

Country Report: Belgium



2017
Update

Acknowledgements & Methodology

This report was written by Vluchtelingenwerk Vlaanderen (Flemish Refugee Action), and was edited by ECRE.

This report draws on statistical information obtained from the competent administrative agencies, information obtained through the monthly contact meetings between the asylum authorities and civil society, analysis of legislation, practices and case law. Vluchtelingenwerk Vlaanderen also gathers crucial information from its own activities. Vluchtelingenwerk has a legal helpdesk through which we receive numerous questions on the rights and position of asylum seekers, refugees and persons benefitting from subsidiary protection. We also operate 'Startpunt', a meeting place near the asylum authorities where we welcome newly arrived asylum seekers with soup and tea every day. Furthermore, we provide them with crucial information about the asylum procedure and their rights in Belgium. This allows to swiftly monitor any changes in the profiles of asylum seekers and in the registration practice. Vluchtelingenwerk Vlaanderen also monitors the situation of asylum seekers in detention and coordinates a platform of NGOs visiting the detention centres in Belgium.

Vluchtelingenwerk Vlaanderen wishes to thank all those who provided information that was essential for the compilation of this report. Particular thanks for their contribution to this update are owed to: Fedasil; the Aliens Office; the Office of the Commissioner General for Refugees and Stateless Persons (CGRS); the Council of Alien Law Litigation (CALL); the Guardianship Service of the Ministry of Justice; Vlaamse Vereniging voor Steden en Gemeentes (VVSG); Myria (Federal Migration Centre); and ECRE.

The information in this report is up-to-date as of 31 December 2017, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

127-bis Repatriation Centre	Detention centre near Brussels National Airport
Caricole	Detention centre near Brussels National Airport
Not taking into consideration	Negative decision of the CGRS declaring an application inadmissible
Pro Deo	Second line free legal assistance
Refusal of entry	Negative decision of the Aliens Office declaring that Belgium is not responsible for an application under the Dublin Regulation
Social integration	Financial assistance under social welfare intégration sociale maatschappelijke integratie
Transit group	Consortium of NGOs, comprising CBAR-BCHV, JRS, Caritas, Ciré and Vluchtelingenwerk, coordinating immigration detention monitoring visits
CALL	Council of Alien Law Litigation Conseil du contentieux des étrangers Raad voor Vreemdelingenbetwistingen
Carda	Centre d'accueil rapproché pour demandeurs d'asile en souffrance mentale
CBAR-BCHV	Belgian Refugee Council Comité belge d'aide aux réfugiés Belgisch comite voor hulp aan vluchtelingen
Cedoca	Research service of the CGRS
CGRS	Commissioner-General for Refugees and Stateless Persons Commissaire général aux réfugiés et aux apatrides Commissariaat-generaal voor de vluchtelingen en de staatlozen
CIB	Centre for Illegals of Bruges Centre pour les illégaux de Bruges Centrum voor illegallen van Brugge
CIM	Centre for Illegals of Merksplas Centre pour les illégaux de Merksplas Centrum voor illegallen van Merksplas
CIRE	Coordination et initiatives pour réfugiés et étrangers
CIV	Centre for Illegals of Vottem Centre pour les illégaux de Vottem Centrum voor illegallen van Vottem
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EMN	European Migration Network
Evibel	Registration database of the Aliens Office
Fedasil	Federal Agency for the Reception of Asylum Seekers
FGM	Female genital mutilation
INAD	Centre for Inadmissible Passengers
JRS	Jesuit Refugee Service
LGBTI	Lesbian, gay, bisexual, transsexual and intersex
LRI	Local reception initiative initiative locale d'accueil (ILA) lokaal opvang initiatief (LOI)

OOC	Observation and Orientation Centre for unaccompanied children
PCSW	Public Centre for Social Welfare Centre public d'action sociale (CPAS) Openbaar centrum voor maatschappelijk welzijn (OCMW)
RIZIV / INAMI	National Institute for Health and Disability Insurance Institut national d'assurance maladie-invalidité Rijksinstituut voor ziekte- en invaliditeitsverzekering
VVSG	Association of Flemish Cities and Towns Vlaamse Vereniging voor Steden en Gemeentes

Statistics

Overview of statistical practice

The Commissioner-General for Refugees and Stateless persons (CGRS) publishes monthly statistical reports, providing information on asylum applicants and first instance decisions.¹ Monthly reports are also published by the Aliens Office.² In addition, statistical information may be found in the reports of the Contact Group on International Protection, bringing together national authorities, UNHCR and civil society organisations.³

Applications and granting of protection status at first instance: 2017

	Applicants in 2017	Pending at end 2017	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	19,688	9,360	11,031	2,929	12,044	42.4%	11.3%	46.3%

Breakdown by main countries of origin

Syria	3,981	995	3,321	771	284	75.9%	17.6%	6.5%
Afghanistan	1,582	2,596	1,308	1,718	2,211	25%	32.8%	42.2%
Iraq	1,357	626	920	178	1,742	37.1%	6.3%	56.6%
Guinea	901	272	461	2	418	52.3%	0.2%	47.5%
Albania	882	150	53	0	829	6%	0%	94%
Palestine	847	211	231	0	33	87.5%	0%	12.5%
DRC	791	253	277	7	510	34.9%	0.9%	64.2%
Russia	703	399	211	1	450	31.9%	0.1%	68%
Eritrea	699	208	449	0	64	87.5%	0%	12.5%
Turkey	535	521	569	0	302	65.3%	0%	34.7%

Source: CGRS. "Rejection" includes inadmissibility decisions.

¹ CGRS, *Figures*, available at: <http://www.cgra.be/en/figures>.

² Aliens Office, *Statistics – Asylum*, available at: <http://bit.ly/1SDO67v>.

³ Myria, *Contact group international protection*, available at: <http://bit.ly/2i1LR47>.

Gender/age breakdown of the total number of applicants: 2017

	Number	Percentage
Total number of applicants	19,688	-
Men	12,529	63.6%
Women	7,159	36.4%
Children	4,745	24.2%
Unaccompanied children	769	3.9%

Source: CGRS; Aliens Office

Comparison between first instance and appeal decision rates: 2017

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	26,004	-	4,044	-
Positive decisions	13,960	53.7%	211	5.2%
<i>Refugee status</i>	11,031	42.4%	200	4.9%
<i>Subsidiary protection</i>	2,929	11.3%	11	0.3%
Negative decisions	12,044	46.3%	3,403	84.1%
Annulments	N/A	N/A	430	10.7%

Source: CGRS; CALL. "Rejection" includes inadmissibility decisions.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (FR/NL)	Abbreviation	Web Link
<p>Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens</p> <p><i>Amended by:</i> Law of 21 November 2017 <i>Amended by:</i> Law of 17 December 2017</p>	<p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</p> <p>Loi du 21 novembre 2017 Wet van 21 november 2017 Loi du 17 décembre 2017 Wet van 17 december 2017</p>	Aliens Act	<p>http://bit.ly/1Ig1MCC (FR) http://bit.ly/1GmqyU0 (NL)</p> <p>http://bit.ly/2FEqrZU (FR) http://bit.ly/1GmsxXT (FR)</p>
<p>Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens</p> <p><i>Amended by:</i> Law of 21 November 2017</p>	<p>Loi de 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers Wet van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen</p> <p>Loi du 21 novembre 2017 Wet van 21 november 2017</p>	Reception Act	<p>http://bit.ly/1MA7uD0 (FR) http://bit.ly/1MKITbo (NL)</p> <p>http://bit.ly/2FEqrZU (FR)</p>
<p>Law of 30 April 1999 concerning employment of foreign workers</p>	<p>Loi de 30 avril 1999 relative à l'occupation des travailleurs étrangers Wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers</p>	Law on Foreign Workers	<p>http://bit.ly/1MHzmTK (FR) http://bit.ly/1FQUuRV (NL)</p>

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (FR/NL)	Abbreviation	Web Link
<p>Royal Decree of 8 October 1981 regarding the entry on the territory, residence, settlement and removal of aliens</p>	<p>Arrêté royal du 8 octobre 1981 concernant l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers Koninklijk Besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en verwijdering van vreemdelingen</p>	Aliens Decree	http://bit.ly/1IkJsLv (FR)
<p>Royal Decree of 11 July 2003 determining certain elements of the procedure to be followed by the</p>	<p>Arrêté royal du 11 juillet 2003 fixant certains éléments de la procédure à suivre par le service de l'Office des étrangers chargé</p>	Royal Decree on Aliens	http://bit.ly/1KOyLBU (NL)

Aliens Office charged with the examination of asylum applications on the basis of the Law of 15 December 1980	de l'examen des demandes d'asile sur la base de la loi du 15 décembre 1980 Koninklijk besluit van 11 juli 2003 houdende vaststelling van bepaalde elementen van de procedure die dienen gevolgd te worden door de dienst van de Dienst Vreemdelingenzaken die belast is met het onderzoek van de asielaanvragen op basis van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen	Office Asylum Procedure	
Royal Decree of 11 July 2003 determining the procedure and functioning of the Office of the Commissioner General for Refugees and Stateless persons	Arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux Réfugiés et aux Apatrides ainsi que son fonctionnement Koninklijk besluit van 11 juli 2003 tot regeling van de werking van en de rechtspleging voor het Commissariaat-generaal voor de Vluchtelingen en de Staatlozen	Royal Decree on CGRS Procedure	http://bit.ly/1FYKWaB (FR) http://bit.ly/1Jo26lJ (NL)
Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation	Arrêté royal du 21 décembre 2006 fixant la procédure devant le Conseil du Contentieux des Etrangers Koninklijk besluit van 21 december 2006 houdende de rechtspleging voor de Raad voor Vreemdelingenbetwistingen	Royal Decree on CALL Procedure	http://bit.ly/1VtXdgc (FR) http://bit.ly/1VtXhJ3 (NL)
Royal Decree of 9 June 1999 implementing the law of 30 April 1999 regarding the employment of foreign workers <i>Amended by:</i> Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers	Arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers Koninklijk besluit van 9 juni 1999 houdende de uitvoering van de wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers Arrêté royal du 29 octobre 2015 modifiant l'article 17 de l'arrêté royal du 9 juin 1999	Royal Decree on Foreign Workers	http://bit.ly/1Q9rEXZ (NL) http://bit.ly/1MYS23l (FR)
Royal Decree of 12 January 2011 on the granting of material assistance to asylum seekers receiving income from employment related activity	Arrêté royal de 12 janvier 2011 relatif à l'octroi de l'aide matérielle aux demandeurs d'asile bénéficiant de revenus professionnels liés à une activité de travailleur salarié Koninklijk besluit van 12 januari 2011 betreffende de toekenning van materiële hulp aan asielzoekers die beroepsinkomsten hebben uit een activiteit als werknemer	Royal Decree on Material Assistance to Asylum Seekers	http://bit.ly/1IAukcQ (FR) http://bit.ly/1JB9PwY (NL)
Royal Decree of 9 April 2007 determining the medical aid and care that is not assured to the beneficiary of the reception because it is manifestly	Arrêté royal du 9 avril 2007 déterminant l'aide et les soins médicaux manifestement non nécessaires qui ne sont pas assurés au	Royal Decree on Medical Assistance	http://bit.ly/1KoGIMv (FR) http://bit.ly/1Tarbni (NL)

not indispensable, and determining the medical aid and care that are part of daily life and shall be guaranteed to the beneficiary of the reception conditions	bénéficiaire de l'accueil et l'aide et les soins médicaux relevant de la vie quotidienne qui sont assurés au bénéficiaire de l'accueil Koninklijk besluit van 9 april 2007 tot bepaling van de medische hulp en de medische zorgen die niet verzekerd worden aan de begunstigde van de opvang omdat zij manifest niet noodzakelijk blijken te zijn en tot bepaling van de medische hulp en de medische zorgen die tot het dagelijks leven behoren en verzekerd worden aan de begunstigde van de opvang /		
Law of 26 May 2002 on the right to social integration	Loi de 26 mai 2002 concernant le droit à l'intégration sociale Wet van 26 mei 2002 betreffende het recht op maatschappelijke integratie	Law on Social Integration	http://bit.ly/1GwdpYC (FR) http://bit.ly/1GnKfsF (NL)
Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary	Arrêté royal du 25 avril 2007 déterminant les modalités de l'évaluation de la situation individuelle du bénéficiaire de l'accueil Koninklijk besluit van 25 april 2007 tot bepaling van de nadere regels van de evaluatie van de individuele situatie van de begunstigde van de opvang	Royal Decree on the Assessment of Reception Needs	http://bit.ly/1MHwUMS (FR) http://bit.ly/1TatQ0r (NL)
Royal Decree of 2 August 2002 determining the regime and regulations to be applied in the places on the Belgian territory managed by the Aliens Office where an alien is detained, placed at the disposal of the government or withheld, in application of article 74/8 §1 of the Aliens Act <i>Amended by:</i> Royal Decree of 7 October 2014 amending the Royal Decree of 2 August 2002	Arrêté royal de 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'OE, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, § 1er, de la loi du 15 décembre 1980 Koninklijk besluit van 2 augustus 2002 houdende vaststelling van het regime en de werkingsmaatregelen, toepasbaar op de plaatsen gelegen op het Belgisch grondgebied, beheerd door de DVZ, waar een vreemdeling wordt opgesloten, ter beschikking gesteld van de regering of vastgehouden, overeenkomstig de bepalingen vermeld in artikel 74/8, § 1 van de Vreemdingenwet Arrêté royal du 7 octobre 2014 modifiant l'arrêté royal de 2 août 2002 Koninklijk besluit van 7 oktober 2014 tot wijziging van het koninklijk besluit van 2 augustus 2002	Royal Decree on Closed Centres	http://bit.ly/1Fx8sZ0 (NL) http://bit.ly/1QSveUL (FR) http://bit.ly/1YkhrPe (NL)
Royal Decree of 9 April 2007 determining the regime and functioning rules of the Centres for Observation and Orientation of Unaccompanied Minors	Arrêté royal du 9 avril 2007 déterminant le régime et les règles de fonctionnement applicables aux centres d'observation et d'orientation pour les mineurs étrangers non accompagnés	Royal Decree on OOC	http://bit.ly/1QLxABu (FR) http://bit.ly/1S40bo8 (NL)

	Koninklijk besluit van 9 april 2007 tot vastlegging van het stelsel en de werkingsregels voor de centra voor observatie en oriëntatie voor niet-begeleide minderjarige vreemdelingen		
Royal Decree of 24 June 2013 on the rules for the training on the use of coercion for security personnel	<p>Arrêté royal déterminant les règles relatives à la formation dispensée dans le cadre du recours à la contrainte, prise en exécution de l'article 74/8, § 6, alinéa 3, de la loi du 15 décembre 1980</p> <p>Koninklijk besluit tot bepaling van de regels voor de opleiding in het kader van het gebruik van dwang, genomen in uitvoering van artikel 74/8, § 6, derde lid, van de wet van 15 december 1980</p>	Royal Decree on the Use of Coercion for Security Personnel	http://bit.ly/1luWwLu (FR) http://bit.ly/1cLmdvV (NL)
Royal Decree of 18 December 2003 establishing the conditions for second line legal assistance and legal aid fully or partially free of charge	<p>Arrêté royal de 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire</p> <p>Koninklijk besluit van 18 december 2003 tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand</p>	Royal Decree on Legal Aid	http://bit.ly/1EZmLoC (FR) http://bit.ly/1Ihe2CS (NL)
Ministerial Decree of 5 June 2008 establishing the list of points for tasks carried out by lawyers charged with providing second line legal assistance fully or partially free of charge	<p>Arrêté ministériel de 5 juin 2008 fixant la liste des points pour les prestations effectuées par les avocats chargés de l'aide juridique de deuxième ligne partiellement ou complètement gratuite</p> <p>Ministerieel besluit van 5 juni 2008 tot vaststelling van de lijst met punten voor prestaties verricht door advocaten belast met gedeeltelijk of volledig kosteloze juridische tweedelijnsbijstand</p>	Ministerial Decree on Second Line Assistance	http://bit.ly/1AO5l3i (FR) http://bit.ly/1T0jAYm (NL)
Royal Decree of 17 December 2017 establishing the list of safe countries of origin	<p>Arrêté royal portant exécution de l'article 57/6/1, alinéa 4, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, établissant la liste des pays d'origine sûrs</p> <p>Koninklijk besluit tot uitvoering van het artikel 57/6/1, vierde lid, van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, houdende de vastlegging van de lijst van veilige landen van herkomst</p>	Royal Decree on Safe Countries of Origin	http://bit.ly/2FMdVU3 (FR) http://bit.ly/1GmsxXT (NL)

Overview of the main changes since the previous report update

The report was previously updated in **February 2017**.

Asylum reform

In 2017, two new laws were adopted amending the Aliens Act and the Reception Act with the aim of transposing the recast Reception Conditions and Asylum Procedures Directives, as well as the Return Directive, the recast Qualification Directive and the Dublin III Regulation to a lesser extent. The law indicates a lowering of the Belgian standards, often to the minimum set out in the EU Directives. The 393-page bill has brought about a wide array of modifications to the Belgian asylum procedure. The law entered into force on 22 March 2018. The necessary Royal Decrees, such as the one on alternatives to detention, have not yet been adopted.

This report is updated following these legislative changes. Given that they have just entered into force, there is no or limited information on the implementation of the new law.

Asylum procedure

- ❖ **Inadmissibility:** The reform transposes the inadmissibility grounds set out in the recast Asylum Procedures Directive. These introduce new concepts such as “safe third country” as inadmissibility grounds in Belgium. The Commissioner-General for Refugees and Stateless Persons (CGRS) shall decide on the admissibility of applications within 15 working days, or within 10 working days when it concerns subsequent applications, or within 2 days when it concerns subsequent applications from detention.
- ❖ **Consideration of sources:** The asylum procedure during the first instance procedure at the CGRS is also subject to various changes. Among other elements, the CGRS will be allowed to take a decision on an application based on undisclosed sources. The law furthermore disregards the benefit of the doubt principle enshrined in Article 4(5) of the recast Qualification Directive by stating that the lack of proof regarding identity or nationality shall be taken into account as an indication of the credibility of the asylum application. The law and its preparatory works emphasise the applicant’s obligation to cooperate, deeming for example failure to present identity documents as a refusal to cooperate and as grounds for a negative indication.
- ❖ **Subsequent applications:** In some cases the law permits the removal of an asylum seeker before a court has treated his or her appeal. This is possible for asylum seekers that have submitted a subsequent application when the CGRS has concluded that there is no risk of *refoulement* and (a) either the subsequent application is lodged the same year as the final decision on the previous application and from detention, or (b) the subsequent application is a third or later claim.
- ❖ **Appeal:** A number of changes endanger the right to an effective remedy. The Council of State, which gave a preliminary advice, stated that within the short amount of time it had to analyse the legislative proposals, it could not properly examine whether or not the right to an effective remedy is being upheld. The law complicates the rules around various procedures, it shortens certain appeal periods and in certain cases deprives asylum seekers of a suspensive appeal. As a result, asylum seekers can be removed before the court has ruled on the substance of their case.

