooperation, Belgium actively contributed to the development of EASO's strategy on COI and practical cooperation. This included i.e. the chairing of the handover workshop from Eurasil to EASO, the organization and chairing of the first ever EASO country specific workshop on Syria. As member of the Steering Group on the Common COI Portal, Belgium actively contributed to the development of this portal.

Cooperation with third countries including resettlement

In 2012 the CGRS assisted in the reinforcement of the **asylum authority in Burundi**. More specifically the project focused on the training of Burundi protection officers and asylum judges, by making use of the EAC learning method.

In 2012 Belgium didn't resettle any refugees, but it welcomed the adoption of a **common EU resettlement programme** in March 2012. Within the framework of this joint EU resettlement programme, Belgium pledged to resettle 100 refugees in 2013. Based on the priorities fixed in the European resettlement programme and the priorities of the Belgian Foreign and Development Cooperation Policy, Belgium decided to resettle in 2013 Burundi refugees from Tanzania (RPP), Congolese refugees from Burundi (EU priority) and vulnerable persons (children and women at risk or victims of violence or torture).

6. UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

6.1 Unaccompanied Minors

Specific context and trends

In 2010, the topic of unaccompanied minors (UAMs) was set on the agenda of the Belgian EU Presidency. Belgium had established a **task force on UAMs**, which published its final report in 2010. The work of this task force resulted in a series of recommendations concerning detection, identification and protection of UAMs. On 12 September 2011, an Act regarding the granting of **residence permits to UAMs** was adopted.⁶⁸

The number of UAMs applying for asylum increased significantly during the previous years, but dropped in 2012. In 2012 there were 1.530 asylum applications of UAMs; of which 977 could be considered as minors after the age determination test. In 2011, 2.040 asylum applications of UAMs (1.478) were registered. This was a strong increase compared to the 1.081 in 2010 (860 after age determination test) and 935 (711 after age determination test) in 2009.

There are specific reception facilities for UAMs. When arriving on the territory, UAMs are offered reception in so-called **Observation and Orientation Centres (OOCs)** where a test aimed at age determination takes place. In a second phase UAMs are referred to specific collective reception facilities where a specialised team of coaches and educators provide them with support. In previous years, not every UAM could be hosted in appropriate reception facilities. This situation forced Fedasil to rapidly enlarge the reception capacity for UAMs. In 2012, the latter increased with 194 places (Observation and Orientation Centre Sugny).

Policy and legislative developments

Protocol Agreement on Unaccompanied minors (non-asylum)

End of 2012, a new Protocol Agreement was developed by a working group consisting of representatives from the Cabinet of the State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Poverty, the Immigration Office, the Guardianship Office, Fedasil and the Police. The purpose of this new Protocol Agreement is to prevent illegally staying UAMs from living in the street where they could be the victims of exploitation or trafficking. The Protocol Agreement between the different bodies active with UAMs provides for a more systematic monitoring of UAMs (who are not asylum seekers). The Agreement stipulates concrete methods and a roadmap for identification, age determination and reception, this taking as little time as possible. It is also the intention to optimize the deployment of the expertise in identification and reception fields. The introduction of the Protocol Agreement is scheduled for early 2013. The Agreement will be evaluated after six months.

Training for guardians and reception centres on the new legislative provisions

As mentioned above, an Act regarding the granting of residence permits to UAMs was adopted in 2011. The Act amended the Aliens Act and provided greater legal certainty for UAMs who are not asylum seekers. The law, which became enforceable as from 8 December 2011, provides more guidance on the search for durable solutions, if possible through family reunification. The best interests of the child serve as guiding principle. During the year 2012 the Immigration Office and the Guardianship Office organized several training sessions on the new provisions of the Aliens Act (articles 61/14 – 61/25 Aliens Act) for guardians and reception centres staff.

Besides this, the Immigration Office also started this year with a series of training sessions in Fedasil reception centres in the framework of proposal 9 of the national action plan against human trafficking: “to

⁶⁸ It concerns UMAs who did not apply for asylum nor were considered as a victim of human trafficking. Before this special protection status for UMAs was only foreseen in a circular (2005)

improve the detection of UAMs who have been victim of human trafficking through training in reception centres.”

The return and reintegration of unaccompanied minors

Parliamentary debate on the return of unaccompanied minors

The competent Secretary of State for Migration and Asylum Policy, Social Integration and the Fight against Poverty, Ms. Maggie De Block, proposed in July 2012 to progress in the return of UAMs within the framework of the European Program ERPUM. Migration specialists from other political parties reacted skeptical and emphasized that the return of UAMs should only be made possible within the framework of voluntary return and that the assistance should be sufficiently guaranteed. Belgium decided **not to join the ERPUM program** but continued with other projects aiming at finding durable solutions for UAMs.

Pilot project for an enhanced reintegration approach as durable solution for Unaccompanied Minors and former Unaccompanied Minors identified in Belgium (country focus: Morocco)

With the support of the European Return Fund - National Actions and co financing of Fedasil, IOM launched in 2012 a new initiative to enhance reintegration assistance provided to UAMs identified in Belgium and willing to return to their country of origin in order to enhance durable solutions for this particularly vulnerable group.