Detention of asylum seekers

- ❖ **Grounds for detention:** The reform introduces grounds for detaining asylum seekers during the procedure as set out by Article 8(3) of the recast Reception Conditions Directive. An asylum

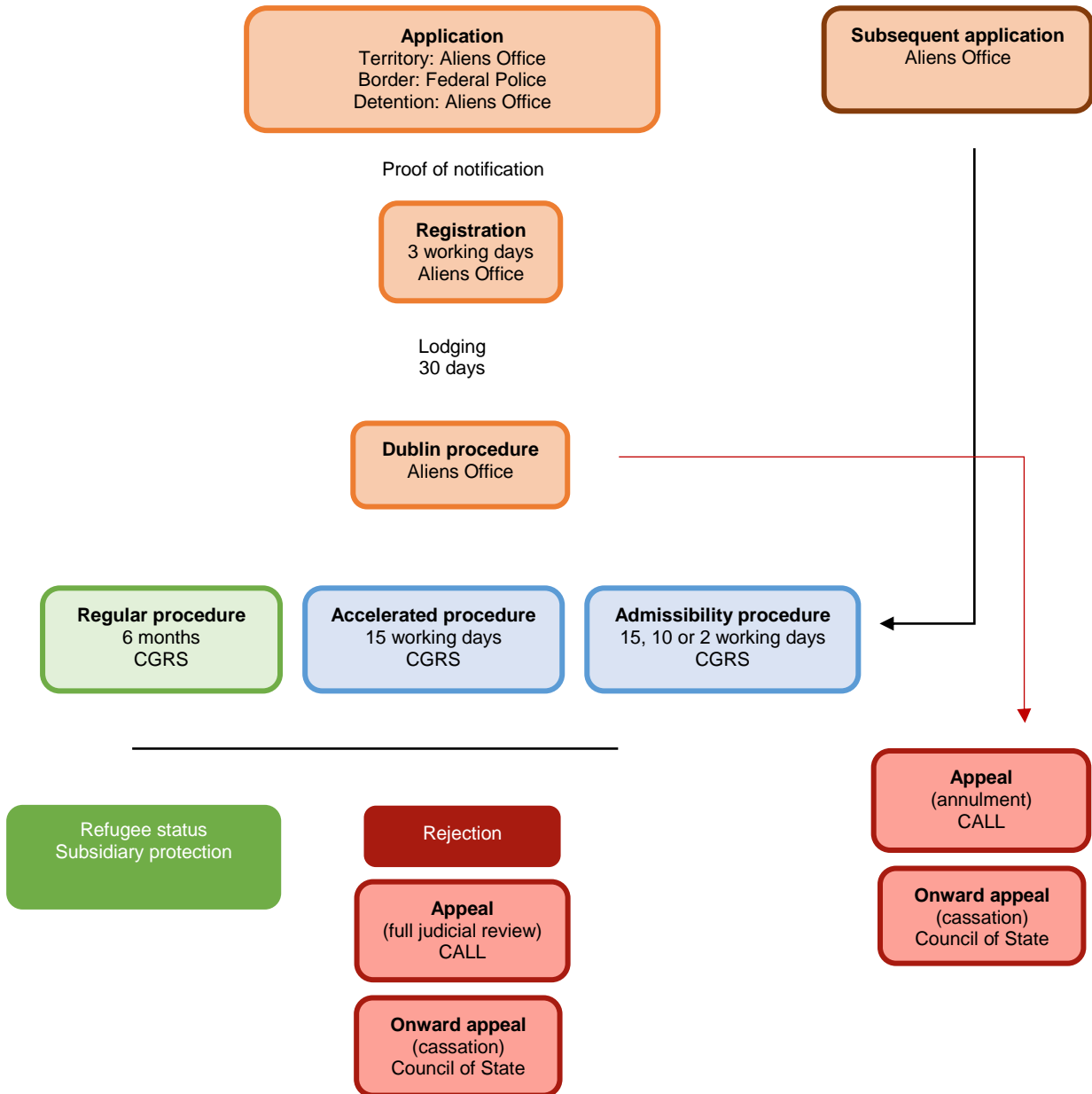
seeker may be detained where he or she does not cooperate in the establishment of his or her identity, where there is a risk of absconding, where the application is made with a deliberate purpose of delaying or hindering return, or for reasons of public order and national security. The maximum duration of such detention is 2 months, except for cases related to public order and national security where it may be prolonged.

- ❖ **Risk of absconding:** In line with the clarification brought by the Court of Justice of the European Union in the *Al Chodor* case, the law lays down objective criteria for the definition of the “risk of absconding”. However, the definition refers to overly broad criteria such as the making of an application more than 8 days after arrival or non-cooperation with the authorities. Moreover, since there is no definition in the proposal of ‘non-cooperation’ with the authorities, this provision is open for wide interpretation and possible abuse. In total the law sets out no less than 11 criteria for the risk of absconding. Civil society fears that a larger number of asylum seekers will be detained as a result.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|--|---|-----------------------------|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ⁴ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ⁵ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ⁶ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: Regularisation procedure ⁷ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: Residence permit for unaccompanied children | | |

Are any of the procedures that are foreseen in the law, not being applied in practice? Yes No

In the past, this was certainly the case. According to Article 52 of the Aliens Act, the CGRS can consider an application as fraudulent or manifestly unfounded under the “accelerated procedure”, but in practice this was not applied. Given that new procedures have just entered into force following the 2017 reform, there is no information yet on the practical application of the law.

3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (FR/NL)
Application		
❖ At the border	Federal Police	Police Fédérale (Direction générale de la police administrative) Federale politie (Algemene directie van de bestuurlijke politie)
❖ On the territory	Aliens Office	Office des étrangers (OE) Dienst Vreemdelingenzaken (DVZ)
Dublin	Aliens Office	Office des étrangers (OE) Dienst Vreemdelingenzaken (DVZ)
Refugee status determination	Commissioner General for Refugees and Stateless Persons (CGRS)	Commissariat général aux réfugiés et aux apatrides (CGRA) Commissariaat-generaal voor Vluchtelingen en Staatlozen (CGVS)
Appeal	Council of Alien Law Litigation (CALL)	Conseil du contentieux des étrangers (CCE) / Raad voor Vreemdelingenbetwistingen (RvV)
Onward appeal	Council of State	Conseil d'Etat / Raad van State
Subsequent application (admissibility)	Commissioner General for Refugees and Stateless Persons (CGRS)	Commissariat général aux réfugiés et aux apatrides (CGRA) Dienst Vreemdelingenzaken (DVZ) Commissariaat-generaal voor Vluchtelingen en Staatlozen (CGVS)

⁴ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

⁵ Accelerating the processing of specific caseloads as part of the regular procedure.

⁶ Albeit not labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

⁷ Residence status is granted in the form of protection for medical reasons under a regularisation procedure rather than the asylum procedure, even where the serious risk of inhuman treatment upon return to the country of origin satisfies the criteria for subsidiary protection. See Article 9ter Aliens Act.

4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office of the Commissioner General for Refugees and Stateless Persons (CGRS)	447.5 FTE	Independent	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The number of protection officers examining applications is 190 FTE.

5. Short overview of the asylum procedure

Registration

An asylum application may be **made** either: (a) on the territory with the Aliens Office, within 8 working days after arrival;⁸ (b) at the border, in case the asylum seeker does not dispose of valid travel documents to enter the territory with the border police; or (c) from a detention centre, in case the person is already being detained for the purpose of removal. The applicant receives a “certificate of notification” (*attestation de déclaration*). The Aliens Office **registers** the application within 3 working days of the notification, which can be prolonged up to 10 working days in case of large numbers of asylum seekers.

The applicant then has to **lodge** the application. This can take place either immediately when the person makes the application, or following the notification but no later than 30 days after the application has been made; exceptional prolongations may be defined by Royal Decree. Following that stage, the applicant receives a “proof of asylum application” stating that he or she is a first-time applicant (“Annex 26”) or a subsequent applicant (“Annex 26-quinquies”).

The Aliens Office is the mandated administration of the Minister responsible for the entry to the territory, residence, settlement and removal of foreign nationals in Belgium. It also has the competence to register asylum applications and decides on the application of the Dublin Regulation. The Aliens Office also only registers subsequent applications and transfers them to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS).⁹

First instance procedure

CGRS is the central administrative authority exclusively responsible for the first instance procedure in terms of examining and granting, refusing and withdrawing of refugee and/or subsidiary protection status. The CGRS is independent in taking individual decisions on asylum applications and does not take any instruction from the competent Minister – or State Secretary – for Asylum and Migration.

In addition to the regular procedure, the law now foresees a number of other procedures:

Prioritised procedure: The CGRS prioritises cases where: (a) the applicant is in detention; (b) the applicant is in a penitentiary facility; (c) a prioritisation request has been issued by the Aliens Office or the

⁸ Article 50(1) Aliens Act, as amended by the Law of 21 November 2017. Persons that already have a legal stay of more than three months in Belgium must apply for international protection within 8 working days after the termination of stay. Those in Belgium with a legal stay of less than three months must apply for international protection within this legal stay.

⁹ Articles 57/6/2 and 51/8 Aliens Act, as amended by the Law of 21 November 2017.

Secretary of State for Asylum and Migration; or (d) the application is manifestly well-founded. There is no time limit for taking a decision in these cases.¹⁰

Accelerated procedure: The CGRS takes a decision within 15 working days, although there are no consequences if the time limit is not respected, where the applicant *inter alia*: raises issues unrelated to international protection; comes from a safe country of origin; makes an application for the sole purpose of delaying or frustrating return; makes an admissible subsequent application; or poses a threat to national security or public order.¹¹

Admissibility procedure: The CGRS decides on the admissibility of the application within 15 working days, 10 working days (subsequent applications) or two working days (subsequent application from detention). It may reject it as inadmissible where the applicant: (a) comes from a first country of asylum; (b) comes from a safe third country; (c) enjoys protection in another EU Member State; (d) is a national of an EU Member State; (e) makes a subsequent application with no new elements; or (f) is a minor dependant who, after a final decision has been taken on the application in his or her name, lodges a separate application without justification.¹²

Border procedure: Where the applicant is detained in a closed centre located at the border, the CGRS has four weeks to decide on the asylum application. The applicant is admitted into the territory if no decision has been taken within that time limit.

Appeal

An appeal against a negative decision can be lodged before the Council of Alien Law Litigation (CALL), an administrative court competent for handling appeals against all kinds of administrative decisions in the field of migration. These appeals are dealt with by chambers specialised in the field of asylum.

Appeals before the CALL against the decisions of the CGRS in the regular procedure have automatic suspensive effect and must be lodged within 30 days. The deadline is reduced to 10 days in inadmissible applications and negative decisions in the accelerated procedure, and 5 days concerning subsequent applications in detention. Appeals generally have automatic suspensive effect, with the exception of some cases concerning subsequent applications.

The CALL has no investigative competence and has to take a decision based on all elements in the file presented by the applicant and the CGRS. In accordance with its “full judicial review” (*en pleine juridiction*) competence, it may: (a) overturn the CGRS decision by granting a protection status; (b) confirm the negative decision of the CGRS; or (c) annul the decision if it considers essential information is lacking in order to decide on the appeal and further investigation by the CGRS is needed.

However, Dublin decisions of the Aliens Office can only be challenged before the CALL by an annulment appeal.

An onward annulment appeal before the Council of State is possible but only points of law can be litigated at this stage. The appeal before the Council of State has no suspensive effect on decisions to expel or refuse entry, which are issued with, or even before, a negative decision of the CGRS.

¹⁰ Article 57/6(2) Aliens Act, as amended by the Law of 21 November 2017.

¹¹ Article 57/6/1 Aliens Act, as amended by the Law of 21 November 2017.

¹² Article 57/6(3) Aliens Act, as amended by the Law of 21 November 2017.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No

There are no published reports by NGOs about cases of actual *refoulement* at the border of persons wanting to apply for asylum. In French, returning someone at the border without having allowed them to access the territory, but after having examined their asylum application on its well-foundedness, is wrongly referred to with the legal term “*refoulement*”. This may add to the confusion between a genuine *refoulement* (or “push back”) and the execution of a return decision.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application? Yes No
2. If so, what is the time limit for lodging an application?¹³ 30 days

The Aliens Office is the authority responsible for the registration of asylum applications.

The law entering into force on 22 March 2018 foresees a three-stage registration process:

1. The asylum seeker “makes” (*présente*) his or her application with the Aliens Office within 8 working days after arrival on the territory.¹⁴ An application at the border is made with the Border Police Section of the Federal Police immediately when the person is apprehended at the border and asked about his or her motives for entering Belgium,¹⁵ or with the prison director in penitentiary institutions. These authorities refer the application immediately to the Aliens Office. The asylum seeker receives a “certificate of notification” (*attestation de déclaration*) as soon as the application is made.¹⁶

Under the new law, failure to apply for a residence permit after irregularly entering the country or failure to apply for international protection within the 8-day deadline constitutes a criterion for the determination of a “risk of absconding”.¹⁷ Non-compliance with this deadline can also be taken into consideration by the CGRS as one of the elements in assessing the credibility of the asylum claim.

2. The Aliens Office registers the application within 3 working days of “notification”.¹⁸ This can be prolonged up to 10 working days when a large number of asylum seekers arrive at the same time, rendering it difficult in practice to register applications within the 3 working day deadline.¹⁹ At the end of 2017, the maximum delay from “notification” until registration did not exceed two weeks in any case.²⁰

¹³ The applicant must make the application within 8 working days of arrival in Belgium.

¹⁴ Article 50(1) Aliens Act, as amended by the Law of 21 November 2017.

¹⁵ *Ibid.*

¹⁶ Article 50(2) Aliens Act, as amended by the Law of 21 November 2017.

¹⁷ Articles 1(11) and 1(2)(1) Aliens Act, as amended by the Law of 21 November 2017.

¹⁸ Article 50(2) Aliens Act.

¹⁹ *Ibid.*

²⁰ Myria, Contact meeting, 22 November 2017, available at: <http://bit.ly/2DwcaZe>, para 11.

3. The asylum seeker “lodges” (*introduit*) his or her application either immediately when it is made, or as soon as possible after the “notification” but no later than 30 days after the application has been made.²¹ This period may exceptionally be prolonged by way of Royal Decree. When the application is lodged, the asylum seeker receives a “proof of asylum application” certifying his or her status as a first-time applicant (“Annex 26”) or a subsequent applicant (“Annex 26-quinquies”). The Aliens Office informs the CGRS of the lodging of the application.²²

The asylum section of the Aliens Office is responsible for:

- ❖ Receiving the asylum application;
- ❖ Registering the asylum seeker in the so-called waiting register, a provisional population register for foreign nationals;
- ❖ Taking fingerprints and a photograph, taking a chest X-ray to detect tuberculosis; and
- ❖ Conducting the Dublin procedure.

At the Aliens Office, a short interview takes place to establish the identity, nationality and travel route of the asylum seeker. The Aliens Office and the asylum seeker, with the help of an interpreter fill in a questionnaire for the CGRS about the reasons why he or she fled his or her country of origin, or, in case of a subsequent asylum application, which new elements are being submitted. A lawyer cannot be present during this interview.

If Belgium is the responsible country under the Dublin Regulation, the file is sent to the CGRS. The questionnaire about the reasons for the asylum application and impossibility of a return to the country of origin is transferred to the CGRS as well.²³

The asylum section of the Aliens Office is furthermore responsible for the follow-up of the asylum seeker’s legal residence status throughout the procedure as well as the follow-up of the final decision on the asylum application. This means registration in the register for aliens in the case of a positive decision, or issuing an order to leave the territory in the case of a negative decision.

Within the Aliens Office, the Closed Centre section is responsible for all the asylum applications lodged in detention centres and prisons, while the Border Inspection section is responsible for asylum applications lodged at the border. The three sections within the Aliens Office (Asylum section, Closed Centres section and Border Inspection section) follow the exact same procedure within Aliens Office general competence, each for their respective ‘categories’ of asylum seekers.

²¹ Article 50(3) Aliens Act, as amended by the Law of 21 November 2017.

²² *Ibid.*

²³ Articles 51/3-51/10 Aliens Act; Articles 10 and 15-17 Royal Decree on Aliens Office Procedure.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | 6 months |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2017: | |
| ❖ Aliens Office | 4,963 |
| ❖ CGRS | 9,360 |

The asylum applications for which Belgium is responsible according to the Dublin Regulation are transferred to the office of the CGRS to be examined on their merits. The CGRS, which is an independent administrative authority, is exclusively specialised in asylum decision-making. In a single procedure, the CGRS first examines whether the applicant fulfils the eligibility criteria for refugee status. If the applicant does not meet these criteria the CGRS will automatically examine whether the applicant is eligible for subsidiary protection.²⁴

The CGRS has the competence to:²⁵

- ❖ Grant or refuse refugee status or subsidiary protection status;
- ❖ Reject an asylum application as manifestly unfounded;²⁶
- ❖ Reject an asylum application as inadmissible;²⁷
- ❖ Apply cessation and exclusion clauses or to revoke refugee or subsidiary protection status (including on instance of the Minister);
- ❖ Terminate the procedure in case the person does not attend the interview, among other reasons, and reject the application in some cases;²⁸ and
- ❖ Issue civil status certificates for recognised refugees.

The CGRS has to take a decision within 6 months after receiving the asylum application from the Aliens Office.²⁹ This may be prolonged by another 9 months where: (a) complex issues of fact and/or law are involved; a large number of persons simultaneously apply for asylum, rendering it very difficult in practice to comply with the 6-month deadline; or (c) the delay is clearly attributed to the failure of the applicant to comply with his or her obligations.³⁰

Where needed, the deadline can be prolonged by 3 more months.³¹

In cases where there is uncertainty about the situation in the country of origin, which is expected to be temporary, the deadline for a decision can reach a maximum of 21 months. In such a case, the CGRS should evaluate the situation in the country of origin every 6 months.³²

²⁴ Article 49/3 Aliens Act.

²⁵ Article 57/6(1) Aliens Act, as amended by the Law of 21 November 2017.

²⁶ Article 57/6(1)(2) Aliens Act.

²⁷ Article 57/6(3) Aliens Act, as amended by the Law of 21 November 2017.

²⁸ Article 57/6(5) Aliens Act, as amended by the Law of 21 November 2017, sets out the reasons for terminating the procedure.

²⁹ Article 57/6(1) Aliens Act.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

If the deadline is prolonged, the CGRS shall inform the applicant of the reasons and give a timeframe within which the decision should be expected.³³

The number of pending cases before the CGRS was 9,360 at the end of 2017.³⁴ The CGRS tries to reduce the waiting period as much as possible. To achieve this, the CGRS has recruited additional staff and taken special measures to increase the number of decisions. As a result, the CGRS has increased the number of decisions taken every month. The CGRS does its utmost to take as many decisions as possible while still seeing to the quality of each decision.

The average processing time in 2017 was 12 months, although Vluchtelingenwerk is aware of persons waiting much longer for a decision. This was especially the case for asylum seekers who made their applications in the second half of 2015. The CGRS has stated that this backlog should be cleared by mid-2018.³⁵

1.2. Prioritised examination and fast-track processing

The CGRS may prioritise the examination of an asylum application where:³⁶

- a. The applicant is detained or is subject to a security measure;
- b. The applicant is serving a sentence in a penitentiary facility;
- c. The Aliens Office or the Secretary of State for Asylum and Migration so requests; or
- d. The asylum application is manifestly well-founded.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?
❖ If so, are interpreters available in practice, for interviews?
 Yes No
 Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?
 Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never

At least one personal interview by a protection officer at the CGRS is imposed by law.³⁷ The interview may be omitted where: (a) the CGRS can grant refugee status on the basis of the elements in the file; (b) the CGRS deems that the applicant is not able to be interviewed due to permanent circumstances beyond his or her control; or (c) where the CGRS deems it can take a decision on a subsequent application based on the elements in the file.³⁸

Generally, for every asylum application the CGRS conducts an interview with the asylum seeker, though the length and the substance of the questions can vary substantially, depending e.g. on the manifestly well-founded or unfounded nature of the claim, or the presence or absence of new elements presented in case of a subsequent application. The interview serves the CGRS to examine whether the asylum application is credible and qualifies for refugee status or subsidiary protection status. The lawyer and/or another person of confidence chosen by the asylum seeker can attend the interview.³⁹ The CGRS has

³³ *Ibid.*

³⁴ Information provided by the CGRS, February 2018.

³⁵ Information provided by the CGRS, February 2018.

³⁶ Article 57/6(2) Aliens Act, as amended by the Law of 21 November 2017.

³⁷ Article 57/5-ter(1) Aliens Act, as inserted by the Law of 21 November 2017.

³⁸ Article 57/5-ter(2) Aliens Act.

³⁹ Article 13/1 Royal Decree on CGRS Procedure.

elaborated an interview charter as a Code of Conduct for the protection officers, which is available on its website.⁴⁰

If the CGRS is considering **Cessation** or **Revocation** of international protection after receiving new facts or elements, it can choose not to interview the person and to instead request written submissions on why the status should not be ceased or withdrawn.⁴¹

Interpretation

When lodging their application at the Aliens Office, asylum seekers must indicate irrevocably and in writing whether they request the assistance of an interpreter, in case their knowledge of Dutch or French is not sufficient.⁴² In that case, the examination of the application is assigned to one of the two “language roles” without the applicant having any say in it and generally according to their nationality; the different nationalities being distributed to one of the two “roles”. In the case of a Subsequent Application, the same “role” as in the first asylum procedure is selected.⁴³

In general, there is always an interpreter present who speaks the mother tongue of the asylum seeker. Sometimes, if the person speaks a rare language or idiom, this can be problematic and then an interpreter in another language can be proposed. During and after the interview at the CGRS, the interpreter has to respect professional secrecy and act according to certain rules of deontology. A brochure on this Code of Conduct is also made available on the CGRS website.⁴⁴ The quality of the interpreters being very variable, the correct translation of the declarations, as they are written down in the interview report, is sometimes a point of contention in the appeal procedures before the Council of Alien Law Litigation (CALL), which in general does not take this element into consideration since it is impossible to prove that the interpreter deliberately or otherwise translated wrongly or had any interest in doing so.

Recording and transcript

There is no video or audio recordings of the interview, but the transcript has to faithfully include the questions asked to and declarations of the asylum seeker; the law demands a “faithful reflection” thereof,⁴⁵ which is understood to be different from a verbatim transcript. The CGRS protection officer has to confront the asylum seeker with any contradiction in his or her declarations, but this is not systematically done.

Additional remarks or supporting documents can be sent to the CGRS afterwards and will be taken into consideration.⁴⁶ The asylum seeker or his or her lawyer may request a copy of the interview report, together with the complete asylum file. This should be done within 2 working days following the interview.⁴⁷ The asylum seeker or his or her lawyer may give comments within 8 working days after the reception of the file.⁴⁸ In this case the CGRS will take them in consideration before making a decision. When the conditions are not met, the comments will only be taken in consideration if they are sent the last working day before the CGRS makes its decision. If no comments reach the CGRS on the last working day before the CGRS makes its decision, the asylum seeker is considered to agree with the report of the interview.⁴⁹

Since June 2016 the CGRS conducts interviews through videoconference in some of the detention centres. This is the case for the closed centre of **Merksplass** where all persons who applied for asylum

⁴⁰ CGRS, *Interview Charter*, available at: <http://bit.ly/1FAxkyQ>.

⁴¹ Article 57/6/7(2) Aliens Act, as amended by the Law of 21 November 2017.

⁴² Article 51/4(2) Aliens Act, as amended by the Law of 21 November 2017.

⁴³ *Ibid.*

⁴⁴ CGRS, *Deontology for translations and interpretations*, available at: <http://bit.ly/1ROmcHs>.

⁴⁵ Article 57/5-quater(1) Aliens Act, as inserted by the Law of 21 November 2017.

⁴⁶ Articles 16-17 and 20 Royal Decree on CGRS Procedure.

⁴⁷ Article 57/5-quater(2) Aliens Act.

⁴⁸ Article 57/5-quater(3) Aliens Act.

⁴⁹ *Ibid.*

are interviewed through video conference. This interview is organised the same way as a regular interview, meaning that there is an interpreter present at the office of the CGRS and the lawyer can present in **Merkspias** to attend the interview. The CGRS evaluated this practice as positive and has extended it to the closed centre of **Bruges** since the end of March 2017. The videos themselves are not kept on file, and the CGRS uses the transcript following the interview as the basis.⁵⁰ The asylum seeker and his or her lawyer can request for an interview in person when they can provide elements of vulnerability that would justify such a request.⁵¹

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision in 2017: Not available

1.4.1. Appeal before the CALL

A judicial appeal can be introduced before the CALL against all negative in-merit decisions of the CGRS within 30 days.⁵² The time limit is reduced to 10 days when the applicant is in detention.⁵³

The appeal has automatic suspensive effect in the regular procedure.⁵⁴

The CALL has a so-called “full judicial review” competence (*plein contentieux*) which allows it to reassess the facts and to take one of three possible decisions:

- ❖ Confirm the negative decision of the CGRS;
- ❖ Overturn it by granting refugee or subsidiary protection status; or
- ❖ Annul the decision and refer the case back to the CGRS for further investigation.⁵⁵

The CALL has no investigative powers of its own, meaning that it must take a decision on the basis of the existing case file. Therefore in case it considers important information to be lacking, it has to annul the decision and send the case back to the CGRS for further investigation.

All procedures before the CALL are formalistic and essentially written, thereby making the intervention of a lawyer necessary. All relevant elements have to be mentioned in the petition to the CALL.⁵⁶ At the hearing, the parties and their lawyer can orally explain their arguments to the extent that they were mentioned in the petition.⁵⁷ Since 2013, however, the CALL is also obliged to take into consideration every new element brought forward by any one of the parties with an additional written note before the end of the hearing.⁵⁸ Depending on how the CALL assesses the prospects of such new elements leading to the recognition or granting of an international protection status, it can annul the decision and send it back to the CGRS for additional examination – unless the CGRS can submit a report about its additional

⁵⁰ Information provided by the CGRS: Myria, Contact meeting, 21 September 2016, available at: <http://bit.ly/2kxOqOG>, para 25.

⁵¹ Information provided by the CGRS: Myria, Contact meeting, 19 October 2016, available at: <http://bit.ly/2jH91M9>, para 7.

⁵² Article 39/57(1) Aliens Act, as amended by the Law of 17 December 2017.

⁵³ *Ibid.*

⁵⁴ Article 39/70 Aliens Act.

⁵⁵ Article 39/2 Aliens Act.

⁵⁶ Article 39/69 Aliens Act.

⁵⁷ Article 39/60 Aliens Act.

⁵⁸ Article 39/76(1) Aliens Act.

examination to the CALL within 8 days – or leave the asylum seeker the opportunity to reply on the new element brought forward by the CGRS with a written note within 8 days. Failure to respond within that 8-day time-is a presumption of agreeing with the CGRS on this point.

Still, in its *Singh v. Belgium* judgment of October 2012, the ECtHR also found a violation of the right to an effective remedy under Article 13 ECHR because the CALL did not respect the part of the shared burden of proof that lies with the asylum authorities, by refusing to reconsider some new documents concerning the applicants' nationality and protection status in a third country, which were questioned in the preceding full jurisdiction procedure.⁵⁹

The CALL must decide on the appeal within 3 months in the regular procedure.⁶⁰ There are no sanctions for not respecting the time limit. In practice, the appeal procedure often takes longer.

During 2017 the CALL decided on 4,044 full judicial review asylum appeals.⁶¹ Decisions of the CALL are publicly available.⁶²

Generally speaking, lawyers and asylum seekers are quite critical about the limited use the CALL seems to make of its full jurisdiction, which is reflected in the low reform and annulment rates. It is also important to note that there remains a big difference in jurisprudence between the more liberal Francophone and the stricter Dutch chambers of the CALL. On the other hand, it must be acknowledged that the quality of a lot of appeals submitted is often poor, especially if these are not introduced by one of the few specialised lawyers in the field.

An order to leave the territory is given when:

- The CALL made its final rejection decision
- There is no option left for a suspensive appeal with the CALL
- The deadline for lodging the appeal has expired

Against an order to leave the territory there is only a non-suspensive appeal left, in an annulment procedure before the CALL (within 30 days).

As opposed to suspensive appeals against in-merit decisions, an appeal against an order to leave the territory or a Dublin decision has no automatic suspensive effect. A request to suspend the decision can be introduced simultaneously with the appeal. In case no request to suspend had been introduced and once the execution of the removal decision becomes imminent, an appeal in an extremely urgent necessity procedure can be lodged before the CALL within 10 or 5 calendar days in case of a subsequent return decision, invoking a potential breach of an absolute fundamental right (e.g. Article 3 ECHR).⁶³ This appeal is suspensive until a judgment is issued.⁶⁴ It demands a swift decision of the CALL within 48 hours; the time limit is extended to 5 days where the expulsion of the person is not foreseen to take place until 8 days after the decision.⁶⁵

It remains questionable if the legislative changes introduced in 2014 regarding time limits, suspensive effect and "full judicial review" are sufficient to guarantee that annulment appeal procedures are effective remedies, as the ECtHR has condemned Belgium once more for violation of Article 13 ECHR, in its February 2014 *Josef* judgment.⁶⁶ The ECtHR calls the annulment appeal system as a whole – whereby

⁵⁹ ECtHR, *Singh and Others v. Belgium*, Application No 33210/11, Judgment of 2 October 2012.

⁶⁰ Article 39/76(3) Aliens Act.

⁶¹ Myria, Contact meeting, 21 February 2018, para 27.

⁶² Judgments are available on the website of the CALL at: <http://bit.ly/2waz6tu>.

⁶³ Article 39/82(4) Aliens Act; Article 39/57(1) Aliens Act.

⁶⁴ Articles 39/82 and 39/83 Aliens Act.

⁶⁵ Article 39/82(4) Aliens Act.

⁶⁶ ECtHR, *Josef v. Belgium*, Application No 70055/10, Judgment of 27 February 2014, para 103 – the case concerns an expulsion following a so-called regularisation procedure for medical reasons (article 9ter Aliens

suspension has to be requested simultaneously with the annulment for it to be activated (by requesting provisional measures) only— too complex to meet the requirements of an effective remedy, in order to avoid the risk of Article 3 ECHR violations. The case was struck out the ECtHR Grand Chamber’s list in March 2015, as the applicant had already been granted residence status.⁶⁷

1.4.2. Onward appeal to the Council of State

A possibility of onward appeal against decisions of the CALL exists before the Council of State, the Belgian supreme administrative court.⁶⁸ Appeals before the Council of State must be filed within 30 calendar days after the decision of the CALL has been notified and have no suspensive effect. They are so called “cassation appeals” that allow the Council of State only to verify whether the CALL respected the applicable legal provisions and substantial formal requirements and requirements, failing which the decision should be annulled.⁶⁹ It cannot make its own assessment and decision on the facts of the case. Appeals before the Council of State are first channelled through some kind of admissibility filter, whereby the Council of State filters out, usually within a month, those cassation appeals that have no chances of success or are only intended to prolong the procedure.⁷⁰ If the decision under review is annulled (“quashed”), the case is sent back to the CALL for a new assessment of the initial appeal.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
 ❖ Does free legal assistance cover: Representation in interview
 Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No
 ❖ Does free legal assistance cover Representation in courts
 Legal advice

Article 23 of the Belgian Constitution determines that the right to a life in dignity implies for every person *inter alia* the right to legal assistance. The Aliens Act guarantees free legal assistance by a lawyer to all asylum seekers, at every stage (first instance, appeal, cassation) of the procedure and in all types of procedures (regular, accelerated, admissibility, appeal in full jurisdiction, annulment and suspension), with the exception of the Aliens Office stage.⁷¹ The Reception Act also guarantees asylum seekers efficient access to the legal aid during the first and the second instance procedure, as envisaged by the Judicial Code.⁷²

The asylum procedure itself is free of charge. As to the lawyer honorarium and costs, asylum seekers are legally entitled to free judicial assistance, but some prefer to pay anyhow.

Act), but the Court’s considerations are valid for all annulment procedures concerning risks of Article 3 ECHR violations.

⁶⁷ ECtHR, *S.J. v. Belgium*, Application No 70055/10, Judgment of 19 March 2015.

⁶⁸ Article 39/67 Aliens Act.

⁶⁹ Article 14(2) Acts on the Council of State.

⁷⁰ The law determines cassation appeals to be admissible only (1) if they invoke a violation of the law or a substantial formal requirement or such a requirement under penalty of nullity, in as far as the invoked argument is not clearly unfounded and the violation is such that it could lead to the cassation of the decision and might have influenced the decision; or (2) if it falls under the competence and jurisdiction of the Council of State, in as far as the invoked argument is not clearly unfounded or without subject and the examination of the appeal is considered to be indispensable to guarantee the unity of the jurisprudence (Article 20 Acts on the Council of State).

⁷¹ Articles 39/56 and 90 Aliens Act.

⁷² Article 33 Reception Act.

There are two types of free legal assistance: first line assistance and second line assistance.⁷³ The competence for the organisation of the first line assistance lies at the regional level.

1.5.1. First-line legal assistance

The so-called “first line assistance” is organised by local commissions for legal assistance, composed of lawyers representing the local bar association and the public centres for social welfare (CPAS / PCSW). There, first legal advice is given by a lawyer or a person is referred to a more specialised instance, organisation or to “second line assistance”, completely free of charge, regardless of income or financial resources. The first line assistance is organised in each judicial district by the Commission for Legal Assistance. Besides these lawyers’ initiatives, there are also other public social organisations and NGOs providing this kind of first line legal assistance.

1.5.2. Second-line legal assistance

“Second line assistance” is organised by the local bar association that exists in every judicial district. Each bar association has a bureau for legal assistance that can appoint a lawyer for (entirely or partially) free second line assistance, the so-called “pro-Deo lawyer”. In practice, this might limit the free choice of a lawyer to a certain extent, but in theory every lawyer can accept to assist someone “pro-Deo” and ask the bureau to be appointed as such, upon the direct request of an asylum seeker. Quite a number of specialised lawyers do so frequently in asylum cases. Within this “second line assistance”, a lawyer is appointed to give substantial legal advice and to assist and represent the person in the asylum procedure.

The 2003 Royal Decree on Legal Aid determines the conditions under which one can benefit from this second line legal assistance free of charge. Different categories are defined, in general depending on the level of income or financial resources and, with regard to specific procedures, on the social group they belong to. For asylum seekers and persons in detention, among others, there is a rebuttable presumption of being without sufficient financial resources. With regard to children, unaccompanied or not, this presumption is conclusive. In theory, only asylum seekers who lack sufficient financial means should be entitled to free legal assistance, but due to the aforementioned presumption, in practice every asylum seeker will get a lawyer appointed to assist them in all the stages of the asylum procedure.

The law permits the bureau for legal assistance to apply a preliminary merits test before appointing a “pro-Deo” lawyer in order to refuse those manifestly unfounded requests, which have no chance of success at all.⁷⁴ However, this provision is only very rarely applied in practice. So, in practice, if a person entitled to legal aid asks for a lawyer free of charge to be appointed, the bureaus for legal assistance grant this quasi-automatically. However, there are reports of a more stringent appointment practice in some districts when the lawyers request to be appointed themselves after having been consulted by an asylum seeker, especially in case of subsequent asylum applications.⁷⁵

Since September 2016 the second line assistance has changed significantly. The most important change entails the introduction of a ‘flat fee’. This means that legal aid is no longer entirely free. However, certain categories of people in need of legal aid are exempted for this requirement, including asylum seekers. If these persons wish to start other proceedings they will be required to pay the flat fee.

⁷³ Article 508/1-508/25 Judicial Code.

⁷⁴ Article 508/14 Judicial Code.

⁷⁵ E.g. the Dutch speaking **Brussels** Bar Association is much more stringent in appointing a lawyer upon his or her own request if another one had been appointed already before. This causes a lot of disputes between the bureau for legal assistance of that bar association and lawyers or bureaus for legal assistance of bar associations from other districts.

Example: an asylum seeker requests the assistance of a “pro-Deo” lawyer to assist him or her with his or her asylum application. The person is exempted from the flat fee for the appointment of the lawyer and during the appeals procedure (if needed). However if he or she wishes to receive free legal aid concerning a rent dispute, he or she will not automatically be exempted from the flat fee as an asylum seeker. The asylum seeker will have to prove first that he or she has no sufficient means.

The nomenclature that determines the number of points for each intervention, and as such the remuneration for the lawyers, has been modified by a Ministerial Decree of 19 July 2016.⁷⁶ In the previous version, lawyers got a certain amount of points per intervention of action. Every point was worth €25. Since 1 September 2016 every point equals one hour. The value per point has not yet been determined. This will only be done in 2018. The Ministerial Decree of 19 July 2016 lays down the nomenclature of the points per intervention.

Example: before the entry into force of a lawyer would receive 15 points for a procedure before the Commissioner-general for refugees and stateless persons. Since 1 September 2016 the lawyer receives a basis of 3 points plus 1 point per started hour of the interview he or she attended. For a first appeal in asylum cases a lawyer can receive a maximum of 11 points. For a second or subsequent asylum application the lawyer will no longer receive the basis points unless the CGRS takes into consideration the new application or when the lawyer can proof the examination of the new elements (as required in subsequent asylum applications) had taken up a considerable amount of time.

“Pro-Deo” lawyers receive a fixed remuneration by the bureau for legal assistance, which are financed by the bar associations that receive a fixed annual subsidy “envelope” from the Ministry of Justice. In theory, costs can be re-claimed by the state if the asylum seeker would appear to have sufficient income after all, but this does not happen in practice. The 2016 Ministerial Decree on Second Line Assistance⁷⁷ has determined a list of points granted per service rendered.

Procedure	Points
Procedure at the CGRS	Basis of 3 points
Presence during the interview	+ 1 point per started hour
Appeal at CALL (full jurisdiction)	Basis of 5 points
Petition	+ 4 points

These developments certainly make the “pro-Deo” remuneration system less attractive for lawyers. Another obstacle for lawyers to engage in this area of legal work is the fact that they are only paid once a year for all the cases they have closed and reported to their bar association in the previous year. Closure of the case can only take place once all procedures are finished, which in reality is long after the actual interventions were undertaken by the lawyer.

Depending on the Bar Association, asylum seekers might experience problems when wanting to change “pro-Deo” lawyer. Some Bars do not allow a second “pro-Deo” lawyer to take over the case from the initially assigned “pro-Deo” lawyer. Although this limits abuses by lawyers acting in bad faith to a certain degree, this measure has also resulted in asylum seekers being subject to the arbitrariness of bad quality lawyers and has prevented experienced lawyers from assisting some in need of specialised legal assistance.

⁷⁶ Ministerial Decree of 19 July 2016, available at: <http://bit.ly/2jAdVzs>.

⁷⁷ For an overview of the full nomenclature, please consult the Ministerial Decree of 19 July 2016, available at: <http://bit.ly/2jAdVzs>.

2. Dublin

2.1. General

Dublin statistics: 2017

Statistics on the application of the Dublin Regulation in 2017 are not available. According to Eurostat, in 2016, Belgium issued 6,483 outgoing requests and carried out 1,479 transfers, while it received 2,587 incoming requests and 414 transfers.

Application of the Dublin criteria

There is no information available on how the Aliens Office applies the Dublin criteria. The Aliens Act uses the term “European regulation” where it refers to the criteria in the Dublin III Regulation for determining the responsible Member State.⁷⁸

The dependent persons and discretionary clauses

Case law analysis suggests that the Aliens Office, as confirmed by the CALL, strictly applies the dependency clause of Article 16 of the Dublin Regulation.⁷⁹ However, this conclusion does not take into account the decision in which the Aliens Office declared itself responsible. Exchanges with lawyers indicate that information exchange on dependency and the situation in the other Member State between the Aliens Office and the lawyer prior to the decision in a specific case may lead to Belgium declaring itself responsible. However, it is impossible for the lawyers to know which argument is decisive in the case. They will often invoke detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible state, together with elements of dependency.

Case law analysis emphasises the necessity of submitting medical attestations when invoking medical problems.⁸⁰ Mere cash payments to someone who still works in the home country is not enough to prove dependency, nor is proof of the intention to take care of a family member during the asylum procedure,⁸¹ or actually living with said family member.⁸² A one-off financial assistance of limited sum – in the present case €200 from a Somali man to his brother who was still in Somalia – was dismissed as not being conclusive evidence for the existence of a durable, structural dependency relationship.⁸³

The “sovereignty clause” of Article 17(1) of the Regulation is mentioned in Article 51/5(2) of the Aliens Act, but the “protection clause” of Article 3(2) and the “humanitarian clause” of Article 17(2) are not. Both clauses are sometimes applied in practice but this is not done systematically. So far it is unclear when the Aliens Office declares itself responsible or applies the “sovereignty clause”, since no decision is taken but the file is immediately transferred to the CGRS.

The criteria for applying the clauses are very unclear and no specific statistics are publicly available on their use. Since the *M.S.S. v. Belgium and Greece* judgment of the ECtHR, detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible state seem to be taken into consideration in some cases when deciding whether or not to apply the “protection clause”.

⁷⁸ See e.g. Article 4-bis(1) and Article 51/5(3) Aliens Act. Note, however, that Article 3 Law of 21 November 2017 refers to the implementation of the Dublin III Regulation.

⁷⁹ Petra Baeyens and Eva Declerck, ‘Welk recht op een gezins- en familieleven binnen het Dublin-systeem’, *Tijdschrift Vreemdelingenrecht*, 2017/4, 389-400.

⁸⁰ CALL, Decision No 173575, 25 August 2016; Decision No 170466, 23 June 2016.

⁸¹ CALL, Decision No 170466, 23 June 2016.