Implemented in close cooperation with relevant Belgian actors (i.e. FEDASIL and the Guardianship Service), this project focuses on UAMs and former UAMs identified in Belgium as a vulnerable category in need of specific assistance. Morocco was selected as pilot country for the implementation of this initiative. The project aims at strengthening the reintegration approach for UAMs with the identification of durable solutions in their Country of Origin, in this case Morocco.

Building on previous AVRR experience, IOM Brussels manages this project with a specific focus on the Life Project Recommendations from the Council of Europe - Recommendation CM/Rec(2007)9 – to find durable solutions for these UAMs⁶⁹.

Age Assessment

EASO expert meeting on age assessment

As part of their mission to design durable solutions for unaccompanied foreign minors arriving or residing in Belgium, their training activities and their responsibilities regarding age assessment, staff members of the Guardianship Office participated in 2012 in EASO expert meetings on UAMs and age assessment.

6.2 Other Vulnerable Groups

Specific Context and trends

Since a few years the number of asylum applications with gender-related motives is increasing. In 2012 some 17% of the decisions taken by the CGRS could be considered as gender-related asylum claims. The main gender-related motives in asylum claims are the following: sexual orientation (mainly homosexuality), forced marriages, female genital mutilation and sexual violence.

Policy and legislative developments

National Action Plan on UN Resolution 1325

⁶⁹ More information on: <http://avrr.belgium.iom.int/en/other-projects/unaccompanied-minors.html>

During 2012 Belgium continued to implement and take action under the National Action Plan on the implementation of UN Security Council Resolution 1325 “**Women, Peace and Security**”. The current national action plan, which covers the period 2009-2012, was subject to a mid-term evaluation in December 2011. It is planned that the current national action plan shall be revised in early 2013. To this end, several meetings were held in the course of 2012 to discuss the policy and strategy for the new national action plan 1325.

Istanbul Convention

On 11 September 2012, on the occasion of a working visit to the Council of Europe in Strasbourg, the Deputy Prime Minister and Minister for Foreign Affairs and the Minister for Justice signed, on behalf of Belgium, the **Convention on preventing and combating violence against women and domestic violence** (Istanbul Convention)⁷⁰. This was an objective explicitly stated in the coalition agreement. Among other things, the Convention encourages the States of Europe to develop a global, concerted and integrated policy to effectively address these types of violence. In particular, it includes prevention and repression measures, but also aims at improving the support provided to victims. With this signature, the government also honours the commitment made in the national action plan on violence between partners and other types of domestic violence.

Belgium had already adopted most of the Convention at Belgian level. In 2012, for instance, a new law on temporary restraining orders in cases of domestic violence was adopted. Signing the above mentioned Convention was a next logical step.

Mental healthcare for asylum seekers and illegally staying persons

On 5 October 2012, the Flemish government issued a Decision⁷¹ aimed at harmonizing patient contributions to be paid in the twenty mental healthcare centres located in Flanders. According to Article 5 of this Decision, the **patient contribution exemption** explicitly applies to asylum seekers and illegally staying migrants. Thereby, the Flemish Government aims at guaranteeing their **access to mental healthcare** (centres). The Decision will come into effect on 1 May 2013 and it will be evaluated after two years, especially at financial affordability level.

⁷⁰ More on the Istanbul Convention on: http://www.coe.int/t/dghl/standardsetting/convention-violence/about_en.asp

⁷¹ The Decision is available in Dutch (and from there in French as well) on: http://www.ejustice.just.fgov.be/cgi/article_body.pl?numac=2012206310&caller=list&article_lang=N&row_id=1&numero=1&pub_date=2012-11-08&pdda=2012&language=nl&fr=f&choix1=EN&choix2=EN&pdfa=2012&text1=asielzoekers&pddj=05&fromtab=+mofxt+UNION+montxt&nl=n&pd dm=11&pdfj=08&sql=pd+between+date%272012-11-05%27+and+date%272012-11-08%27++and+%28+%28+htit+contains++%28+%27asielzoekers%27%29++++%29+or+%28+text+contains++%28+%27asielzoekers%27%29++++%29+%29&pdfm=11&rech=1&tri=pd+AS+RANK+&trier=publicatie

7. ACTIONS AGAINST TRAFFICKING IN HUMAN BEINGS

7.1 Specific context

Trafficking in human beings (THB) is an autonomous offence in the Belgian Criminal Code while smuggling is an offence in the Aliens Act. Belgium does not have a specific law on assistance, support and identification of victims of trafficking. However, articles 61/2 to 61/5 of the Aliens Law contain provisions for the issuing of residence permits to victims. Article 61/2 states also that presumed victims (identified by police or inspection services) have to be referred to specialised reception centres⁷².

Belgium implements a multidisciplinary approach whereby different actors are required to act within the framework of the fight against THB, including inter alia the police and inspection services, public prosecutors, reception centres, the Immigration Office and the Centre for Equal Opportunities and the Fight against Racism. In order to coordinate the different initiatives aimed at combating THB, an **Interdepartmental Cell for the Coordination of the fight against trafficking in human beings** was established as soon as 1995. The cell was revitalised through the Royal Decree of 16 May 2004 on the fight against human trafficking and people smuggling. The cell is chaired by the Ministry of Justice and comprises representatives from all instances concerned at the federal level who are actively involved in the fight against THB at political or operational level.