⁸² CALL, Decision No 180718, 13 January 2017.

⁸³ CALL, Decision No 161217, 20 May 2016.

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

In practice, all asylum seekers are fingerprinted and checked in the Eurodac database after making their asylum application with the Aliens Office.⁸⁴ In case they refuse to be fingerprinted, their claim may be processed under the [Accelerated Procedure](#).⁸⁵ Refusal to get fingerprinted could be interpreted as a refusal to cooperate with the authorities, which could result in detention.

Systematically, the Aliens Office first determines which EU state is responsible for examining the asylum application based on the criteria of the Dublin III Regulation. This is a preliminary procedure to decide whether or not the file must be transferred to the CGRS.

The Aliens Office has clarified that, in line with the Court of Justice of the European Union (CJEU) ruling in *Mengesteab*,⁸⁶ the time limit for issuing a Dublin request starts running from the moment an asylum seeker makes an application at the Aliens Office, and not from the moment he or she is issued a “proof of asylum application” (“Annex 26”).⁸⁷

A decision to transfer following a tacit or explicit agreement to take back or to take charge of an asylum applicant is delivered in a written decision containing the reasons for the decision in person (the so-called “Annex 26-quater” – or “Annex 25-quater” when in detention). However, the asylum seeker’s lawyer does not automatically receive a copy of the decision sent to the asylum seeker.⁸⁸

In case Belgium is the responsible state, the asylum seeker’s file is transferred to the CGRS, and this is mentioned also on the registration proof of the asylum application.⁸⁹

Individualised guarantees

Following the 2014 ECtHR ruling in *Tarakhel v. Switzerland*,⁹⁰ the Aliens Office started to systematically demand individualised guarantees in case of transfer requests to Italy of families with children, concerning specific accommodation, material reception conditions and family unity.⁹¹ The Aliens Office does not systematically do so for other vulnerable asylum applicants, nor in case of transfers to other Dublin States, although it requests guarantees when the continuity of an asylum seeker’s medical treatment has to be ensured in the country of destination.

The CALL has however overruled this Aliens Office practice in some cases, without this having a generalised effect on its practice. By way of example, in 2015-2016 some decisions by the Aliens Office to transfer an asylum seeker in need of medical or psychological aid to Spain or Italy have been suspended by the CALL because no individualised guarantees had been demanded beforehand concerning the possibility to reintroduce an asylum applications and reception conditions adapted to their particularly vulnerable situation.⁹²

⁸⁴ Article 51/3 Aliens Act, as amended by the Law of 21 November 2017.

⁸⁵ Article 57/6/1(i) Aliens Act, as amended by the Law of 21 November 2017.

⁸⁶ CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

⁸⁷ Myria, Contact meeting, 22 November 2017, para 10.

⁸⁸ Article 71/3 Royal Decree 1981.

⁸⁹ Article 51/7 Aliens Act.

⁹⁰ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

⁹¹ Aliens Office, Letter to CBAR-BCHV in response to questions concerning the implementation of the *Tarakhel* judgment, 17 November 2014, unpublished.

⁹² See e.g. CALL, Decision No 144544, 29 April 2015; No 155882, 30 October 2015; No 176192, 12 October 2016.

In a ruling of April 2015, the CALL held that a simple mention by the Aliens Office to the effect that the receiving authorities had indicated that the applicant would be placed “under an ERF project” did *not* discharge the duty to obtain individualised guarantees before the transfer.⁹³ In another judgment of April 2015, the CALL also clarified that, where the receiving authorities have not responded to a request within the requisite time limits, the Aliens Office has not fulfilled its duty to obtain guarantees.⁹⁴

In a ruling of October 2016, the CALL annulled the transfer decision under the Dublin III Regulation of an asylum seeker and her five minor children to Germany. The Aliens Office did not sufficiently take into account the best interests of the children, and the reception guarantees necessary to transfer the Afghan asylum seeker with her children to Germany, without a real risk of violating Article 3 ECHR.⁹⁵

Transfers

Persons whose claims are considered to be Dublin cases may in certain cases be detained (see section on [Grounds for Detention](#)). As a reaction to the increase of asylum applications from persons having transited through other Member States in August 2015, more asylum seekers seemed to be detained since September 2015 even before any transfer agreement had been reached. After some decisions by the Council Chambers to release such persons because the applicability of the Dublin Regulation in itself is not a sufficient ground for detention, the Aliens Office has taken a step back and this practice has become less frequent. It concerned particularly Iraqi asylum seekers who were detained solely because they were in a Dublin procedure. The Commissioner for Human Rights of the Council of Europe expressed his concern and called on the authorities to review this practice, especially in cases in which no country had yet been identified to which the asylum seeker could be transferred.⁹⁶

Once the maximum time limit under the Dublin Regulation for executing the transfer has passed (which is prolonged in case the persons did not have a known address with the Aliens Office), Belgium's responsibility for examining the asylum application will be accepted when the persons concerned present themselves to the Aliens Office again.

If the asylum seeker continues to be at the disposal of the Aliens Office for the execution of the transfer, in theory Belgium becomes responsible for his or her asylum application after 6 months. In practice, the Aliens Office systematically contacts the services in the reception centre where the asylum seeker resides and considers them to be absconding if they have not left an address. It is recommended that the asylum seeker systematically inform the Aliens Office of his or her address.

The average processing time between the asylum application and the delivery of a decision refusing entry (at the border) or residence on the territory based on the Dublin Regulation is not provided by the Aliens Office, but can vary greatly depending on the number of pending cases at the Dublin Unit and the Member State the Aliens Office wants to transfer a person to.

The time limit from the acceptance of a request until the actual transfer is not known because the Aliens Office does not and cannot keep statistics relating to asylum seekers returning or going to the responsible country on a voluntary basis or on Dublin transfer decisions that are not executed in practice.

⁹³ CALL, Decision No 144188, 27 April 2015.

⁹⁴ CALL, Decision No 144100, 28 April 2015.

⁹⁵ CALL, Decision No 176046, 10 October 2016.

⁹⁶ Council of Europe, *Report by Nils Muižnieks Following his Visit to Belgium from 14 to 18 September 2015*, available at: <http://bit.ly/2jAmSZH>.

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

Asylum seekers have to attend a specific Dublin interview in which they can state their reasons for opposing a transfer to the responsible country.⁹⁷ Lawyers are not allowed to be present at any procedure at the Aliens Office, including the Dublin interview. They can nevertheless intervene by sending information on the reception conditions and the asylum procedure in the responsible state or with regard to individual circumstances of vulnerability, presence of family members and relatives or other.⁹⁸ This is important since the CALL has repeatedly demanded from the Aliens Office that it responds to all arguments put forward and all information submitted.

During the interview the Aliens Office will ask about:

- ❖ The identity and country of the asylum seeker
- ❖ The route taken to Belgium
- ❖ Problems in the country of origin. The Aliens Office uses a specific form with standard questions. This questionnaire is very important, as it will form the basis of the second interview at the Commissioner-General for Refugees and Stateless Persons.
- ❖ Submitting the applicant's documents.

During this interview asylum seekers can state their reasons for opposing a transfer to the responsible EU state.⁹⁹ When a request to take back or take charge of an asylum seeker is being sent to another state, this is mentioned in the "proof of asylum application" ("Annex 26").

The questionnaire contains elements that are relevant for determining if the sovereignty clause should be applied to avoid potential inhuman treatment of the person concerned, in case of transfer to another responsible EU or Schengen Associated state. The asylum seekers are asked why they cannot or do not want to return to that specific country, whether they have a specific medical condition and why they have come to Belgium.

The applicant is asked more specifically whether there are reasons related to the reception conditions and the treatment he or she underwent why he or she opposes a transfer to that Member State. However, no questions are asked specifically as to what the detention conditions, the asylum procedure and the access to an effective remedy are like in the responsible state. This is for the asylum seeker to invoke and they have to prove that such general circumstances will apply in their individual situation or that they belong to a group that systematically undergoes inhuman treatment.

The asylum seeker should specifically ask for a copy of the questionnaire at the end of the interview. Otherwise the lawyer will have to request a copy at the Aliens Office. Practitioners have stated that it can take up to a month or longer before they receive a copy of the questionnaire, which is often too late for the appeal or to prepare the interview at the CGRS.¹⁰⁰

⁹⁷ Article 10 Royal Decree on Aliens Office Procedure.

⁹⁸ Article 18 Royal Decree on Aliens Office Procedure.

⁹⁹ Article 10 Royal Decree on Aliens Office Procedure.

¹⁰⁰ Myria, Contact meeting, 21 December 2016, available at: <http://bit.ly/2jGwYmM>, para 29.

When the Aliens Office accepts that Belgium is responsible for the asylum claim, it transfers the file to the CGRS. However, the decision as to why Belgium is responsible is not motivated.

2.4. Appeal

Indicators: Dublin: Appeal
 Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
○ Annulment appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
○ Extreme urgency procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Applications for which Belgium is not responsible are subject to a “refusal of entry or residence” decision by the Aliens Office and are not examined on the merits. The appeal procedure provided for against a Dublin transfer i.e. a decision of “refusal of entry or residence on the territory” is a non-suspensive annulment procedure before the CALL, rather than a “full jurisdiction” procedure (see section on [Regular Procedure: Appeal](#)). Dublin transfers decisions may be appealed within 30 days.

It is exactly this appeal procedure that was considered by the ECtHR not to be an effective remedy in *M.S.S. v. Belgium and Greece*. However, under the “extreme urgency” procedure, an appeal with short automatic suspensive effect may be provided (see section on [Regular Procedure: Appeal](#)).

The CALL verifies if all substantial formalities have been respected by the Aliens Office.¹⁰¹ In 2016 this has included cases where the Aliens Office ordered a Dublin transfer without indicating which responsibility criterion was applicable.¹⁰² The amenability to scrutiny of the correct application of the Dublin criteria has been confirmed in the same year by the Court of Justice of the European Union (CJEU) in the cases of *Ghezelbash* and *Karim*.¹⁰³

The CALL also considers whether the sovereignty clause or the protection clause should have been applied by assessing potential breaches of Article 3 ECHR. In order to do this, the CALL takes into consideration all the relevant elements concerning the state of reception conditions and the asylum procedure in the responsible state where the Aliens Office wants to transfer the asylum seeker to; frequently taking into account national AIDA reports. When such information on reception conditions and the asylum procedure in the country is only invoked in an annulment procedure, the CALL will only determine whether this information should have been known by the Aliens Office and included in its assessment of the sovereignty clause, in which case it will suspend the decision (regularly causing the Aliens Office to revoke the decision spontaneously itself, as such avoiding negative follow-up jurisprudence) or even annul it and send it back to the Aliens Office for additional examination.¹⁰⁴ Following the *Tarakhel* judgment, in these suspension and annulment appeals the CALL not only scrutinises the general reception and procedural situation in the responsible state on systemic shortcomings, but also evaluates the need for individual guarantees from such a state in case shortcomings are not systemic, where the applicant appears to be specifically vulnerable (see section on [Dublin: Procedure](#)).

¹⁰¹ Article 39/2(2) Aliens Act.

¹⁰² CALL, Decision No 165134, 31 March 2016, available at: <http://bit.ly/2kZHIUV>.

¹⁰³ CJEU, Case C-63/15 *Ghezelbash* and Case C-155/15 *Karim v. Migrationsverket*, Judgments of 7 June 2016.

¹⁰⁴ See e.g. CALL, Decision No 116471, 3 January 2014 (suspension, Bulgaria) available in Dutch at: <http://bit.ly/1FxO9LJ>; Decision No 117992, 30 January 2014 (annulment, Malta), available in Dutch at: <http://bit.ly/1Gon1oq>.

There is no information available with regard to the average processing time for the CALL to decide on the appeals against Dublin decisions specifically, nor is this available for the annulment or suspension procedures before the CALL in general.

As with all final judgments by administrative judicial bodies, a non-suspensive cassation appeal before the Council of State can also be introduced against the judgments of the CALL concerning Dublin transfers.¹⁰⁵

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 - Yes With difficulty No
 - ❖ Does free legal assistance cover:
 - Representation in interview
 - Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 - Yes With difficulty No
 - ❖ Does free legal assistance cover
 - Representation in courts
 - Legal advice

The Ministerial Decree on Second Line Assistance, laying down the remuneration system for lawyers providing free legal assistance has not determined specific points for a lawyer's intervention in the Dublin procedure at first instance with the Aliens Office. Of course the general Judicial Code and Royal Decree provisions on free legal assistance can be applied and asylum seekers as such are entitled to a "pro-Deo" lawyer also with regard to the Dublin procedure. However, since assistance by a lawyer is not allowed during the Dublin interview, the general category of administrative procedures will not be applied by the bureau for legal assistance. There might, however, be analogy with the category of written legal advice if the lawyer intervenes in any other way (written or otherwise) at the Aliens Office with regard to a Dublin case.

With regard to the appeal, the general rules for free legal assistance in annulment and suspension petitions with the CALL apply (see section on [Regular Procedure: Legal Assistance](#)).

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?
 - Yes No
 - ❖ If yes, to which country or countries?

Sometimes, transfers under the Dublin Regulation are not executed either following:

- ❖ An informal (internal) and not explicitly motivated decision of the Aliens Office itself; or
- ❖ A suspension judgment (in some rare cases followed by an annulment judgment) of the CALL.

Hungary: In the course of 2016, the Aliens Office stopped Dublin transfers to Hungary, and Belgium started to declare itself responsible instead of transferring to Hungary. The Aliens Office emphasised in December 2016 that it is not due to the circumstances for asylum seekers in Hungary as such - it considers that there are no systemic deficiencies in reception conditions or the asylum procedure in

¹⁰⁵ Article 14(2) Acts on the Council of State.

Hungary – but due to the total lack of cooperation on the part of Hungary for Dublin transfers.¹⁰⁶ In January 2018, the Aliens Office confirmed that there are still no transfers to Hungary. The Dublin procedure takes place but Belgium will declares itself as the responsible Member State.¹⁰⁷

Greece: In mid-2017 the government resumed transfer requests to Greece. Up until January 2018, 60 requests had been made. Most of them are being refused by Greece. So far not a single transfer has taken place.¹⁰⁸

Italy: Following the *Tarakhel v. Switzerland* ruling of the ECtHR regarding Italy, the CALL initially suspended transfers in respect of applicants who were at risk of being left homeless upon return due to the shortage in reception places in the country.¹⁰⁹ With the exception of families with minor children, this has not led to a generalised Aliens Office practice to demand individualised guarantees from Italy. From 2016 until early 2018, the CALL has upheld transfers to Italy for most asylum seekers,¹¹⁰ although it has ruled against transfers in some specific cases.¹¹¹

Bulgaria: The Aliens Office continues to decide that transfers of asylum seekers to Bulgaria do not automatically constitute a risk of inhumane treatment. It continues to order transfers but the number is limited.¹¹² In 2016, the CALL annulled several transfer decisions to Bulgaria. The CALL rules that recent reports and information have shown a deterioration in the quality of the asylum procedure and the reception conditions in Bulgaria.¹¹³ For example, in an appeal decision taken on 1 June 2016, the CALL, suspended a Dublin transfer of an Afghan national to Bulgaria on grounds that such a transfer would lead to a breach of Article 3 ECHR. The Afghan national applied for asylum in Belgium on 20 August 2015 and received a return decision on 26 April 2016 after the acceptance of a “take back” request by Bulgaria.¹¹⁴

In 2017, there have also been suspensions of transfers on a case-by-case basis to **Austria**,¹¹⁵ **Croatia**,¹¹⁶ **Poland**,¹¹⁷ or **Malta**.¹¹⁸

2.7. The situation of Dublin returnees

The Aliens Office considers part of the Dublin returnees as **Subsequent Applicants**. This is the case for Dublin returnees whose asylum application in Belgium has been closed, for example following an explicit and/or implicit withdrawal. In the case where an asylum seeker has left Belgium before the first interview, he or she will have his or her asylum procedure terminated.¹¹⁹ When this asylum seeker is then sent back to Belgium following a Dublin procedure and lodges an asylum application again, the CGRS is legally

¹⁰⁶ Myria, Contact meeting, 21 December 2016, available at: <http://bit.ly/2jGwYmM>.

¹⁰⁷ Myria, Contact meeting, 17 January 2018, available at: <http://bit.ly/2HCWN3B>, para 10.

¹⁰⁸ Myria, Contact meeting, 17 January 2018, available at: <http://bit.ly/2HCWN3B>, paras 11-12.

¹⁰⁹ CALL, Decision No 138940, 20 February 2015; No 144488, 27 April 2015; No 144400, 28 April 2015.

¹¹⁰ See e.g. CALL, Decision No 165056, 31 March 2016; No 169601, 10 June 2016; No 172362, 26 July 2016; No 173670, 29 August 2016; No 174958, 26 September 2016; No 177208, 28 October 2016; No 1772652, 28 November 2016; No 182116, 10 February 2017, No 183618, 9 March 2017; No 186352, 2 May 2017; No 192946, 29 September 2017.

¹¹¹ See e.g. CALL, Decision No 161166, 9 February 2016; No 162742, 25 February 2016; No 172924, 8 August 2016; No 176192, 12 October 2016; No 180180, 26 December 2016; No 194907, 13 November 2017; No 199510, 5 February 2018.

¹¹² Myria, Contact meeting, 16 November 2016, para 34; Contact meeting, 17 January 2018, para 10.

¹¹³ CALL, Decision No 175351, 26 September 2016; Nos 178479, 178480 and 178481, 28 November 2016; No 184911, 30 March 2017; No 191107, 30 August 2017.

¹¹⁴ CALL, Decision No 168891, 1 June 2016.

¹¹⁵ CALL, Decision No 187282, 22 May 2017.

¹¹⁶ CALL, Decision No 180305, 4 January 2017.

¹¹⁷ CALL, Decision No 191999, 14 September 2017.

¹¹⁸ CALL, Decision No 181730, 2 February 2017.

¹¹⁹ Article 57/6/5, as inserted by the Law of 21 November 2017.

obliged to deem it admissible.¹²⁰ Nevertheless, these asylum seekers often are still considered as subsequent applicants and therefore are without shelter until this decision is officially taken.

When considered as a subsequent applicant, they have no automatic access to reception. They will fall under the general practice of reception for subsequent applications (see [Criteria and Restrictions to Access Reception Conditions](#)).¹²¹

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

Following the entry into force of the reform on 22 March 2018, the admissibility procedure is introduced in Article 57/6(3) of the Aliens Act. The CGRS can declare an asylum application inadmissible where the asylum seeker:

1. Enjoys protection in a [First Country of Asylum](#);
2. Comes from a [Safe Third Country](#);
3. Enjoys protection in another EU Member State;
4. Is a national of an EU Member State or a country with an accession treaty with the EU;¹²²
5. Has made a [Subsequent Application](#) with no new elements; or
6. Is a minor dependant who, after a final decision on the application lodged on his or her behalf, lodges a separate application without justification.

The CGRS must take a decision on inadmissibility within 15 working days. Shorter time limits of 10 working days are foreseen for subsequent applications, or even 2 working days for subsequent applications in detention.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure? Yes No
 - ❖ If so, are questions limited to identity, nationality, travel route? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

Since the procedure that leads to a decision of inadmissibility does not in itself differ from the regular procedure, other than the time-period in which a decision has to be made, the same legal provisions apply to the interview taken by either of the two instances.

A regular interview for the lodging of the asylum application takes place at the Aliens Office.¹²³ Although there is no explicit legal obligation to enquire specifically and proactively about potential new elements in case of a subsequent asylum application or about conditions which oppose a Dublin transfer, the officer at the Aliens Office is explicitly obliged under the Royal Decree on Aliens Office Procedure to take into consideration all elements concerning those two aspects, even if they are invoked only after the interview.¹²⁴

¹²⁰ Article 57/6/2(1) Aliens Act, as amended by the Law of 21 November 2017.

¹²¹ Myria, Contact meeting, 21 June 2016, available at: <http://bit.ly/2k3obi9>, para 9.

¹²² Note that this ground is not foreseen in Article 33(2) recast Asylum Procedures Directive.

¹²³ Article 51/10 Aliens Act.

¹²⁴ Articles 10, 16 and 18 Royal Decree on Aliens Office Procedure.

At the CGRS the regular personal interview about the facts underlying the asylum application has to take place in the same depth and detail as is the case for other asylum applications. The interview may be omitted where the CGRS deems it can take a decision on a subsequent application based on the elements in the file.¹²⁵

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?
- | | | |
|----------------------------|--|---|
| | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

An appeal against an inadmissibility decision must be lodged within 10 days, or 5 days in the case of a subsequent application in detention.¹²⁶ The appeal has automatic suspensive effect, with the exception of some cases concerning [Subsequent Applications](#).¹²⁷

The CALL shall decide on the application within 2 months,¹²⁸ under “full judicial review” (*plein contentieux*).

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
- | | | | |
|-------------------------------------|---|---|-----------------------------|
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover: | <input checked="" type="checkbox"/> Representation in interview | | |
| | <input checked="" type="checkbox"/> Legal advice | | |
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
- | | | | |
|------------------------------------|--|---|-----------------------------|
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover | <input checked="" type="checkbox"/> Representation in courts | | |
| | <input checked="" type="checkbox"/> Legal advice | | |

In first instance procedures leading to inadmissibility decisions as well as in the appeal procedures, the general provisions on the right and access to free legal assistance apply, are also raising the same challenges for asylum seekers (see section on [Regular Procedure: Legal Assistance](#)). In practice, much fewer procedural interventions by lawyers, in appeals or otherwise, take place in these specific cases.

¹²⁵ Article 57/5-ter(2) Aliens Act, as inserted by the Law of 21 November 2017.

¹²⁶ Article 39/57(1)(3) Aliens Act, as amended by the Law of 17 December 2017.

¹²⁷ Article 39/70 Aliens Act, as amended by the Law of 17 December 2017.

¹²⁸ Article 39/76(3)(3) Aliens Act.

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Can an application made at the border be examined in substance during a border procedure? Yes No
3. Is there a maximum time limit for a first instance decision laid down in the law? Yes No
❖ If yes, what is the maximum time limit? 28 days

Belgium has 13 external border posts: 6 airports, 6 seaports, and one international train station (Eurostar terminal at Brussels South station). Belgium has no border guard authority as such; the border control is carried out by police officers from the Federal Police, in close cooperation with the Border Control Section at the Aliens Office, as opposed to the control on the territory, being primarily within the competence of the Local Police.

A person without the required travel documents will be refused entry to the Schengen territory at a border post and will be notified of a decision of refusal of entry to the territory and “*refoulement*” by the Aliens Office (“Annex 11-ter”).¹²⁹ Such persons may submit an asylum application to the border police, which will carry out a first interrogation and send the report to the Border Control Section of the Aliens Office.¹³⁰ The “decision of *refoulement*” is suspended after the decision taken by the CGRS. The “decision of *refoulement*” is suspended during the term to appeal and the whole appeal procedure itself.¹³¹

The CGRS shall examine whether the application is:¹³²

- Inadmissible; or
- Cannot be treated accelerated under the grounds set out in the [Accelerated Procedure](#).¹³³

If these grounds do not apply the CGRS will decide that further investigation is necessary, following which the applicant will be admitted to enter the territory.

The asylum application will be examined while the applicant is kept in detention in a closed centre located at the border. The new law provides that a person cannot be detained at the border for the sole reason that he or she has made an application for international protection.¹³⁴ Nevertheless, UNHCR is concerned that this provision still does not guarantee protection against arbitrary detention. Although it recommended border detention guarantees under Article 74/5 of the Aliens Act to be aligned to those of territorial detention under Article 74/6 (necessity test, evaluation of alternatives to detention etc.), this suggestion has not been taken into account (see [Grounds for Detention](#)).

Most of the other asylum seekers who apply for asylum at the border are held in a specific detention centre called the “**Caricole**”, situated near Brussels Airport, but can also be held in a closed centre located on the territory, while in both cases legally not being considered to have formally entered the country

¹²⁹ Article 72 Aliens Decree; Article 52/3(2) Aliens Act. Remarkably, in French the word “*refoulement*” is used (“*terugrijving*” in Dutch), though it does not concern a violation of the *non-refoulement* principle, since the persons concerned have been allowed to introduce an asylum application and have it examined.

¹³⁰ Articles 50-ter and 50 Aliens Act.

¹³¹ Article 39/70 Aliens Act.

¹³² Article 57/6/4 Aliens Act, as inserted by the Law of 21 November 2017.

¹³³ Except for the ground relating to the failure of the applicant to apply for asylum as soon as possible.

¹³⁴ Article 74/5(1)(2) Aliens Act, as amended by Law of 21 November 2017.

yet.¹³⁵ Asylum seekers who apply for asylum at the border are systematically detained, without preliminary assessment of their personal circumstances. No exception is made for asylum seekers of certain nationalities or asylum seekers with a vulnerable profile other than being a child or a family with children. Families with children are placed in so-called open housing units, which are more adapted to their specific needs, but which are also legally still considered to be border detention centres.¹³⁶

When the asylum application is rejected, the asylum seeker has not yet entered the territory according to the law and may thus be removed from Belgium under the responsibility of the carrier.¹³⁷ This brings with it a potential protection gap since the person concerned should lodge an appeal against the “decision of *refoulement*” that was given to him or her – when he or she applied for asylum upon arrival at the border – long before knowing if, where and under which circumstances this would be executed. When the carrier actually decides to return the person to a transit country, the conformity of that particular executing measure and those particular circumstances with Article 3 ECHR will not have been subjected to any in-merit examination.¹³⁸ This was one of the aspects of concern for the ECtHR in the *Singh* case when it ruled that Belgium lacked an effective remedy in such situations, in violation of Article 13 ECHR (see [Border Procedure: Appeal](#)).

The first instance procedure for persons applying for asylum at the border detained in a closed centre or open housing unit is the same as the regular procedure, although the law states that applications in detention are treated by priority.¹³⁹ If the CGRS has not taken a decision within four weeks, the asylum seeker is admitted to the territory.¹⁴⁰

For the removal of rejected asylum seekers at the border, the Aliens Office applies the Chicago Convention, which implies that rejected asylum seekers have to be returned by the airline company that brought them to Belgium, to the place from where their journey to Belgium commenced or to any other country where they will be admitted entry.¹⁴¹ In many cases the point of departure (and return) is not the country of origin, and the CGRS does not examine potential persecution or serious harm risks in other countries than the applicant’s country of origin. Not all issues rising under Article 3 ECHR in the country where the person is (forcibly) returned will therefore be scrutinised. This is in particular the case where the country of return is a country other than that of nationality, or also outside the scope of application of the Chicago Convention, where the CGRS has doubts over the person’s nationality or recent stay in that country, making it impossible in their opinion to pronounce itself on the risk of being treated inhumanely there.

In 2017, 469 asylum applications were made at the border.¹⁴²

¹³⁵ For jurisprudence on the fictitious extraterritoriality at the borders, see CBAR-BCHV, *Grens, Asiel, Detentie – Belgische wetgeving, Europese en internationale normen*, January 2012, available in Dutch at: <http://bit.ly/1wNTXfc>, 13-15.

¹³⁶ Article 74/9 Aliens Act.

¹³⁷ Chicago Convention of 7 December 1944 on International Civil Aviation. See on this issue CBAR-BCHV, *Het Verdrag van Chicago. Toepassing op asielzoekers aan de grens* (The Chicago Convention. Applicability for asylum seekers at the border), June 2013, available in Dutch at: <http://bit.ly/1ycTntE>.

¹³⁸ And it will be too late to appeal against it in an effective way, as also the ECtHR has ruled in *Singh v. Belgium*.

¹³⁹ Article 57/6(2)(1) Aliens Act, as amended by the Law of 21 November 2017.

¹⁴⁰ Articles 57/6(4) and 74/5(4)(5) Aliens Act, as amended by the Law of 21 November 2017.

¹⁴¹ Article 74/4 Aliens Act.

¹⁴² Based on monthly calculation of information provided by the Aliens Office during Myria Contact meetings.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?
 Yes No
 - ❖ If so, are questions limited to nationality, identity, travel route? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

As is the case in the regular procedure, every asylum seeker receives a personal interview by a protection officer of the CGRS, after the Aliens Office has conducted a short interview for the purpose of the registration of the asylum application and after the asylum seeker has filled in the CGRS questionnaire.

However, as the border procedure concerns asylum applications made from detention and thereby treated by priority, the interview by the CGRS takes place much faster after asylum seekers' arrival and in the closed centre. This implies that there is little time to prepare and substantiate the asylum application. Most asylum seekers arrive at the border without the necessary documents providing material evidence substantiating their asylum application. Contacts with the outside world from within the closed centre are difficult in the short period of time between the arrival and the personal interview, which constitutes an extra obstacle for obtaining documents and evidence.

Vulnerable asylum seekers also face specific difficulties related to this accelerated asylum procedure. Since no vulnerability assessment takes place before being detained, their vulnerability is not always known to the asylum authorities and as a result may not be taken into account when conducting the interview, assessing the protection needs and taking a decision. However, following the reform entering into force on 22 March 2018, it is now clearly provided that the asylum seeker should fill in a questionnaire specifically intended to determine any specific procedural needs, at the start of the asylum procedure.¹⁴³

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?
 Yes No
 - ❖ If yes, is it Judicial Administrative
 - ❖ If yes, is it suspensive Yes No

The appeal at the border is the same as in the regular procedure, except for the much shorter time limits that need to be respected. The time period within which any appeal to the CALL must be lodged while in border detention (including for families in an open housing unit) is only 10 days, or 5 days in cases such as a second or further order to leave the territory, instead of 30 calendar days in the regular procedure.¹⁴⁴

Due to this short deadline, asylum seekers may face serious obstacles in appealing against negative decisions. The Aliens Office only notifies a "decision of *refoulement*" after the CGRS has taken a negative decision on the application.

¹⁴³ Article 48/9(1) Aliens Act, inserted by the Law of 21 November 2017.

¹⁴⁴ Article 39/57 Aliens Act.

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover
 Representation in courts
 Legal advice

In the border procedure, asylum seekers are entitled to free legal aid. In principle, the same system as described under the regular procedure applies for the appointment of a “pro-Deo” lawyer. However, most bureaus of legal assistance appoint junior trainee lawyers for these types of cases, which means that highly technical types of cases are handled by lawyers who do not have adequate experience. The contact between asylum seekers and their assigned lawyer is usually very complicated. Often no lawyer is present at the personal interview because asylum seekers cannot get in touch with their lawyer before the interview takes place, and lawyers tend not to visit their client before the interview to prepare it. When a negative first instance decision is taken by the CGRS, it is not always easy to contact the lawyer over the phone or in person to discuss the reasons given in the decision. Often the lawyer decides that there are no arguments/grounds to lodge an appeal with the CALL and advises the asylum seeker not to lodge an appeal without explaining the reasons why. Some bureaus of legal assistance have or intend to create pools and lists of specialised alien law lawyers to be exclusively assigned in this type of cases, but the necessary control and training to effectively guarantee quality legal assistance seems to be lacking.¹⁴⁵

5. Accelerated procedure

5.1. General (scope, grounds for accelerated procedures, time limits)

The amended Aliens Act introduces the concept of “accelerated procedure”, which can be applied in cases where the applicant:¹⁴⁶

- a. Only raises issues irrelevant to international protection;
- b. Comes from a [Safe Country of Origin](#);
- c. Has misled the authorities by presenting false information or documents or by withholding relevant information or documents relating to his or her identity and/or nationality which could have a negative impact on the decision;
- d. Has likely in bad faith destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality;
- e. Has made clearly inconsistent, contradictory, clearly false or obviously improbably representations which contradict sufficiently verified country of origin information, thereby making his or her claim clearly unconvincing;
- f. Has made an admissible [Subsequent Application](#);
- g. Has made an application merely in order to delay or frustrate the enforcement of an earlier or imminent removal decision;
- h. Entered the territory irregularly or prolonged his or her stay irregularly and without good reasons has failed to present him or herself or apply as soon as possible;
- i. Refuses to comply with the obligation to have his or her fingerprints taken; or

¹⁴⁵ In some specific cases the system of exclusively appointing listed lawyers to assist asylum seekers at the border, seems to have attracted some lawyers for purely financial reasons rather than out of expertise or even interest in the subject matter or their client’s case.

¹⁴⁶ Article 57/6/1(1) Aliens Act, as amended by the Law of 21 November 2017.

- j. May for serious reasons be considered a danger to the national security or public order, or has been forcibly removed for serious reasons of national security or public order.

The CGRS shall decide on the application within 15 working days.¹⁴⁷ When rejecting the application is treated under the accelerated procedure on the aforementioned grounds, it may pronounce the application as manifestly unfounded.¹⁴⁸ This has effects on the order to leave the territory, which will be valid between 0-7 days instead of 30 days.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure? Yes No
 - ❖ If so, are questions limited to nationality, identity, travel route? Yes No
 - ❖ If so, are interpreters available in practice, for interviews? Yes No
2. Are interviews conducted through video conferencing? Frequently Rarely Never

Exactly the same legal provisions apply to the personal interview in the accelerated procedures, including the ones dealing with the admissibility of the application, as to the one in the [Regular Procedure: Personal Interview](#). The only difference provided for is that in case of detention, the interview takes place in the detention centre where the applicant is being held, but this has no impact on the way the interview takes place as such.¹⁴⁹ Also an interpreter is present during these interviews. The CGRS conducts interviews through videoconference in the detention centres of **Merkspias** and **Bruges**.

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

An appeal in the accelerated procedure must be lodged within 10 days,¹⁵⁰ and has suspensive effect.

¹⁴⁷ *Ibid.*

¹⁴⁸ Article 57/6/1(2) Aliens Act.

¹⁴⁹ Article 13 Royal Decree on CGRS Procedure.

¹⁵⁰ Article 39/57(1)(2) Aliens Act.

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover
 Representation in courts
 Legal advice

The right to legal aid applies in exactly the same way to the accelerated procedure as it does in the [Regular Procedure: Legal Assistance](#). “Pro-Deo” lawyers get exactly the same remuneration for similar interventions in accelerated procedures as in regular ones. In order to avoid that crucial time would be lost with formally getting the appointment of a lawyer arranged in time, it is accepted that formal appointment of the lawyer can take place until one month after the actual intervention.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?
 Yes For certain categories No
❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children?
 Yes No

While the Aliens Act does not expressly set out a definition of vulnerable groups, the amended Reception Act reflects the non-exhaustive list contained in Article 21 of the recast Reception Conditions Directive, referring to “children, unaccompanied children, single parents with minor children, pregnant women, disabled persons, victims of human trafficking, elderly persons, persons with serious illness, persons suffering from mental disorders and persons having suffered torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.”¹⁵¹

1.1. Screening of vulnerability

Both the Aliens Office and the CGRS have arrangements in place for the identification of vulnerable groups.

In 2014 the Aliens Office started a “Vulnerability Unit” to screen all applicants upon registration on their potential vulnerability. The Vulnerability Unit consists of officials interviewing vulnerable cases, who have had specific training and are supposed to be more sensitive to the specific implications vulnerability might have on the interview.¹⁵²

¹⁵¹ Article 36 Reception Act, as amended by the Law of 21 November 2017.

¹⁵² CBAR-BCHV, *Trauma, geloofwaardigheid en bewijs in de asielprocedure* (Trauma, credibility and proof in the asylum procedure), August 2014, available in Dutch at: <http://bit.ly/1MiiYbk>, 66-69.

Until early 2018, only visible or clearly stated vulnerabilities were registered in a database (“Evibel”), to which Fedasil, the reception authority, also has access. The impact of this on the procedure and assessment of the asylum application as such seemed to be rather small; the information was mostly used to determine special reception needs, if any. A 2017 report from the reception agency, Fedasil, highlighted that due to focus on medical vulnerabilities by the Aliens Office and the Dispatching service, there is a risk that attention is drawn away from less visible vulnerabilities.¹⁵³ However, since August 2016 the Aliens Office uses a registration form in which they should indicate if a person is a (non-accompanied) minor, + 65 years old, pregnant, a single woman, LGBTI, a victim of trafficking, victim of violence (physical, sexual, psychological), has children, or has medical or psychological problems.

Following the reform entering into force on 22 March 2018, it is now clearly provided that the asylum seeker should fill in a questionnaire specifically intended to determine any specific procedural needs, at the start of the asylum procedure.¹⁵⁴ At the time of the writing it is not clear yet which questions or elements this questionnaire will contain. Furthermore, a doctor appointed by the Aliens Office *can* make recommendations on procedural needs, based on a medical examination; this is not an obligation.¹⁵⁵ If the procedural needs would not have been signalled in the beginning of the asylum procedure, the asylum seeker can still do this at any moment during the procedure, by submitting a written note to the CGRS describing the elements and circumstances of his request.¹⁵⁶ This does not, however, entail an obligation on the CGRS to restart the examination of the asylum application. The Aliens Office and the CGRS decide if any special procedural needs apply and the decision in itself is not appealable.¹⁵⁷

Furthermore, according to the reform, reception centres should not only evaluate if there are any special reception needs, but should also look for signs of special procedural needs. The centres should signal this to the Aliens Office and/or the CGRS, on condition that the asylum seeker gives consent.¹⁵⁸

The law on Guardianship of unaccompanied minors contains general provisions on the protection of unaccompanied minors, the role of the guardian. Based on this law, the Guardianship unit of the Federal Public Service of Justice has established a hotline that operates 24/7 to notify the detection of unaccompanied minor, so that the necessary arrangements can be made.¹⁵⁹

1.2. Age assessment of unaccompanied children

The Guardianship service has the general mission to streamline a system of tutors (guardians) intended to find a durable solution for unaccompanied children who are not EU citizens in Belgium, whether they apply for asylum or not. The service has to control first of all the identity of the person who declares or is presumed to be below 18 years of age.

If the Guardianship service itself or any other public authority responsible for migration and asylum, such as the Aliens Office or the CGRS, has any doubt about the person concerned being underage, a medical age assessment can be ordered, at the expense of the authority applying for it.¹⁶⁰

Age assessments in Belgium consist of scans of a person’s teeth, wrist and clavicle. Following critiques around the accuracy of the medical test to establish the age of non-Western children by the Order of

¹⁵³ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

¹⁵⁴ Article 48/9(1) Aliens Act, inserted by the Law of 21 November 2017.

¹⁵⁵ Article 48/9(2) Aliens Act.

¹⁵⁶ Article 48/9(3) Aliens Act.

¹⁵⁷ Article 48/9(4) Aliens Act.

¹⁵⁸ Article 22(1/1) Aliens Act, inserted by the Law of 21 November 2017.

¹⁵⁹ Loi-programme (I) (art. 479), 24 December 2002 - Titre XIII - Chapitre VI : Tutelle des mineurs étrangers non accompagnés.

¹⁶⁰ Article 7 UAM Guardianship Act.

Physicians,¹⁶¹ a margin of error of 2 years is taken into account. This means that only a self-declared child who is tested to be 20 years of age will be registered as an adult. In 2015, the Council of State had to reaffirm, by suspending several Guardianship Services' decisions, the legal provision that of the different outcomes of the different subtests of which such an age assessment consists, the one that indicates the lowest age is the one binding for the Guardianship Service's decision.¹⁶²

The policy note presented in October 2016 by the Secretary of State for Asylum and Migration has announced a change in age assessment policy, with a view to responding to what is described as one of the most common examples of "abuse in the asylum system". The policy note recommends that responsibility for age assessment be transferred from the Guardianship service to the Aliens Office.¹⁶³

An applicant may challenge an age assessment before the Council of State through a non-suspensive appeal, however the court is not competent to review elements such as the reliability of the results of the medical examination or the evidentiary value of identity documents. It can only if the Aliens Office had the right to conduct an age assessment according to the law. This procedure is lengthy, often taking longer than a year, which means that the person often becomes an adult before the Council of State has reached a final decision. Accordingly, the procedure is not an effective appeal and has been met with criticism.¹⁶⁴ In 2016, the Council of State received 37 challenges against age assessment decisions during the same period, out of which 34 have been rejected and 3 are pending.

In 2017 there were 3,111 signalisations of unaccompanied children, of whom 1,499 applied for asylum.. 1,076 of them applied for asylum. 86% of the unaccompanied children were boys and 14% were girls. The top 5 nationalities (among the signalisations) were:

Signalisations of unaccompanied children : 2017	
Country	Number
Eritrea	478
Afghanistan	461
Guinea	298
Sudan	283
Morocco	216
Total	3,111

Source: Guardianship Service, February 2018.