As the Interdepartmental Cell meets only two or three times a year, a **Bureau** composed of the main departments who take part in the fight against trafficking in human beings and people smuggling has also been set up. The Bureau meets once a month and is in charge of the day to day functioning of the Cell and the preparation and execution of the Cell's decisions. Among the Bureau's members are representatives of the Department for Crime Policy (chair), the Centre for Equal Opportunities and the Fight Against Racism (secretariat), the Immigration Office, the Central Unit for Human Trafficking of the Federal Police, the Department for Social Inspection at the Federal Public Department of Social Affairs, the General Directorate for the Control of Social Laws at the Federal Public Service for Employment, Labour and Social Dialogue and the Federal Public Department of Foreign Affairs.

Whereas the Bureau prepares and carries out the tasks which are entrusted to it by the Cell, the Cell is the main decision body and as such includes ministerial representatives (the ministers and vice-ministers of all the ministries concerned as well as a representative of the Prime Minister).

7.2 Significant policy, legislative and other national developments

On 22 June 2012, a new **Action Plan for the Fight against Human Trafficking 2012-2014**⁷³ was adopted by the Council of Ministers. The new plan is described as more pragmatic and in line with the coalition agreement. Prevention, protection of victims and prosecution and conviction of traffickers are the guidelines of the plan. Specific attention is also paid to people who are in a vulnerable position. With 19 concrete proposals, the emphasis is put on realistic measures that can be implemented within a short timeframe.⁷⁴ A more strict prosecution policy for accomplices and perpetrators who are guilty of trafficking, awareness campaigns and the recognition of the specialized centres for victims of THB (Payoke, PAGASA and Sürya) are just some new elements among the wide range of new initiatives. The Interdepartmental Cell and its Bureau will monitor the implementation of the new Action Plan based on deadlines set in the Action Plan.

At the end of March 2012, the Working Group on Human Trafficking in the Belgian Senate presented its report.⁷⁵ The Working Group, which was created in May 2011, was given the task of drawing up a **status**

⁷² There are three specialized centers: Pag-Asa (in Brussels), Sürya (in Liège, Walloon Region) and Payoke (in Antwerp, Flemish Region)

⁷³ The initial National Action Plan against Trafficking in Human Beings was approved at the Federal Council of Ministers of 11 July 2008.

⁷⁴ The Action Plan suggests 19 proposals implying legislative changes, focusing inter alia on the transposition of the Directive 2011/36/EU of 5 April 2011: http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_C_MH_FR_2012.pdf

⁷⁵ <http://www.senate.be/www/?Mlval=/publications/viewPubDoc&TID=83891552&LANG=fr>

report on the current situation regarding human trafficking in Belgium. To this end, it undertook an analysis of the various forms of human trafficking, including related issues such as illegal labour and child labour, insofar as connected to human trafficking. In addition, the legal provisions for the prosecution of human trafficking and the protection of victims of forced prostitution were also examined. Particular attention was paid to the material resources available to the police and prosecutors for combating human trafficking, as well as the role of social inspection services. The working group was also asked to examine in greater detail the international collaboration, which was not sufficiently covered in previous hearings. The report included a series of recommendations.

An important **judgment (Carestel/Kronos) on human trafficking and social fraud** was rendered in November 2012. It concerns the exploitation of Eastern European workers employed as sanitary cleaners at gas stations. Not only the subcontractor but also the motorway restaurant chain was condemned, despite defending they had no idea their cleaning workers were trafficked and abused⁷⁶.

The **Law of 11 February 2013**⁷⁷, adopted on 21 December 2012 and transposing the EU Sanctions Directive (2009/52/EC), introduced a ban on the employment of undocumented migrants and provided for better protection of the rights of illegally staying workers. According to the new law, certain organizations and illegal workers themselves can initiate legal procedures. The law also obliges employers to verify whether the employee has a valid residence permit. An employer who employs undocumented immigrants is subject to financial and criminal penalties. The new law can be considered as an important instrument for the fight against illegal migration, but also in the fight against human trafficking.

7.3 Relevant EMN products and information from other sources

A week before the European anti-trafficking day (18 October 2012), the Centre for Equal Opportunities and Opposition to Racism⁷⁸ issued its fifteenth annual report '**The Money That Matters**' on trafficking and smuggling of human beings.⁷⁹ These annual reports act as a tool to assess and give impetus to Belgian policy in the fight against trafficking in and smuggling of human beings. The Centre hereby fulfils its legal remit by taking on the de facto role of 'national rapporteur on trafficking in human beings'.

The Centre focused on the financial aspects related to 'Trafficking in and Smuggling of Human Beings'. The report comprises four Chapters: Follow the Money (about the importance of analysing financial flows), Go for the Money (about the importance of the seizure and confiscation of the proceeds of crime), the Other Side of the Coin (about the role of local authorities in the potential detection of these financial flows). Finally, Chapter 4 (Give the Money Back) is devoted to compensation for victims.

The Belgian Contact Point of the EMN also contributed to the **ad hoc query (AHQ) on trafficking in human beings** launched by the Finish EMN contact point. The compilation of answers to the AHQ provided an overview of the specific laws on assistance, support and identification of the victims of trafficking in human beings, the organisation of assistance and support to victims, the competent authorities to decide on the identification of victims and the type of residence permits that are granted in the different Member States.⁸⁰

⁷⁶ More on this case on:

in French: http://www.diversiteit.be/?action=artikel_detail&artikel=823

or in Dutch on: http://www.diversiteit.be/?action=artikel_detail&artikel=823&setLanguage=1

⁷⁷ The Law of 11 February 2013 was officially published on 22 February 2013.

⁷⁸ The Centre for Equal Opportunities and Opposition to Racism is a member of the Belgian National Contact Point of the EMN (together with the Immigration Office and the CGRS).

⁷⁹ Centre for Equal Opportunities and Opposition to Racism, Trafficking in and Smuggling of Human Beings: 15th Annual Report.

http://www.diversiteit.be/?action=publicatie_detail&id=153&thema=5&setLanguage=3.

⁸⁰ The compilation of answers is available on: <http://www.emnbelgium.be/publication/ad-hoc-query-trafficking-human-beings>

7.4 EU strategy: prevention and measures to identify, protect and assist victims of trafficking

Prevention

In some Belgian embassies, applicants for a work visa receive a **flyer** with information on work conditions in Belgium and contact details of the different services that can provide assistance if needed.

The Federal Public Department for Employment is currently updating its **brochure on domestic employment**. The brochure includes a chapter on THB and a list of useful contact points.

Identification

In September 2012, under the auspices of the ministerial departments concerned (Justice, Health, Migration), the Interdepartmental Cell for the Coordination of the fight against trafficking in human beings issued a **brochure** to raise awareness on the need to **identify victims of THB in Belgian hospitals**.

Specific training on the problem of **human trafficking of minors** was also given to staff in reception centres for asylum seekers.

A series of new initiatives are scheduled in 2013, such as the realization of a **brochure to inform guardians** of UAMs about the problem of THB.

Protection and assistance

As mentioned above, the National Action Plan against Trafficking in Human Beings requests to progress towards the **formal recognition of specialised centres for victims of human trafficking** (Payoke, PAGASA and Sürya)⁸¹. In 2012, the specialised centres continued to provide support to victims of human trafficking and smuggling. These independent NGO's provide for accommodation as well as legal administrative and psychosocial support to victims of human trafficking. They also facilitate access to external services such as medical, therapeutic, education, training, employment, housing and social welfare services. Assistance and support is tailor-made, based on the needs and expectations of each individual victim. By entering the Belgian "victim protection procedure", a victim has access to all the above-mentioned services. The "victim protection procedure" is linked to three conditions: (1) cooperation with law enforcement (i.e. statement or complaint); (2) no contact with the presumed perpetrator; (3) accept the assistance of a specialized centre throughout the procedure. If one of these conditions is not respected, the reference magistrate will put an end to the procedure.

Within the Immigration Office, the **THB Unit** within the **Bureau MINTEH** (minors/victims of trafficking in human trafficking), analyses and processes cases of victims. In 2012, the Bureau MINTEH reported a total of 157 new cases of victims, which is a slight increase compared to 2011 (149 new cases). The most important forms of exploitation for those having received a first residence permit in 2012 were **labour exploitation** (65 cases) and **sexual exploitation** (52 cases).

In 2012 the Bureau MINTEH took **848 decisions to issue or extend a residence permit to victims of THB**. This concerns both new victims from 2012 and victims from prior to 2012, who have been granted victim's status and regarding whom one or more decisions were taken. In 2012, 46 victims received a residence permit of indefinite duration, among which 35 for reasons inherent to the procedure of human trafficking and 11 for humanitarian reasons⁸².

⁸¹ Article 61/2 refers to "centers recognized by competent authorities and specialized in the reception of victims of such offenses". Only the explanatory memorandum explicitly notes that there are three experienced centers: Payoke, Pagasa, Sürya.

⁸² Figures provided in this paragraph include (1) figures for victims to whom a residence document was issued for the first time in 2012 and (2) information on the type and the number of residence permits issued by the Immigration Office in 2012. In fact, once a victim assumes the official status of victim, he/she is issued an initial document. Subsequently, as he/she has this status, he/she will receive other residence documents.

8. MIGRATION AND DEVELOPMENT POLICY

8.1 Specific context

Belgium doesn't have so far a general policy framework fostering coherence between the federal and federated entities' development policy and other policy areas (including migration, trade, agriculture, etc.). Several mechanisms for co-ordinating policy positions and operational approaches exist but an **explicit policy statement on policy coherence** for development as well as **institutional tools** to implement, monitor and report on the coherent use of all policy levers for development are **still lacking**. Developments are therefore oriented towards achieving better coherence and better results.

The Belgian international cooperation has long been focusing on the **African continent**, and in particular on the Great Lakes Region. It will more and more target the **poorest and most fragile States**. Projects referred to below take these aspects into consideration.

8.2 Developments within the national perspective

In 2012, several national developments, under the leadership of the Minister for Development Cooperation Paul Magnette, drew attention to policy coherence, inter alia promoting mainstreaming of migration in development policies:

1°) On 8 May 2012, the **5th Stakeholders Meeting** of the Belgian Development Cooperation was dedicated to "Policy Coherence for Development". On that occasion, the Minister underlined the interdependence of decisions taken in the field of development and other sectoral policies including migration. He pleaded for a "cooperative reflex" to promote coherence in favour of development.