Out of a total of 675 age assessments conducted in 2017, 479 were declared to be over 18 years old.¹⁶⁵

¹⁶¹ Order of Physicians, *Age assessment tests for foreign unaccompanied minors*, 20 February 2010, available in French at: <http://bit.ly/1MBTGpj> and Dutch at: <http://bit.ly/1HiSvex>.

¹⁶² See e.g. Council of State, Decision No 231491, 9 June 2015, available in French at: <http://bit.ly/1XdO2xs>; Decision No 232635, 20 October 2015, available in Dutch.

¹⁶³ Chamber of Representatives, *Note de politique générale, Asile et Migration*, 27 October 2016, DOC 54 2111/017, available at: <http://bit.ly/2kX0S8p>.

¹⁶⁴ Platform Kinderen op de vlucht, *Leeftijdsschatting van NBMV in vraag: probleemstelling, analyse en aanbevelingen*, September 2017, available in Dutch at: <http://bit.ly/2GyEJsd>.

¹⁶⁵ Information provided by the Guardianship Service, February 2018.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people? Yes For certain categories No
- ❖ If for certain categories, specify which:

2.1. Adequate support during the interview

In gender-related asylum claims the official of the Aliens Office should check if the asylum seeker opposes to a protection officer of the other sex.¹⁶⁶ Women and girls applying for asylum in their own name are also handed over the brochure “Information for women and girls that apply for asylum”, published by the CGRS in 9 languages.¹⁶⁷

Similarly at the CGRS level, there are few specific provisions as to the screening, processing and assessing of vulnerabilities of asylum seekers. There is a general obligation to take into consideration the individual situation and personal circumstances of the asylum seeker, in particular the acts of persecution or serious harm already undergone, which could be considered a sort of specific vulnerability.¹⁶⁸ In case of a gender-related claim, one can oppose to be interviewed by a protection officer from the other sex or with the assistance of an interpreter from the other sex.¹⁶⁹ Children, whether unaccompanied or accompanied, should be interviewed in appropriate circumstances and their best interests should be decisive in the examination of the asylum application.¹⁷⁰

Unaccompanied children applying for asylum are handed over the brochure “Guide for the unaccompanied minor who applies for asylum in Belgium”, published by the CGRS in languages. The Aliens Act also has specific provisions on the procedures for unaccompanied children when they do not apply for asylum. Unaccompanied children should always be accompanied by their guardian during interviews, while accompanied children who apply separately or who request to be heard by the CGRS during the procedure of their parents should only be accompanied by the lawyer and person of trust during the first interview. If there are more interviews at a later stage, the CGRS can also interview the child alone.¹⁷¹

At the CGRS, two vulnerability orientated units have been established that render support to protection officers dealing with such cases:

- ❖ A “Gender Unit” of 15 officials, trained following the EASO training module on Interviewing Vulnerable Persons, assembles all gender-related asylum applications,¹⁷² including applications based on sexual orientation or gender identity (LGBTI), as well as those applications concerning genital mutilation (FGM), honour retaliation, forced marriages and partner violence or sexual abuse. Its main task is to guarantee an equal treatment of those asylum applications;¹⁷³
- ❖ A “Minors Unit” of 3 officials and 108 participating protection officers, headed by an appointed coordinator, ensures a harmonised approach, information exchange and exchange of best

¹⁶⁶ Article 9 Royal Decree on Aliens Office Procedure.

¹⁶⁷ CGRS, *Women, girls and asylum in Belgium: Information for women and girls who apply for asylum*, available at: <http://bit.ly/2kvQCpP>. The brochure is not otherwise distributed or freely available.

¹⁶⁸ Article 27 Royal Decree on CGRS Procedure.

¹⁶⁹ Article 15 Royal Decree on CGRS Procedure.

¹⁷⁰ Article 14 Royal Decree on CGRS Procedure. On this issue, see also CBAR-BCHV, *L'enfant dans l'asile: prise en compte de sa vulnérabilité et son intérêt supérieur*, June 2013, available in French at: <http://bit.ly/1RYkyTJ>.

¹⁷¹ Article 57/1(3) Aliens Act, inserted by the Law of 21 November 2017.

¹⁷² This includes 12 Gender reference persons in the six geographical sections of the CGRS, the Legal Service and the Documentation Centre (Cedoca).

¹⁷³ Information provided by the CGRS, 24 August 2017.

practices. Unaccompanied minors are only interviewed by specially trained protection officers, who follow the EASO training module on Interviewing Children;¹⁷⁴

- ❖ A “Psy Unit” assisted protection officers in cases where psychological problems might have an influence on the processing of the application or on the assessment of the application itself. However, in September 2015 the CGRS suddenly declared this cell to have been abolished as a consequence of the need to prioritise among its different internal projects due to the rising numbers of applicants since the summer of 2015 (see section on [Use of Medical Reports](#)).¹⁷⁵

2.2. Exemption from special procedures

If the CGRS decides that the applicant has special procedural needs, in particular in the case of torture, rape or other serious forms of violence, which are incompatible with the accelerated or border procedures, it can decide not to apply those procedures.¹⁷⁶

Unaccompanied children and children with families are currently still exempted from the border procedure, since they cannot be detained.¹⁷⁷ Nevertheless, the government is planning the establishment of family units within the closed centres with a view to reinstating detention for families in 2018, a practice suspended after Belgium was convicted by the ECtHR in the past.¹⁷⁸

Following the 2017 reform, unaccompanied children are not exempted from the accelerated procedure.

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant’s statements regarding past persecution or serious harm?
 Yes In some cases No
2. Are medical reports taken into account when assessing the credibility of the applicant’s statements?
 Yes No

Since 22 March 2018, the Aliens Act provides the possibility for the CGRS to request a medical report relating to indications of acts of torture or serious harm suffered in the past, if the CGRS thinks this is relevant to the case. It can request such a medical examination as soon as possible, if necessary by a doctor assigned by the CGRS. In the medical report a clear difference should be made between objective observations and the observations which are based on the declarations of the applicant. The report can be sent to the CGRS only with the applicant’s consent.¹⁷⁹ However, refusal to undergo a medical examination shall not prevent the CGRS from deciding on the asylum application.¹⁸⁰

If no such request is made by the CGRS and the applicant declares to have a medical problem, the CGRS should inform him or her of the possibility to provide such a report on his or her own initiative and expenses. In this case the medical report should be sent to the CGRS as soon as possible and the CGRS can request an advice concerning the report from a doctor appointed by them.¹⁸¹

The CGRS should evaluate the report together with all the other elements of the case.¹⁸²

¹⁷⁴ Information provided by the CGRS, 24 August 2017.

¹⁷⁵ Information provided by the CGRS: CBAR-BCHV, Contact meeting, 15 September 2015, available at: <http://bit.ly/1GymMYx>, para 60.

¹⁷⁶ Article 48/9(5) Aliens Act, inserted by the Law of 21 November 2017.

¹⁷⁷ Articles 74/9 and 74/19 Aliens Act.

¹⁷⁸ ECtHR, *Muskhadzhiyeva v. Belgium*, Application No 41442/07, Judgment of 19 January 2010.

¹⁷⁹ Article 48/8(1) Aliens Act, inserted by the Law of 21 November 2017.

¹⁸⁰ Article 48/8(3) Aliens Act.

¹⁸¹ Article 48/8(2) Aliens Act.

¹⁸² Article 48/8(4) Aliens Act.

It is not yet clear how this new provision will be implemented. In current practice, a distinction can be made between psycho-medical attestations that provide evidence on the mental state of the asylum seeker, relevant to determining what can be expected from him or her during an interview and to evaluate his or her credibility, and medical attestations that describe physical or psychological harm undergone in the past and that is potentially important to determining the well-foundedness of the application.

3.1. Mental state and credibility

Until 2015, a “Psy Unit” at the CGRS existed, consisting of a psychologist and a reference person in every regional section to provide support services to protection officers upon request if they believe that the psychological situation of the asylum seeker might have an impact on the way the interview can be conducted as well as on the determination of protection needs and status.¹⁸³ The purpose of the psychologist's intervention was clearly not to confirm or contradict certain elements of the asylum application.

In September 2015 the CGRS declared to have abolished the “Psy Unit” cell because of budgetary and prioritisation reasons. The CGRS had already before announced its intention to develop internal instructions for the protection officers on how to identify different psychological problems and to publish guidelines on which information a (psycho-)medical report should contain, but no further information is available.¹⁸⁴

If an asylum seeker has psychological problems which impedes him to have a normal interview or an interview at all, the CGRS expects the asylum seeker and/or his lawyer to provide a medical attestation. There is not yet a standardised procedure for these kind of cases but the CGRS evaluates on a case by case basis if an interview is possible or of special arrangements need to be made.¹⁸⁵

It has been the CGRS point of view that it is still always up to the asylum seeker him or herself in the first place to deposit a psycho-medical attestation if he or she wants to justify his or her inability to recount his or her story in a coherent and precise way without contradictions, since the burden of proof lies with him or her. The mere attestation of a psychological problem will never suffice for the CGRS to grant a protection status, but it always has to be taken into consideration in determining the protection needs.

3.2. Medical evidence of past persecution or serious harm

For the determination of the well-foundedness of an asylum application based on acts of persecution or serious harm suffered in the past, the new provision introduced by the 2017 reform of the Aliens Act will hopefully lead to a practice of establishing evidence for the physical harm such acts might have caused.

Until now, the value of such medical reports of physical harm as evidence for the existence of past persecution or inhuman treatment was mostly put aside by the CGRS, arguing that such reports could not be decisive about the exact cause of the harm or about who inflicted such injuries and for which reasons. Exceptionally, the CGRS has been required by the CALL to further examine the circumstances surrounding the physical harm, after having refused to consider a medical report because it did not allow for a determination of the exact cause of the harm and potential past persecution with certainty.¹⁸⁶ The

¹⁸³ CBAR-BCHV, *Trauma, geloofwaardigheid en bewijs in de asielpprocedure*, August 2014, 74-80.

¹⁸⁴ Information provided by the CGRS: CBAR-BCHV Contact meeting, 10 February 2015, available at: <http://bit.ly/1MvsoVI>, para 22; Contact meeting, 10 March 2015, available at: <http://bit.ly/1XBcBXk>, para 22.

¹⁸⁵ Information provided by the CGRS: Myria Contact meeting, 18 January 2017, available at: <http://bit.ly/2kx93eZ>, para 25.

¹⁸⁶ See for example CALL, Decision No 64786, 13 July 2011. In this case the doctor himself mentioned in his medical report that the injuries were “most probably” inflicted by torture, but the CGRS found this insufficient as evidence since the other declarations were considered to be not credible. The proven hypo-reaction, which

CALL ruled that the reversal of the burden of proof in case of past persecution or serious harm applies because of the presence of the physical scars as such, and this obliges the CGRS to conduct additional research into the circumstances surrounding their causes.¹⁸⁷

An overall exception in the protection practice of the CGRS is the use of medical attestations in case an FGM risk is claimed. In such cases, it is even mandatory for the asylum seekers to prove with a medical attestation that the asylum seeker herself or her minor daughter (depending on whose circumcision is said to be feared for) is already, or not yet, circumcised. To keep the protection status, every year a new medical attestation confirming this has to be delivered to the CGRS.

Some NGOs deliver free medical examinations and attestations. The organisation Constat has a specific main objective to defend and promote the full application of the Istanbul Protocol in the Belgian asylum procedure, in particular in the examination of physical and psychological consequences of torture and other cruel, inhuman and degrading treatments or punishments for asylum seekers. Other organisations in this specific field are Exil and Medimmigrant.

In this context, it is also important to mention the so-called “medical regularisation procedure”, that is not technically a part of the asylum procedure, but is closely related. In case return to the country of origin would create a risk of inhuman or degrading treatment resulting from the deterioration of the health of the person concerned due to a lack of actual access to appropriate medical treatment, an application should be lodged with the Aliens Office instead of the CGRS.¹⁸⁸ This application of protection for medical reasons has been taken out of the asylum procedure, and a completely separate procedure with less procedural guarantees. In this procedure, a standardised medical form has to be filled in and deposited before the request can be admissible and examined on its merits. A refusal can only be subjected to an annulment (and suspension) appeal. The mere existence of the procedure is an excuse often used in decisions of the CGRS not to take into consideration and not even to pronounce itself at all about any medical element put forward in the asylum procedure, even if it could have had certain relevance for the asylum application.

In *M’Bodj* and *Abdida*,¹⁸⁹ two judgments delivered on 18 December 2014, the CJEU has ruled that this so called “9ter procedure” is not a form of international protection, but a national protection measure on which the EU asylum rules do not apply because it does not entail a protection against harm caused by “actors of persecution or serious harm” in the meaning of the Qualification Directive. Nevertheless, as the Return Directive and the EU Charter of Fundamental Rights remain applicable, there needs to be an effective remedy available that automatically suspends the execution of the refusal decision in case a return might create a risk of serious or irrevocable damage to the health situation of the person concerned, that could amount to a violation of Article 3 ECHR. The current appeal procedure does not seem to satisfy this requirement completely, given the short deadline to file an automatically suspensive urgent appeal.

a psychologist determined to be also “possibly” caused by a traumatic experience, was not accepted as an explanation for the incoherencies in the declarations. The CALL agrees that the medical reports in themselves are not sufficient proof to cast out any doubt on the causes of the harm undergone, but states that the presence of the physical scars as such are sufficient reason already to apply the reversal of the burden of proof in case of past persecution or serious harm and urges the CGRS to conduct additional research into the circumstances surrounding their causes.

¹⁸⁷ Article 48/7 Aliens Act.

¹⁸⁸ Article 9-ter Aliens Act.

¹⁸⁹ CJEU, Case C-562/13, *Centre public d’action sociale d’Ottignies-Louvain-la-Neuve v Moussa Abdida*, 18 December 2014; Case C-542/13, *Mohamed M’Bodj v Belgium*, 18 December 2014.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

Every unaccompanied child who applies for asylum or is otherwise detected on the territory or at the border has to be referred to the Guardianship service at the Ministry of Justice. The so-called Programme Law of 24 December 2002 has established the service and procedures to be followed in such a case.¹⁹⁰

Once identified as being a child, a guardian will be assigned to assist the child. The guardian represents his or her pupil in legal acts and has the responsibility to ensure that all necessary steps are taken during the unaccompanied child's stay in Belgium. The guardian has to arrange for the child's accommodation and ensure that the child receives the necessary medical and psychological care, attends school etc. The guardian has to see onto the child's asylum or other residence procedures, represent and assist the child in these and other legal procedures and if necessary find a lawyer. Since the February 2015 amendment to the Aliens Act it is now allowed to cumulate the specific procedure intended at finding a durable solution for unaccompanied children (family reunification, return or right to reside in Belgium) with the asylum procedure,¹⁹¹ while before one had to choose between the two or conduct them consecutively.

The guardian also has to help in tracing the parents or legal guardians. If that has not been done yet, the guardian can also introduce an asylum application for his or her pupil.¹⁹² It should be noted, however, that a pending asylum procedure in practice could cause other procedures for finding a durable solution to be temporarily suspended until a final decision is taken on the asylum application, since in that case Belgian authorities are not allowed to contact the authorities of the country of origin to assess whether return or family reunification is possible.

The guardian has to attend the different interviews at the Aliens Office and the CGRS, and should inform the child of the decisions taken in his or her regard in an understandable manner and language. In case of a negative decision the guardian should explain appeal possibilities and request the child to provide arguments to that end. He or she should also contact the lawyer to prepare the appeal, as well as the social worker in the reception centre to be able to prepare for possible consequences of the decision on the child's right to reception.¹⁹³

If necessary, a provisional guardian can be appointed immediately upon notice to the Guardianship Service; for instance when an unaccompanied child is detained, the directing manager of the Guardianship Service or his or her deputy shall take on guardianship.¹⁹⁴

There were 3,123 ongoing guardianships by 604 active guardians at the end of 2017. The majority (77%) of those were volunteers.¹⁹⁵

¹⁹⁰ Article 479 Title XIII, Chapter VI of Programme Law of 24 December 2002 (UAM Guardianship Law).

¹⁹¹ Article 61/15 Aliens Act.

¹⁹² Article 479(9)(12) UAM Guardianship Law.

¹⁹³ Article 11 UAM Guardianship Law; 9 Royal Decree Aliens Office Asylum Procedure; Article 14 Royal Decree CGRS Procedure; Guardianship Service, *General guidelines for guardians of unaccompanied children*, 2 December 2013, available in Dutch at: <http://bit.ly/2FFW1GG>.

¹⁹⁴ Article 479(6) UAM Guardianship Law.

¹⁹⁵ Information provided by the Guardianship Service, February 2018.

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Not in all cases

The Aliens Office is also competent for registering subsequent applications i.e. the asylum seeker's declaration on new elements and the reasons why he or she could not invoke them earlier, and transmit the claim "without delay" to the CGRS.¹⁹⁶

After the application is transmitted, the CGRS first decides on the [Admissibility](#) of the claim by determining whether there are new elements which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection.¹⁹⁷ The claim is deemed admissible where the previous application has been terminated on the basis of implicit withdrawal.¹⁹⁸

The CGRS should take this decision within 10 working days after receiving the application from the Aliens Office. If the person is in detention, this decision should be taken within 2 working days.¹⁹⁹ If the CGRS declares the application admissible, it continues with an examination of the merits under the [Accelerated Procedure](#). The final decision should be made within 15 working days.²⁰⁰

Where the subsequent application is dismissed as inadmissible, the CGRS should determine whether the removal of the applicant would lead to direct or indirect *refoulement*.²⁰¹

An appeal to the CALL against an inadmissibility decision should be made within 10 days, or 5 days when the applicant is in detention.²⁰² The appeal has automatic suspensive effect, except where:²⁰³

- a. The CGRS deems that there is no risk of direct or indirect *refoulement*; and
- b. The application is either (i) a second application within one year from the final decision on the previous application and made from detention, or (ii) a third or further application.

Legal assistance is arranged in exactly the same way as with regard to first asylum applications. However, in practice some asylum seekers or lawyers themselves have experienced difficulties in obtaining "pro-Deo" assignments because the bureau for legal assistance required them to provide proof of the existence of new elements in advance.

Since the 2017 reform of the Aliens Act, an applicant does not have a right to remain on the territory even before the CGRS pronounces itself on admissibility in cases where:²⁰⁴

- a. The application is a third application; and
- b. The applicant remains without interruption in detention since his or her second application; and
- c. The CGRS has decided in the previous procedure concerning the second application that removal would not amount to direct or indirect *refoulement*.

¹⁹⁶ Article 51/8 Aliens Act, as amended by the Law of 21 November 2017.

¹⁹⁷ Article 51/8 Aliens Act, as amended by the Law of 21 November 2017.

¹⁹⁸ *Ibid*, citing Article 57/6/5(1)-(5) Aliens Act.

¹⁹⁹ Article 57/6(3) Aliens Act, as amended by the Law of 21 November 2017.

²⁰⁰ Article 57/6/1(1) Aliens Act, as amended by the Law of 21 November 2017.

²⁰¹ Article 57/6/2(2) Aliens Act, as amended by the Law of 21 November 2017.

²⁰² Article 39/57 Aliens Act, as amended by the Law of 17 December 2017.

²⁰³ Article 39/70 Aliens Act, as amended by the Law of 17 December 2017.

²⁰⁴ Article 57/6/2(3) Aliens Act, as amended by the Law of 21 November 2017.

A total of 4,315 applicants lodged subsequent applications in 2017:

Subsequent applicants: 2017	
Country	Number
Iraq	756
Afghanistan	585
Russia	312
Albania	212
Syria	158
Total	4,315

Source: CGRS

F. The safe country concepts

Indicators: Safe Country Concepts

- | | | |
|--|---|--|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

1. Safe country of origin

The safe country of origin concept was introduced in the Aliens Act in 2012. Applications from safe countries of origin are examined under the [Accelerated Procedure](#).²⁰⁵

According to the law, countries can be considered safe if the rule of law in a democratic system and the general political circumstances allow to conclude that in a general and durable manner there is no persecution or real risk of serious harm, taking into consideration the laws and regulations and the legal practice in that country, the respect for the fundamental rights and freedoms of the ECHR and for the principle of non-*refoulement* and the availability of an effective remedy against violations of these rights and principles.²⁰⁶

After having received a detailed advice of the CGRS, the government approves the list of safe countries of origin upon the proposal of the Secretary of State for Migration and Asylum and the Minister of Foreign Affairs. The list must be reviewed annually and can be adjusted.²⁰⁷ The Royal Decree of 17 December 2017 on Safe Countries of Origin reconfirmed the list of safe countries of origin that was adopted in 2017: **Albania, Bosnia-Herzegovina, FYROM, Kosovo, Serbia, Montenegro, India and Georgia**.²⁰⁸

To refute the presumption of safety of his or her country of origin, the applicant has to present serious reasons explaining why the country cannot be considered safe in his or her individual situation. It remains

²⁰⁵ Article 57/6/1(1)(b) Aliens Act, as amended by the Law of 21 November 2017.