2°) On 24 October 2012, the Minister submitted to the House of Representatives a **draft law** to modernize the Law of 25 May 1999 on International Development Cooperation. The Draft Law incorporates several innovative elements aimed at enhancing policy coherence for development, inter alia screening the impact of draft legislation on development⁸³.

It remains to be seen whether the policy **commitment** on policy coherence for development will be maintained, and what **level of priority** will be given to specific links between migration and development. In addition to this, several actions were undertaken in 2012 to further **involve Diaspora groups in development initiatives**, using different approaches:

1°) **Transfer of knowledge and other resources:** Belgium continued to support the MIDA - Migration for Development in Africa – Program (2008-2012), aimed at strengthening the capacities of public and private institutions in Burundi, the Democratic Republic of Congo and Rwanda by mobilizing the Diasporas of the Great Lakes Region settled in the member states of the European Union. The program that encourages the mobility of skills and resources of the Diaspora in response to local development needs, is financed by the Belgian government (budget of 3.822.000 EUR for 48 months), and managed by and implemented by the International Organization for Migration (IOM) Brussels and Kinshasa in close cooperation with the Ministries of Labour in Burundi and DRC and the Ministry of Foreign affairs in Rwanda. In 2012, the Belgian Development Cooperation funded the "External Evaluation of the MIDA - Great Lakes Programme Phase 4"⁸⁴.

2°) **Support to private investment initiatives:** In May 2012, Belgium signed a Memorandum of Understanding (MoU) and agreed to contribute funds to IOM for the implementation of the **MEDMA 2 Pilot**

⁸³ The draft Law was adopted on 19 March 2013 and published in the Official Gazette on 12 April 2013: http://diplomatie.belgium.be/fr/binaries/loi_cooperation_au_developpement_19_mars_2013_tcm313-221450.pdf

⁸⁴ The demand on funding with a view to implementing MIDA 5 is under scrutiny based on the conclusions of the above mentioned evaluation as well as current financial constraints.

Project: “Mobilization of Moroccans residing in Belgium for the Development of Morocco”. This EUR 1.2 million, two year pilot project seeks to **encourage Moroccans residing in Belgium to invest** in Northern Regions (Tanger, Tétouan), Oriental Regions (Oujda, Berkane, Nador, Jerrada) and the Al Hoceima Province of Morocco. It aims to provide potential investors (15 investment projects selected according to predetermined eligibility criteria) with up-to-date technical, financial and administrative information and insights into how best to access existing national mechanisms to facilitate their investment and contribute to the socio-economic development of some of the poorest regions of the country. The support in the field of migration and development is delegated to the IOM. The project is supported by a network of public-private transnational exchanges (municipalities/cities in Belgium, Belgian Development Cooperation, Solvay Business School Entrepreneurs, Ministry of Moroccans residing abroad/MCRME, Hassan II Foundation, Central Guarantee Fund/CCG, municipalities/cities in Morocco).

Belgium also provided financial support to the **Diaspora Unit** within the Chamber of Commerce, Industry and Agriculture – Belgium, Luxembourg, Africa, Caribbean, Pacific (**CBL-ACP**) with the aim to mobilize human and financial resources of the Diasporas to create micro, small and medium enterprises in ACS countries (more particularly partner countries in Central Africa). The Diaspora Unit assisted potential entrepreneurs from the Diaspora in Belgium in designing and implementing a business plan, preferably with significant social impact. Beneficiaries were also put in contact with key actors offering start-up funding to entrepreneurs, such as the **ATHENA facility** of the Belgian Investment Company for Developing Countries (**BIO**).

3°) **Capacity building:** The Belgian Development Cooperation continued to pay annual instalments to two programmes from migrant associations, both engaged in the second phase of their programmes for a period of three years (2010-2012) with a total funding of 1,250 million Euro each: (1) The “Benelux Afro-Centre” (BAC) programme strengthening the institutional and management capacity of **the National Council of NGOs in the sector of health (CNOS)** in the Democratic Republic of Congo (**RDC**), (2) the “Cap Santé” programme strengthening the organization and management capacity of the **Kabinda health district** management team in the Democratic Republic of Congo (**RDC**). Another 600.000 Euro subsidy will be granted to the first two-year programme (2012-2013) of the Federation of Associations of Migrants for the Development of Central Africa (FAMIDAC), an umbrella organization of 15 migrant associations, aiming at supporting partners in the South **working in non-formal vocational training** in Burundi, the Democratic Republic of Congo (DRC) and Rwanda.

8.3 Developments from an EU / global perspective

Belgium welcomed EU initiatives for and commitments to **improve policy coherence for development (PCD)**, inter alia based on the Commission Staff Working Document “Policy Coherence for Development Work programme 2010 – 2013⁸⁵” and Commission Communication “Increasing the impact of EU Development Policy: An Agenda for Change⁸⁶”. Other information sources, including the final report from the European Centre for Development Policy Management (ECDPM) entitled “Measuring Policy Coherence for Development” published in May 2012, proved useful in providing information on how to measure policy coherence. The Belgian, French, Irish and Norwegian EMN NCPs submitted in 2012 a **study proposal for 2013 on “Migration and Development: Mapping Instruments, Actors, Funds & Effectives practices to foster stronger policy coherence in the Member States”**. In this context, networking with other EMN NCPs, national stakeholders and international stakeholders including ECDPM and ICMPD⁸⁷ was particularly

⁸⁵ More information on this Commission Staff working document dated from 21 April 2010 on:

http://ec.europa.eu/development/icenter/repository/SEC_2010_0421_COM_2010_0159_EN.PDF

⁸⁶ More information on this Commission Communication dated from 13 October 2011 on:

http://ec.europa.eu/europeaid/infopoint/publications/europeaid/documents/257a_en.pdf

⁸⁷ ICMPD and ECDPM conducted a study: “Mapping Migration and Development in Selected European Countries” with a view to identifying common ground for the establishment of strategic alliances at the European level with relevant development actors/actors in order to better voice development concerns in the global, regional and national M&D debates. More information on this study are to be obtained by contacting the ECDPM Brussels Office.

intense in 2012. The Belgian NCP participated inter alia in the NO EMN NCP conference in Oslo in June 2012⁸⁸, which provided useful food for thought on this topic.

Belgium also followed up and contributed to the main **external migration dialogue processes** implemented in the framework of the EU Global Approach to Migration and Mobility (GAMM). In this regard, the Ambassador for Migration and Asylum actively participated in 2012 in the negotiations on the **draft Political Declaration of the EU-Morocco Mobility Partnership**. Emphasis was placed, among other aspects, on strengthening cooperation on migration and development and enhancing the potential of migration and its beneficial effects on the development of Morocco and European countries. Several projects co-financed and/or undertaken by Belgium, including the MEDMA Project mentioned above (see 8.2), are among the many new projects implemented by the EU and Member States in this framework.

Considering Belgium's interest in the two above mentioned points, the drafting of the EMN Inform on "Maximizing the Development Impact of Migration and Mobility in 2011" proved useful in putting national and EU developments in the matter in perspective.

Furthermore Belgium actively contributed to the 6th meeting of the Global Forum on Migration and Development (GFMD) which took place in Mauritius on 19-22 November 2012. Besides its financial contribution (50.000 Euro), Belgium assumed the role of rapporteur in the session dedicated to "**Protecting Migrant Domestic Workers - Enhancing their Development Potential**". The specific Belgian expertise was shared with respect to migrant domestic workers and employers within the diplomatic community. Furthermore the lessons learnt on Migration & Development mainstreaming processes as summarized in the rapporteur's report provide Belgium with support to develop mainstreaming tools and enhance coherence and synergies⁸⁹.

Finally it is worth noting that Belgium has been elected on 27 November 2012 at the position of **Rapporteur of the Bureau of the Council of the International Organization for Migration (IOM)**⁹⁰. Belgium was also requested to lead the Working Group on Budget Reform (WGBR). Taking up these challenges, Belgium makes a four-year commitment. As in the practice and subject to formal election, Belgium will assume the Council Presidency during one year as from November 2015.

⁸⁸ On 18 June 2012 the NO EMN NCP organized in Oslo a conference on "Migration and Development" followed on 19 June 2012 by a Cluster meeting focusing on the "Practical Side of the Migration – Development nexus".

⁸⁹ More information on the outcomes of the 6th meeting of the GFMD in the report of the proceedings on : https://www.gfmd.org/documents/mauritius/gfmd_mauritius12_report_of_the_proceedings.pdf

⁹⁰ The office of Rapporteur will be assumed by the Permanent Representative of Belgium in Geneva.

9. IMPLEMENTATION OF EU LEGISLATION in 2012

Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment

- **Transposition required by:** 19 June 2011
- **Transposition into Belgian law:** [Law of 15 May 2012](#) and Royal Decrees of [15 August 2012](#), [17 July 2012](#), and [3 August 2012](#).

The new bills (Royal Decrees of 17 July 2012 and 3 August 2012, published in the Belgian Official Gazette on 31 August 2012), implementing the Blue Card Directive, do not replace the existing legal rules for high skilled workers (work permit B) but will endorse them. The new legal rules implement a dual administrative system respecting the different competences of the regional entities and the federal authorities: the different regional entities confer a temporary labour permit/employment authorization to the contracting employer before the Immigration Office issues a residence permit ("Card H") for the employee and his family. The regional labour authorities have to decide upon 30 days after receipt of the application (if the application file is complete).

In comparison with the work permit B, the Blue Card shall grant the status of long term residence after 5 years legal stay in the EU and 2 years in Belgium. The requirements for issuing a Blue Card are the following: (1) diploma of higher education, (2) minimum annual income of 49.995 EUR gross (2012 - in comparison with work permit B: 37.721 EUR) and (3) labour contract of at least 1 year. The minimum annual income will be adapted annually. The application can be introduced abroad or in Belgium.

The Blue Card will be issued for 13 months, renewable for another 13 months and after that for 3 years. In the case the employee changes his/her employment, the permit has to be renewed. As the (other) existing labour migration scheme for highly-skilled employees was already quite flexible (fast procedures; relatively low salary level...), it remains to be seen what the effect of the Blue Card in Belgium will be.

Directive 2009/52/ EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

- **Transposition required by:** 20 July 2011
- **Transposition into Belgian Law :** [Law of 11 February 2013](#) approved on 21 December 2012

The Law of 11 February 2013 introduces a ban on the employment of undocumented migrants and the rights of illegally staying workers are better protected. The new law provides that certain organizations and illegal workers themselves can initiate legal procedures. The law also imposes certain obligations on employers who must verify whether the employee has a valid residence permit. An employer who employs undocumented immigrants is subject to financial and criminal penalties.