²⁰⁶ Article 57/6/1(3) Aliens Act.

²⁰⁷ Article 57/6/1 Aliens Act.

²⁰⁸ Royal Decree of 17 December 2017, available at: <http://bit.ly/2pi7CR2>.

unclear in how far this burden of proof is any different than the one resting on asylum seekers in general throughout the procedure.

In 2017, a total of 2,022 persons from safe countries of origin applied for asylum. The breakdown per nationality is as follows:

Applicants from safe countries of origin: 2014-2017				
Country	2014	2015	2016	2017
Kosovo	842	737	331	320
Albania	732	827	817	882
FYROM	403	335	165	251
India	84	79	50	52
Bosnia-Herzegovina	150	58	56	44
Montenegro	19	15	14	5
Georgia	:	:	:	468
Total	2,230	2,051	1,433	2,022

Source: CGRS

2. Safe third country

Following the reform entering into force on 22 March 2018, the Aliens Act contains the “safe third country” concept,²⁰⁹ as a ground for inadmissibility.²¹⁰

2.1. Safety criteria

A country may be considered as safe third country where the following principles apply:²¹¹

1. Life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion;
2. There is no risk of serious harm;
3. The principle of *non-refoulement* is respected;
4. The prohibition of expulsion in violation of the prohibition on torture and other cruel, inhuman or degrading treatment is complied with; and
5. The applicant has the possibility to request refugee status and, if found to be a refugee, to receive protection in accordance with the Refugee Convention.

2.2. Connection criteria

A third country can only be regarded as a safe third country if the applicant has such a relationship with the third country on the basis of which it can reasonably be expected of him or her to return to that country and to have access thereto.²¹² The existence of a connection should be assessed on the basis of “all relevant facts and circumstances, which may include the nature, duration and circumstances of previous stay”.²¹³

The Explanatory Memorandum to the Law of 21 November 2017 gives examples of links, such as a previous stay in the third country (e.g. a long visit) or a family bond. The Explanatory Memorandum also states that for reasons of efficiency only a minimum check of access is required: it is sufficient that the

²⁰⁹ Article 57/6/6 Aliens Act, inserted by the Law of 21 November 2017.

²¹⁰ Article 57/6(3)(2) Aliens Act, inserted by the Law of 21 November 2017.

²¹¹ Article 57/6/6(1) Aliens Act.

²¹² Article 57/6/6(2) Aliens Act.

²¹³ *Ibid.*

authorities suspect that the applicant will be admitted to the territory of the third country concerned. In this regard the Explanatory Memorandum states that recast Asylum Procedures Directive does not demonstrate that the element of “access” should already be examined when applying the safe third country concept. “For reasons of efficiency”, the legislator opted to take this additional condition into account when examining whether a particular third country can be regarded as safe for the applicant. It is therefore necessary to be able to assume that the applicant will be given access to the territory of the third country concerned.

The CGRS has already stated that it will only apply this concept very exceptionally and that there will be no list of safe third countries.

3. First country of asylum

Following the 2017 reform, the concept of “first country of asylum” is defined in Article 57/6(3)(1) of the Aliens Act as a ground for inadmissibility. A country can be considered as a first country of asylum where the asylum seeker is recognised as a refugee and may still enjoy such protection, or otherwise benefits from “other real protection” in that country, including *non-refoulement*, provided that he or she can again have access to the territory of that country.

At the end of 2013, beginning of 2014, this first country of asylum concept was applied largely to refuse asylum applications from Tibetans having lived in India before coming to Belgium, although India is not a signatory to the Refugee Convention. Moreover, Rwandans and Congolese with (often Mandate UNHCR) refugee status in another African country had been refused international protection on this ground, but this practice has been halted due to some judgments of the CALL considering this protection status ineffective and/or inaccessible.²¹⁴ The CALL has repeatedly refused to refer a preliminary question to the CJEU on the interpretation of the concept of “real protection”.

The CGRS has confirmed it also applies the concept in other situations, e.g. in the case of Syrian refugees from a non-specified country from the Middle East (probably Jordan) because it was accepted that they it was possible to return to that country, they had a residence permit there and because of their socio-economic situation.²¹⁵

In all of these legal provisions concerning the existence of a safe country as an inadmissibility ground or reason to reject the claim on the merits, a presumption is introduced to the effect that there is no need for international protection. This seems to exonerate the CGRS of its share in the burden of proof and its obligation to further motivate its decision. The burden of proof of the contrary – that the country of origin is not safe or that there is no effectively accessible international protection available – is put completely on the asylum seeker.

G. Relocation

Indicators: Relocation	
1. Number of persons effectively relocated since the start of the scheme	1,169
2. Are applications by relocated persons subject to a fast-track procedure?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Belgium has relocated 700 asylum seekers from Greece and 469 from Italy from the start of the scheme to present. The Aliens Office has stated that relocation ended in December 2017 but more applicants would be arriving in 2018 due to pending cases.²¹⁶

²¹⁴ See e.g. CALL, Decision No 129911, 23 September 2014; No 123682, 8 May 2014.

²¹⁵ Myria, Contact meeting, 19 April 2016, available at: <http://bit.ly/2jGUHTW>, para 28.

²¹⁶ Myria, Contact meeting, 18 January 2017, para 97.

1. The relocation procedure

Belgium sent out its number of pledges to Italy and Greece indicating its preferences (nationality, family composition, etc.) This happened through the official way and via 'DubliNet'. Greece and Italy tried to find a match in their database. Greece and Italy sent individual files to the Dublin Unit of the Aliens Office. The Aliens Office reviewed the files and performed a security check. A case could be refused for reasons of public order or when there was an indication of exclusion under Article 1F of the Refugee Convention.²¹⁷

Once the case was accepted the Dublin Unit of the Aliens Office sent an individual invitation with its acceptance to Greece or Italy. The follow-up was different in Greece and Italy:²¹⁸

- **Greece:** Greece invited the individuals for notification of the decision. The files will then be transferred to IOM Greece to arrange the transfer. IOM arranged with Belgium when the transfer could take place. In the meantime IOM organised a cultural orientation and a medical consultation.
- **Italy:** there was no personal invitation. Belgium arranged with the Italian Dublin Unit when the transfer would take place, and IOM arranged the transfer.

2. Post-arrival treatment

Asylum seekers arriving in Belgium through relocation are treated the same way as other asylum seekers. They follow the same asylum procedure and the same reception trajectory.

Very few asylum seekers arriving through relocation are refused international protection. In the few cases where this occurred, rejection was based on fraudulent information on the applicant's nationality.²¹⁹

H. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No
 - ❖ Is tailored information provided to unaccompanied children? Yes No

1.1. Content of information

The Royal Decree on Aliens Office Procedure provides for an information brochure to be handed to the asylum seeker the moment he or she introduces the asylum application. The brochure is supposed to be in a language the asylum seeker can reasonably be expected to understand and should at least contain information about the asylum procedure, the application of the Dublin III Regulation, the eligibility criteria of the Refugee Convention and of subsidiary protection status, access to legal assistance, the possibility for children to be assisted during the interview, reception accommodation, the obligation to cooperate, the existence of organisations that assist asylum seekers and migrants and the contact details of the UNHCR representative in Belgium.²²⁰

In 2015 and 2016 the government regularly gave letters to asylum seekers containing misleading information. For example, it presented legislative proposals as being already the law in force and stated

²¹⁷ Information provided by the Aliens Office: Myria Contact meeting, 18 January 2017, available at: <http://bit.ly/2kx93eZ>, para 9-10.

²¹⁸ *Ibid.*

²¹⁹ Myria, Contact meeting, 21 February 2018, para 22.

²²⁰ Articles 2-3 Royal Decree on Aliens Office Procedure.

that asylum seekers who were fingerprinted elsewhere in the EU would be sent back to that state. The letters did not state that asylum seekers with family members could stay in Belgium. Moreover, the leaflet on the Dublin procedure, as required by Article 4(2) by the Dublin III Regulation, was not distributed until January 2016, nearly two years late. Some of these letters were directed to all asylum seekers, while others specifically targeted Iraqi and Afghan nationals. The government did not hide that this kind of “information” was part of a larger deterrence campaign, and even admitted so in Parliament and in its latest policy note for 2017.

In early 2018, several lawyers signalled that the aforementioned letters were being used again. The Secretary of State denied this and stated that the letters had been updated in the beginning of 2017.²²¹

1.2. Modes of information provision

A brochure entitled “Asylum in Belgium”, published by the CGRS and the reception agency, Fedasil, explains the different steps in the asylum procedures, the reception structures and rights and obligations of the asylum seekers. It was last updated in 2014 and exists in ten languages (Dutch, French, English, Albanian, Russian, Arabic, Pashtu, Farsi, Peul and Lingala) and in a DVD version and is distributed at the dispatching desk of Fedasil, where people are designated to a reception accommodation place.²²²

Besides these more general brochures directed to all asylum seekers, some specific leaflets are also published and made available. The brochure ‘Women, girls and asylum in Belgium’ (2011) was drawn up for female asylum seekers and is translated in nine different languages. It not only contains information about the asylum procedure itself, but also on the issues of health, equality between men and women, intra-family violence, female genital mutilation and human trafficking. Also for asylum seekers in a closed centre, at a border or in prison specific information leaflets are available. There is also the so-called ‘Kizito’ comic dated 2007, designed for unaccompanied children who do not speak any of the official languages in Belgium (Dutch, French and German), conceived to be understood only by the drawings, that explains the different steps of the asylum procedure and life in Belgium.

The Guardianship Service has developed a leaflet on assistance to unaccompanied children. This leaflet is available in 15 languages.²²³

Moreover, the CGRS has published several brochures on different aspects of the asylum procedures. There is a code of conduct for interpreters and translators and a so-called charter on interview practices that serves as the CGRS protection officers’ code of conduct (see [Regular Procedure: Personal Interview](#)). All these publications are freely available on the CGRS website.²²⁴

In August 2016, Vluchtelingenwerk Vlaanderen, launched the website www.asyluminfo.be containing accessible information on the asylum procedure in Belgium in seven languages (Dutch, French, English, Arabic, Somali, Farsi and Pashtu).

Vluchtelingenwerk has published several guidelines for lawyers both in French and Dutch, for example on Dublin,²²⁵ and on subsequent applications.²²⁶

²²¹ De Morgen, ‘Welles-nietesspel over asiëbrief: “De brief benadrukt: doe geen moeite, het is hier de hel”’, 19 February 2018, available in Dutch at: <http://bit.ly/2piBUTF>.

²²² CGRS and Fedasil, *Asylum in Belgium: Information brochure for asylum seekers regarding the asylum procedure and reception provided in Belgium*, available at: <http://bit.ly/2kvQCpP>.

²²³ The leaflets can be consulted at: <http://bit.ly/2l019Xb>.

²²⁴ CGRS, *Publications*, available at: <http://bit.ly/2kvQCpP>.

²²⁵ Vluchtelingenwerk Vlaanderen, *Het Dublin-onderzoek: leidraad voor de advocaat*, available in French and Dutch at: <http://bit.ly/2kkX4Os>.

²²⁶ Vluchtelingenwerk Vlaanderen, *Nota pre-registratie en opvang bij meervoudige asiëaanvragen*, available in French and Dutch at: <http://bit.ly/2jGWfNK>.

A procedural guide by Ciré was updated in 2015, but only available in French; unlike the 2008 version that was made available in Dutch, English, Serbian-Croatian, Turkish, Albanian and Russian.²²⁷

On the websites of [Agentschap Inburgering en Integratie](#) (Dutch), [Ciré](#) (French) and [ADDE](#) (French) extensive legal information is made available on all aspects of the asylum procedure, reception conditions and detention.

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No

Specialised national, Flemish and French speaking NGOs such as Vluchtelingenwerk Vlaanderen, Coordination and Initiatives for Refugees and Aliens (Ciré), Association for Aliens Law (ADDE), JRS Belgium, Caritas International, Nansen and Myria – to name some – have developed a whole range of useful and qualitative sources of information and tools, accessible on their respective websites or through their first line legal assistance helpdesks.²²⁸

According to the Reception Act, reception facilities should ensure that residents have access to legal advice, and to this end they can also make arrangements with NGOs.²²⁹ However, there is no structural approach to this so it depends on the reception centre. Currently, we have no knowledge of any such arrangement at the moment.

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?²³⁰ Yes No
❖ If yes, specify which: Bosnia-Herzegovina, Serbia, Montenegro, Kosovo, Albania, FYROM, India, Georgia

The CGRS uses the accelerated procedure for nationals of safe countries of origin.

There is no other prioritisation occurring for specific nationalities.

Burundi: Recently the CALL granted refugee status to several Burundian nationals merely because of their passage through Europe and their asylum application in Belgium. The CALL announced on its website that its jurisprudence conforms to the findings of a report of the Commission of Inquiry of the

²²⁷ Ciré, *Guide de la procédure d'asile*, available in French at: <http://bit.ly/1XdLNdx>.

²²⁸ The websites of Kruispunt Migratie-Integratie: <http://bit.ly/1HiBm4s> (Flanders and Brussels) and of ADDE: <http://bit.ly/1HcnMBS> (Wallonia and Brussels) give an overview with contact details of all the existing legal assistance initiatives for asylum seekers and other migrants.

²²⁹ Article 33 Reception Act.

²³⁰ Whether under the “safe country of origin” concept or otherwise.

United Nations Human Rights Council. In this report, the Commission advised to grant *prima facie* refugee status to Burundian nationals and to ensure strict respect for the principle of *non-refoulement*. The CALL confirms that the current security situation in Burundi obliges the asylum authorities to treat these applications with great caution.²³¹

Resettlement: In 2017, 1,309 refugees arrived in Belgium through the resettlement programme, of whom 1,191 are Syrians coming from Lebanon, Turkey, Jordan and Iraq, while another 118 are Congolese refugees from Uganda.²³²

²³¹ CALL, 'Burundi : de Raad houdt rekening met de aanbevelingen van een onderzoekscommissie van de Raad voor de Mensenrechten van de Verenigde Naties', 30 January 2018, available in Dutch at: <http://bit.ly/2HEQAnW>.

²³² CGRS and Fedasil, *Resettlement of Refugees in Belgium*, available at: <http://bit.ly/2FQeL2d>.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions available to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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1.1. Right to shelter and assignment to a centre

According to the 2007 Reception Act, every asylum seeker has the right to material reception conditions from the moment he or she has registered his or her asylum application, that allow him or her to lead a life in human dignity.²³³

There is no limit to this right connected to the nationality of the asylum seekers. Asylum seekers from safe countries of origin will have a reception place assigned to them, as will those who have a recognised refugee status in another EU country. EU citizens applying for asylum and their family members are entitled to reception as well, although in practice they are not accommodated by Fedasil anymore (see [Differential Treatment of Specific Nationalities in Reception](#)). Therefore all these categories have the right to shelter at the start of the asylum procedure, even though they may have different kinds of asylum procedures and their right to shelter may be limited in time.

In theory, no material reception conditions, with the exception of medical care, are due to a person with sufficient financial resources to provide for his or her basic needs.²³⁴ Expenses made for material aid already delivered can also be recovered in such cases.²³⁵ The concept and means of calculating financial resources, as well as the part to be contributed, are determined in a Royal Decree of 2011.²³⁶ Nevertheless, no assessment of these financial resources or of the actual risk of destitution of the person concerned takes place already at the moment of the intake. Also, in practice, the withdrawal of the material aid is only rarely applied, since Fedasil does not have the capacity to control and have the expenses already made effectively reimbursed (see section on [Reduction or Withdrawal of Reception Conditions](#)).

When the asylum seeker lodges his or her asylum application at the Aliens Office, he or she gets a “proof of application” (“Annex 26”). This document has to be presented to Fedasil’s Dispatching desk, in the same office building as the Aliens Office, where the applicant will get a reception centre assigned as his or her mandatory place of registration (“Code 207”).²³⁷ The applicant should go to the assigned centre

²³³ Article 3 Reception Act.

²³⁴ Article 35/2 Reception Act.

²³⁵ Article 35/1 Reception Act.

²³⁶ Royal Decree, 12 January 2011 on Material Assistance to Asylum Seekers residing in reception facilities and who are employed.

²³⁷ Articles 9-10 Reception Act.

immediately. An asylum seeker can, however, also choose not to accept the offered place in a reception centre and to stay at a private address, but in that case he or she will only be entitled to medical care and legal aid. The applicant can nonetheless always opt into material aid again, as long as his or her asylum procedure is pending.

As of 22 March 2018, the Aliens Act provides that “registration” and “lodging” are two different steps in the asylum procedure.²³⁸ The Reception Act, however, now clearly provides that an asylum seeker has the right to shelter from the moment he or she makes the asylum application, and not only from the moment where the asylum application is registered,²³⁹ in line with the recast Reception Conditions Directive.

By the beginning of 2019 a new “arrival centre” will be established, where all asylum applications should be made and will be registered and where applicants will be initially sheltered. There, the government will conduct an assessment of any specific reception needs, such as medical needs, and will designate a reception place for the rest of the procedure.²⁴⁰

In 2017 many migrants, mostly from Sudan and Eritrea, were sleeping rough again in the park opposite the Aliens Office building. However, legally they were in a different situation than the asylum seekers staying there in 2015 because many of them refused to apply for asylum and thus has no right to shelter under the Reception Act. According to NGOs, the persons refused to apply for asylum due to misinformation by the government and harsh and repeated police interventions. Another reason was fear of being sent back to Italy under the Dublin Regulation and intention to travel onwards to the United Kingdom. At the end of September 2017, several NGOs including Ciré, Artsen zonder Grenzen, Médecins du Monde, Plateforme des citoyens and Vluchtelingenwerk Vlaanderen set up a humanitarian hub for these migrants, where they receive medical and psychological help, legal advice and clothes. This hub is now located in the **Gare du Nord** in Brussels.

1.2. Right to reception: subsequent applications

The Reception Act provides the possibility for Fedasil to refuse reception to asylum seekers who lodge a second or further subsequent asylum application, until their asylum application is deemed admissible by the CGRS.²⁴¹ This is unless Fedasil is informed that they have a pending or granted request for a prolongation of the reception.²⁴² Between the moment of the subsequent application and the decision of the CGRS consideration admissibility the asylum seekers have the right to medical assistance from Fedasil and to free legal representation. Once the CGRS has deemed the application admissible the right to reception is reactivated. The asylum seeker should then present him or herself to Dispatching to obtain a place.

When the asylum seeker has not obtained reception from Fedasil during the first stage and the CGRS decides to declare the subsequent asylum application inadmissible he or she will also have no right to reception during the appeal with the CALL.

According to the law, Fedasil has to take all elements of vulnerability into account when taking this kind of decision. Furthermore Fedasil is obliged to motivate this decision on an individual base. According to the Constitutional Court this decision is only legal in case of abuse of the asylum procedure, and so when the person applies for asylum only to extend the right to reception.²⁴³ In reality Fedasil systematically

²³⁸ Article 50/1 Aliens Act, as amended by the Law of 21 November 2017.

²³⁹ Article 6(1) Reception Act, as amended by the Law of 21 November 2017.

²⁴⁰ Chamber of Representatives, *Policy Note on asylum and migration*, October 2017, 24.

²⁴¹ Article 4(1)(3) Reception Act, as amended by the Law of 21 November 2017.

²⁴² Fedasil, *Instructions on the right to material aid in case of subsequent asylum applications*, 6 March 2015, available in Dutch at: <http://bit.ly/1RrW7gl>.