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

- **Transposition required by:** 1 December 2007 (In respect of article 15: 1 December 2008)
- **Transposition into Belgian Law :** Fully transposed in September 2010

Since 1 June 2012, the CGRS is entitled to refuse to consider applications from asylum seekers coming from countries considered as safe when it is not clear from their statements that they have a well-founded fear of persecution or where there are no serious reasons to believe that they face a real risk of serious harm (New section 57/6/1 of the Aliens Law from 15 December 1980, introduced by [the Law of 19 January 2012, modifying the Aliens Law](#)).

The law also provides that the CGRS must take a decision within 15 working days and that such decisions are only subject to an action for annulment (no automatic suspensive effect) against the Council for Aliens Law Litigation.

A country of origin is considered as safe when there is generally no persecution according to the Geneva Convention and there is no real risk of serious harm upon return to the country of origin. The criteria used to identify a country as safe are:

- The general political circumstances in the country of origin
- The legal status
- The application of the laws (effective law protection)

This specific procedure currently applies to asylum seekers from: Serbia, Kosovo, Albania, Bosnia, Montenegro, Macedonia and India ([Royal Decree from 26 May 2012](#)). The list must be reviewed annually and can be adjusted.

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

- **Transposition required by:** 24 December 2010 and 24 December 2011 (Article 13 (4))
- **Transposition into Belgian Law:** [Law of 19 January 2012](#) and [Royal Decree of 19 June 2012](#) following the request for information (January 2011) and the formal request - a reasoned opinion- (September 2012) sent by the European Commission.

According to the new Law, return decisions will in principle provide for a period of 30 days (instead of 5 days) for voluntary departure. In some cases a shorter period may be determined granted, or in exceptional cases this period can be limited to less than 7 days or there will be none at all. This is the case if there is e.g. a risk of absconding, if the person concerned did not respect a preventive measure or if there is a risk to public or national security. Upon request and when necessary for the preparation of the voluntary departure, the period can be extended.

Return decisions shall be accompanied by an entry ban of 3 years if no period for voluntary departure has been granted, or if the obligation to return has not been complied with. In cases of fraud, the length of the entry ban can be extended up to 5 years. There are possibilities to suspend or withdraw the entry ban.

The law introduced the **concept of “return track”** for asylum seekers. This is a framework for individual counseling on return, offered by the Federal Agency for the Reception of Asylum Seekers (Fedasil), whereby priority is given to voluntary return.

New instructions implement this return track in the reception centers. Starting from the first of August 2012, all asylum seekers get return accompaniment in the reception facilities. From the first of September onwards, failed asylum seekers are transferred to return facilities in open reception centers.

The return track starts with informal counseling, followed by a more formal phase. In an informal phase, asylum seekers are informed on the possibilities of voluntary return. This is done from the moment they file their asylum request.

The next formal phase consists of two parts. (1) In the course of five days following a negative first instance decision by the CGRS on the asylum request, asylum seekers in the reception facilities are formally offered return accompaniment (during the period to introduce appeal or the period foreseen by the order to leave the country). An individual project of return must be elaborated and signed by the person involved. The Immigration Office must be informed.

(2) The moment a negative appeal decision is taken by the Aliens Litigation Council, the person is transferred to special (open) return places foreseen in certain federal reception centers (still under the reception law), where the return accompaniment continues. During the period of validity of the order to leave the country (in principle 30 days), the authorities will not carry out a forced return and all effort will be concentrated on voluntary return. When the period foreseen by the order to leave the country elapses and the return project is evaluated in a negative way (no willingness for voluntary return), the Immigration Office can start a forced return (including administrative detention).

ANNEXES:

A1. Methodology

In accordance with Article 9(1) of Council Decision 2008/381/EC establishing the EMN, each EMN National Contact Point is required to provide every year a report describing the migration and asylum situation in the Member State, which shall include policy developments and statistical data.

This report is the 9th Policy Report elaborated by the Belgian Contact Point of the EMN. It presents the most significant policy developments in the field of migration and asylum in Belgium in the period **1 January 2012 to 31 December 2012**. More particularly, the Belgian Annual Report 2012 has three main aims:

- 1) To identify and facilitate information exchange on significant legal, political and administrative developments in 2012 in migration and asylum in Belgium
- 2) To document the state of implementation of EU legislation and the impact of European policy developments at the national level
- 3) To comment on relevant public debates in the field of asylum and migration

This report was produced according to **common study specifications**⁹¹ for the production of the EMN Annual Policy Report 2012. The common specifications aim at facilitating comparability between the findings from all Member States. They are based on the assessment of previous reports and in particular on the lessons learned from drafting Synthesis Reports. Like for the Annual Policy Reports 2010 and 2011, they have been adapted to contribute to the factual reporting of the tracking method of the Stockholm Programme and its accompanying Action Plan. To this aim, the Belgian Contact Point of the EMN contributed in December 2012 an **Annex** to the herewith presented Policy Report 2012.

In order to provide an objective overview of developments in 2012, the Belgian Contact Point of the EMN used a **wide range of sources**⁹², including:

- draft legislation subject to political agreement
- published and adopted national and European legislation
- government statements and reports
- official statistics
- pending cases and rulings (Constitutional Court, etc.)
- publications (EMN, ECDPM, ICMPD, OECD, etc.)
- summaries of proceedings (EMN conferences, GFMD, etc.)
- press releases (press centers, newspapers, etc.)
- newsletters (Kruispunt Migratie, etc.) and journals (AlterEchos, Labiso, etc.)
- other information products (information kits, awareness campaigns etc.)
- other information tools (web sites of key stakeholders in this field)

Key partners, whose input was particularly appreciated in the drafting of this report, were also contacted inter alia in the following institutions:

- Immigration Office (FPS Interior)
- Office of the Commissioner General for Refugees and Stateless Persons (FPS Interior)
- Federal Agency for the Reception of Asylum Seekers
- Centre for Equal Opportunities and the Fight against Racism
- Development Cooperation Department (FPS Foreign Affairs)
- C5 Unit-Migration, Asylum & the Fight against Trafficking in Human Beings (FPS Foreign Affairs)

The Belgian Annual Report 2012, together with national contributions from other EMN National Contact Points, will serve to develop **theme-based EMN Informs**⁹³.

⁹¹ EMN Specifications for Annual Policy Report 2012 are presented in MIGRAPOL Doc 274 dated from 22 October 2012.

⁹² More details on sources in the bibliography (annex 3).

⁹³ EMN Informs will be made available on www.emnbelgium.be

A2. Terms and Definitions

Significant development

For the purpose of this report, a significant development is defined as an event often involving one or more of the following:

- legislative developments
- institutional developments
- major debates in parliament
- government statements
- media and civil society debates
- academic research

Definitions

Terms included in this report are to be understood on the basis of:

- national legislation and definitions
- EMN Glossary of Asylum and Migration Terms

List of abbreviations

AHQ	Ad Hoc Query
AVRR	Assisted Voluntary Return and Reintegration
BOG	Belgian Official Gazette
CALL	Council for Alien Law Litigation
CEAS	Common European Asylum System
CEOOR	Centre for Equal Opportunities and Opposition to Racism
CGVS	Office of the Commissioner General for Refugees and Stateless Persons
CPEP	Common Planning and Evaluation Project
DG SIE	Directorate-General Statistics and Economic Information
EASO	European Asylum Support Office
EAC	European Asylum Curriculum
EC	European Commission
ECDPM	European Centre for Development Policy Management
ECHR	European Convention on Human Rights
EEA	European Economic Area
EIF	European Integration Fund
EMN	European Migration Network
ERI	European Reintegration Instrument
ESF	European Social Fund
EURINT	European Initiative on Integrated Return Management
Fedasil	Federal Agency for the Reception of Asylum Seekers
FPS	Federal Public Service
FREEMO	Free Movement (expert meeting, Council of the European Union)
FYRM	Former Yugoslav Republic of Macedonia
GAMM	Global Approach on Migration and Mobility
GFMD	Global Forum on Migration and Development
HLWG	High Level Working Group, Council of the European Union
ICPMD	International Centre for Migration Policy Development
IO	Immigration Office
IOM	International Organization for Migration
JO	Joint Operation

MIDA	Migration for Development in Africa
MoU	Memorandum of Understanding
MS	Member State
NGO	Non-Governmental Organization
PCD	Policy Coherence for Development
OOC	Observation and Orientation Centre
SCHEVAL	Schengen Evaluation
SEFOR	Sensitization, Follow up and Return
SIS	Schengen Information System
TCN	Third-country national
THB	Trafficking in Human Beings
UKBF	United Kingdom Border Force
UAM	Unaccompanied minor
VIS	Visa Information System

Specific terms

Aliens Act	Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals
Closed centre	Detention centre for irregular migrants, pending their forced return (administrative detention).
Fedasil	Federal Agency for the Reception of Asylum-Seekers
Housing unit	Private housing unit where irregular families with children are accommodated pending their (forced) return. Alternative to detention in closed centres where a collective regime prevails.
Inburgering	Flemish term for the first steps of the (civic) integration process of newcomers.
Open centre	Reception centre for asylum seekers.

Annex 2: National Statistics

	2012	2011	2010	2009
First and multiple asylum applications persons and (cases)	28.105 (21.461)	32.730 (25.479)	26.560 (19.941)	22.955 (17.186)
First instance positive decisions (refugees – cases))	3.038	2.857	2.107	1.889
First instance positive decisions (subsidiary protection – cases)	1.381	1.094	711	418
Unaccompanied minor asylum applicants	977	1.649	860	711
Issued long-term visa to TCN's on following motivations:				
Labour (contractor)	3.107	3.341	3.026	2.633
Family reasons	11.143	15.258	12.675	13.859
students	6.886	6.694	6.776	6.517
Total unemployment rate	7,8			
Unemployment rate of TCN	31,2			
Apprehensions of irregular staying migrants**	20.746	18.981	15.216	18.223
Forced removals *	3.847	3.708	3.568	3.791
Assisted Voluntary returns** (IOM + Immigration Office)	5.656	3.870	3.088	2.668

*: EU-citizens, Dublin and bilateral take-overs included

** : EU-citizens included

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