²⁴³ Constitutional Court, Decision No 95/2014, 30 June 2014.

refuses to assign a reception place to subsequent applicants until their asylum application is taken into consideration by the CGRS. Labour Courts have ordered Fedasil at multiple occasions to motivate such decisions individually taking into account all elements of the case.²⁴⁴ Regularly subsequent applicants obtain reception after going to these courts. The Federal Mediator also drew attention to this problem in his annual report of 2015 and 2016.²⁴⁵

As of 2018, Article 4 of the Reception Act is aligned with the recast Reception Conditions Directive and explicitly states that decisions which limit or withdraw the right to shelter, such as in the case of subsequent applications, should be individually motivated, should be based on the particular situation of the person concerned, especially with regard to vulnerable persons, and should take into account the principle of proportionality. Health care and a dignified standard of living should at all times be ensured. It is not clear yet how Fedasil will define the “dignified standard of living”.

A small change in the formulation of the motivation in decisions on shelter in the case of subsequent applications was noticed in these last months, but it is clear that the policy is still to not grant reception in these cases and that vulnerability is still mostly not taken in account.²⁴⁶

1.3. Right to reception: Dublin procedure

During the examination of the Dublin procedure by the Aliens Office, asylum seekers are entitled to a reception place. However, Fedasil still limits the right to reception conditions to the period until the time-period for executing the order to leave the territory has elapsed (considering this to be the “actual transfer” the CJEU referred to in *Cimade*), or until the travel documents are delivered if the asylum seeker confirms his or her willingness to collaborate with the transfer but cannot execute the decision yet for reasons beyond his or her own will.²⁴⁷ The Labour Courts of Brussels and Antwerp have overruled these instructions again in individual cases, because they would make too strict an interpretation of the *Cimade* judgment, ordering Fedasil to provide shelter until the Belgian state effectively executes this transfer decision itself, unless it gives clear instructions as to when and where the asylum seeker has to present him or herself for this.²⁴⁸ Currently, asylum applicants under a pending Dublin transfer decision will be accommodated in an open return place and the return track procedure will apply, as described below.²⁴⁹

If eventually in such cases, after the maximum time period permitted by the Dublin Regulation to transfer the asylum seeker to the responsible Member State has passed, Belgium accepts its responsibility to examine the asylum application, no reception place will be assigned until the person has presented him or herself at the Aliens Office again and the Aliens Office has accepted to reopen the first application (see [Dublin](#)). In a July 2015 judgment in the *V.M. v Belgium* case, the ECtHR found that Belgium had violated Article 3 ECHR because (back in 2011) it had not provided for adequate material reception conditions for

²⁴⁴ Labour Court of Brussels, Decision No 17/1762/A, 8 February 2018. See also Labour Court of Brussels, Decision of 17 February 2015, available in French at: <http://bit.ly/1Q3cOBn>; Labour Court of Brussels, Decision No 16/1384/A, 14 November 2016; Labour Court of Bruges, Decision No 16/8K, 11 October 2016.

²⁴⁵ Federal Mediator, *Annual Report 2016*, available at: <https://bit.ly/2udKLvX>; *Annual report 2015*, available at: <http://bit.ly/2jAm6f7>.

²⁴⁶ Orbit, ‘Fedasil zet asielzoekersgezin eerst op straat en herziet na 14 dagen foute beslissing’, 20 November 2017, available in Dutch at: <http://bit.ly/2G2nP3L>.

²⁴⁷ Fedasil, *Instructions on the termination and the prolongation of the material reception conditions*, 15 October 2013, available in Dutch at: <http://bit.ly/1Km961S>. These internal instructions replaced the Instructions of 13 July 2012, before they were eventually quashed by the Council of State, Judgment No 225.673, 3 December 2013.

²⁴⁸ Labour Court, Brussels, Judgment of 4 December 2013; Labour Court of Antwerp, Judgment of 6 March 2014, available in Dutch at: <http://bit.ly/1FGadUL>.

²⁴⁹ Fedasil, *Instruction on the change of place of mandatory registration of asylum seekers having received a refusal decision following a Dublin take charge*, 20 October 2015, available in Dutch at: <http://bit.ly/1MulnwV>. This instruction replaces point 2.2.4. of the Instructions of 15 October 2013.

a particularly vulnerable family (asylum seekers, children, disabled, Roma) during the (non-automatically suspensive) appeal procedure against an Aliens Office transfer decision under the Dublin Regulation.²⁵⁰

Asylum seekers who are sent back to Belgium following a Dublin procedure are often considered as subsequent applicants (see [Situation of Dublin Returnees](#)). As a consequence they often only get shelter after their asylum application is taken into consideration by the CGRS. In the case where an asylum seeker has left Belgium before the first interview, he or she will have gotten a “technical refusal” in his or her first asylum procedure. When this asylum seeker is then sent back to Belgium following a Dublin procedure and lodges his or her asylum application again, the CGRS is legally obliged to take it into consideration.²⁵¹ Nonetheless, these asylum seekers often are still considered as subsequent applicants and therefore are without shelter until this decision is officially taken.

1.4. “Return track” and assignment to an open return centre

The law foresees a so-called “return track” for asylum seekers.²⁵² This is a framework for individual counselling on return set up by Fedasil which promotes voluntary return to avoid forced returns.²⁵³

The return track starts with informal counselling, followed by a more formal phase. The informal phase consists of providing information on possibilities of voluntary return and starts from the moment the asylum application is being registered. Within 5 working days after a negative first instance decision on the asylum application by the CGRS, the asylum seeker is formally offered return accompaniment. When an appeal is lodged with the CALL the asylum seeker is again informed about his or her options for return. The return track ends with the transfer to an open return place in a federal reception centre, when:

(1) The period to introduce an appeal with the CALL has elapsed or a negative appeal decision is taken by the CALL: Asylum seekers in this situation can ask Fedasil for a derogation of this rule and thus to stay in their first reception centre in case of:

- Families with children who are going to school, who receive a negative decision of the CALL between the beginning of April and the end of June;
- Ex-minors who turn 18 between the beginning of April and the end of June and go to school
- A medical problem which prevents the asylum seeker from moving to the open reception place or during the last 2 months of pregnancy until 2 months after giving birth;
- a family reunification procedure with a Belgian child has been started up;
- when the asylum procedure of a family member is still pending.

When these derogations are granted, the asylum seeker can stay in the first reception centre until the conditions for the derogation are no longer met. At the end of the derogation the asylum seeker can ask for a new designation at an open reception centre, or simply leave the old centre.

(2) The Aliens Office takes a negative decision on the basis of the Dublin Regulation: In this situation, derogations from the obligation to go to the open return centre are only possible in case of:

- ❖ A medical problem which prevents the asylum seeker from moving to the open reception place or during the last 2 months of pregnancy until 2 months after giving birth; and
- ❖ The asylum seeker has applied for a prolongation of the order to leave the territory at the Aliens Office.

²⁵⁰ ECtHR, *V.M. and others v. Belgium*, Application No 60125/11, Judgment of 7 July 2015 (referred to the Grand Chamber), available at: <http://bit.ly/1MYGPvr>.

²⁵¹ Art. 57/6/2 Aliens Act.

²⁵² Article 6/1 Reception Act.

²⁵³ Fedasil, *Instruction concerning the return track and the assignment to an open return place*, 20 October 2015, available in Dutch at: <http://bit.ly/1Nof30n>, and *Instruction concerning the modification of the reception place of asylum seekers who have received a negative decision on the basis of the Dublin Regulation*, 20 October 2015.

When this derogation is granted, the asylum seeker can stay in the first reception centre. His or her return should be organised there, instead of in the open return centre.

Children who receive a negative decision are not transferred to an open return centre until they reach adulthood. Then they can apply for a place in an open return centre.

1.5. End of the right to reception

The right to material reception ends when:²⁵⁴

- ❖ A legal stay for more than three months is granted; or
- ❖ An order to leave the territory is delivered and the delay on this order has expired, and there is no possibility left for introducing a suspensive appeal.

Non-suspensive appeals are appeals against a decision of the Aliens Office (like a Dublin decision or an order to leave the territory), or against a negative decision or a decision to grant subsidiary protection of the CALL after a first suspensive appeal.

During these appeals there is no right to shelter, unless:

- ❖ the CALL suspends or annuls the decision of the Aliens Office or CGRS;
- ❖ the Council of State declares a cassation appeal against a decision of the CALL admissible.

Therefore the right to reception in the open return place ends when the order to leave the territory expires. In case of a negative Dublin decision this delay is mentioned on the “Annex 26-quarter” (see section on [Right to Reception: Dublin Procedure](#)). In case of a negative decision by the CGRS, the Aliens Office delivers an order to leave the territory only when the suspensive appeal has been rejected by the CALL, or after the deadline for introducing the appeal has expired.²⁵⁵ The time limit of the order to leave the territory will vary between 0 and 30 days.²⁵⁶

Until the expiry of the deadline of the order to leave the territory, every asylum seeker (whether he or she collaborates with voluntary return or not) is entitled to full material reception conditions. The order to leave the territory can be prolonged only if the person collaborates on his or her return.²⁵⁷ When the period for voluntary return as determined in the order to leave the country elapses and there is no willingness to return voluntarily, the right to reception ends and the Aliens Office can start up the procedure to forcibly return the person, including by using administrative detention.

In case of a negative outcome of the asylum procedure and thus the end of the right to reception, there are some humanitarian and other circumstances in which a prolongation of the right to reception conditions can be applied for with Fedasil:

- to end the school year (from the beginning of April until the end of June);
- during the last 2 months of pregnancy until 2 months after giving birth;
- when a family reunification procedure with a Belgian child has been started up;
- when it is impossible for the person to return to their country of origin for reasons beyond their own will;
- for medical reasons, when an application for legal stay has been made on this ground at the Aliens Office; or
- whenever respect for human dignity demands it.²⁵⁸

²⁵⁴ Article 6 Reception Act.

²⁵⁵ Article 52/3 Aliens Act; Article 6 Reception Act.

²⁵⁶ Article 74/14 Aliens Act.

²⁵⁷ Article 6/1 Reception Act and Article 52/3 Aliens Act.

²⁵⁸ Article 7 Reception Act.

Fedasil has adopted internal instructions about these possibilities and how to end the accommodation in the reception structures in practice.²⁵⁹

In case of a positive outcome of the asylum procedure, and thus after a decision granting a protection status, or another legal stay (for example, a medical regularisation procedure – which has been started up parallel with an asylum procedure – with a positive outcome and thus a legal stay of more than 3 months), the person concerned can stay for a maximum of 2 more months in the reception place. These 2 months should allow the person to look for another place to live and to transit to financial help of the PCSW if necessary. Persons staying in collective structures at the moment of recognition (or other legal stay) will be offered the choice between moving to an individual reception structure for 2 months or leave the collective structure within 10 working days. In the last case they will receive food cheques during one month. The deadline of two months can be extended. In general a prolongation of one month is common, after that the request for further prolongation should be very well motivated. All prolongations are generally awarded for no longer than a month, except for exceptional cases e.g. finishing the school year from April onwards or having a signed lease which starts after a month. Fedasil has adopted internal instructions on these issues.²⁶⁰

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

- | | |
|--|----------|
| 1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 1 January 2018 (in original currency and in €): ²⁶¹ | |
| ❖ Accommodated single adult, incl. food | €180-212 |
| ❖ Accommodated single adult | €244-280 |

2.1. Material or financial aid?

Since the adoption of the 2007 Reception Act, the system of reception conditions for asylum seekers has shifted completely from financial to purely material aid. This comprises of accommodation, food, clothing, medical, social and psychological help, access to interpretation services and to legal representation, access to training, access to a voluntary return programme, and a small daily allowance (so-called pocket money). Nevertheless, the help can be partially delivered in cash, as is the case in the Local Reception Initiatives (LRI), as discussed below. The whole reception structure is coordinated by Fedasil. Fedasil regularly issues internal instructions on how to implement specific rights provided for in the Reception Act, as referred to throughout this report.

Only in exceptional cases, the social welfare services provided by the PCSW deliver financial aid to asylum seekers.²⁶² This could be the case for example when the asylum seeker wants to live together with his or her partner who already has a legal stay in Belgium. However, this is only exceptional and can only be the case after explicit permission of Fedasil. To obtain this permission the asylum seeker should ask for an abrogation of the designated reception place (“Code 207”).²⁶³

2.2. Collective or individual?

For the assignment to a specific centre, Fedasil should legally take into consideration the occupation rate of the centre, the family situation of the asylum seeker, his or her age, health condition, vulnerability and

²⁵⁹ Fedasil, *Instructions on the termination and the prolongation of the material reception conditions*, 15 October 2013.

²⁶⁰ Fedasil, *Instructions on the transition from material reception to financial help: measures for residents of collective centres and the accompaniment in transition in the individual structures*, 20 July 2016.

²⁶¹ Note that these cash amounts are given in the individual reception structures of the LRI. Collective centres provide most assistance in kind.

²⁶² Article 3 Reception Act.

²⁶³ Article 13 Reception Act.

the procedural language of his or her asylum case. There are no monitoring or evaluation reports about the effective assessment of all these elements in practice. Albeit legally binding criteria, these do not seem to be always taken into consideration.²⁶⁴

In theory, an asylum seeker or his or her social assistants can ask to change centre at any given time during the procedure, based on these criteria. Fedasil itself can decide as well to change the location of reception, on the basis of these criteria.²⁶⁵ Currently, the possibilities to change on the request of the asylum seeker are very limited in practice.

The new reception model whose implementation started in 2016 generally assigns people to collective reception centres. Only asylum seekers with very specific vulnerabilities are directly assigned to specialised NGO reception structures or LRI.²⁶⁶ According to the law, after 6 months in a collective centre, all asylum seekers can apply to be transferred to an individual accommodation structure.²⁶⁷ Where the person's asylum application has already been refused at first instance procedure by the CGRS, the transfer will be refused or postponed. Nonetheless, due to the increase in asylum applications in 2015, and thus persons entitled to accommodation, these transfers have been put on hold.²⁶⁸ Ever since these transfers have not restarted.²⁶⁹ This means that asylum seekers stay much longer in collective structures (see [Conditions in Reception Facilities](#)).

There are two exceptions:

- ❖ Persons with a high chance of recognition (nationality with recognition rate above 90% e.g. Syrians, Libyans and Burundians) are assigned to LRI after a 4-month stay in collective reception centres;²⁷⁰
- ❖ Persons staying in collective structures at the moment they are granted a legal stay of more than 3 months, for example refugee status, will be offered the choice between moving to an individual reception structure for 2 months or leave the collective structure within 10 working days. In this case they will receive meal vouchers during one month.²⁷¹

In the collective centres most conditions are delivered in kind.

Fedasil shelters refugees who were resettled for 6 to 8 weeks in a collective reception centre. After this they will go to an LRI for 6 months maximum. This delay can be prolonged by 2 months. During this period the LRI will help to find their own place to live, which could be in the same commune of the LRI, or in another.

This procedure is not the same for asylum seekers coming to Belgium through [Relocation](#). These persons receive the same reception conditions as any other asylum seeker in Belgium.

²⁶⁴ Article 11 Reception Act. EMN, *The organisation of Reception Facilities in Belgium*, August 2013, available at: <http://bit.ly/1G7h2RA> summarises these legal criteria, but does not make an evaluation of their application in practice.

²⁶⁵ Article 12(2) Reception Act.

²⁶⁶ Regeerakkoord, 9 October 2014, available at: <http://bit.ly/2k2yJfn>. See also Myria, Contact meeting, 21 June 2016, available at: <http://bit.ly/2k3obi9>.

²⁶⁷ Article 12 Reception Act.

²⁶⁸ Information provided by Fedasil: CBAR-BCHV, Contact meeting, 15 September 2015, available at: <http://bit.ly/1GymMYx>, para 88.

²⁶⁹ Information provided by Fedasil, February 2018.

²⁷⁰ Myria, Contact meeting, 19 October 2016, available at: <http://bit.ly/2jHkICx>; Fedasil, *Instruction concerning transfers from collective reception to a Local reception Initiative (LRI) – designation of asylum seekers with a high rate of recognition*, 13 October 2013.

²⁷¹ Meal vouchers are vouchers that can be used in almost any supermarket to buy food or food related items. Employees (in all kind of sectors) often receive meal vouchers as part of their salary as well.

2.3. Financial allowance

Pocket money

All asylum seekers receive a fixed daily amount of pocket money in cash, so those who reside in collective reception centres as well.²⁷² In 2017 adults and all children from 12 years on who attend school receive €7.70 a week, younger children and children 12 years of age or older who do not attend school receive €4.70 a week, and unaccompanied children during the first phase of shelter (in “the observation and orientation centres”) receive €5.90 a week.

Allowances in individual reception facilities (NGO or LRI)

Asylum seekers in NGOs or LRI all receive a weekly amount in cash or in meal vouchers, to provide for material needs autonomously; this also includes the pocket money. For 2017, the amounts vary according to the family composition and the internal organisation of accommodation. These amounts are as follows on a monthly (4-week) basis:²⁷³

Category of applicant	Allowance in LRI with food provided	Allowance in LRI with no food provided
Single adult	€180-212	€244-280
Additional adult	€136-156	€180-200
Additional child <3 years	€92-116	€124-136
Additional child 3-12 years	€48-60	€68-76
Additional child 12-18 years	€60-68	€76-84
Single-parent extra allowance	€24-32	€32-40
Unaccompanied child	€180-212	€244-280

Besides this, the organising authority of the accommodation remains in charge of certain material needs such as transport, clothing, school costs, interpreters, etc. Since these LRI have a lot of autonomy as regards the way they are organised, they can choose if and how they distribute material aid themselves. This means that asylum seekers might exceptionally receive a financial allowance that equals the social welfare benefit (called “social integration”) for nationals, diminished with the rent for the flat or house they are accommodated in and expenses.

Allowances in case of no material reception

If all reception structures are completely saturated and Fedasil decides to not assign a reception place, the asylum seeker has the right to financial aid provided by the PCSW.²⁷⁴ The applicant would then obtain the full amount of the financial social welfare allowance, equally and in the same way as every national or other legal resident of the country. This is also the case when the obligatory designated reception place (Code 207) is abrogated officially by Fedasil because of exceptional circumstances, for example when Fedasil allows the asylum seeker to live with a partner who already has a legal stay in Belgium. Since 1 June 2016, these amounts are as follows per person per month:²⁷⁵

Monthly amounts of “social integration” for Belgian nationals	
Category	Monthly amount
Single adult	€892.70

²⁷² Article 34 Reception Act.

²⁷³ Extrapolated from the weekly amount, times 4: Information provided by the VVSG.

²⁷⁴ Article 11(4) Reception Act.

²⁷⁵ Article 14 Law on Social Integration, available at: <http://bit.ly/2kopTt5>.

Cohabitant	€595.13
Person with family at charge	€1,190.27

In practice, most asylum seekers who presented themselves to the PCSW after having been turned down at the Fedasil dispatching during the reception crisis of 2009-2012 were refused this financial allowance and had to take their request to the Labour Courts. In its February 2014 judgment in *Saciri*,²⁷⁶ the CJEU ruled that in case the accommodation facilities are overloaded, asylum seekers may be referred to the PCSW, provided that that system ensures that the minimum standards laid down in the Reception Conditions Directive are met. In particular, the total amount of the financial allowances shall be sufficient to ensure a dignified standard of living, adequate for ensuring the health of the asylum seekers and capable of ensuring their subsistence. That general assistance should also enable them to find housing, if necessary, meeting the interests of persons having specific needs, pursuant to Article 17 of that Directive.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?
 Yes No
2. Does the legislation provide for the possibility to withdraw material reception conditions?
 Yes No

The law provides for some situations in which reception conditions and material aid can be refused or withdrawn or even recovered from the asylum seeker. Such decisions are only possible for individual reasons related to the asylum seeker.

3.1. Sanctions for violation of house rules

Different limitations to the enjoyment of reception conditions can be imposed for infractions of the house rules of a reception centre. The possible sanctions are enumerated in the Reception Act. One example is the temporary withdrawal or reduction of the daily allowance.²⁷⁷ The procedures on how to apply these sanctions can be found in a Royal Decree.²⁷⁸

As a sanction for having seriously violated the house rules, and thereby putting others in a dangerous situation or threatening the security in the reception facility, the right to reception can be suspended for a maximum of one month.²⁷⁹ This measure was taken against 36 persons in 2017.²⁸⁰

The law makes it possible to withdraw reception permanently.²⁸¹ The sanction can only be used for persons, who had been temporarily excluded from reception before, subject to the aforementioned sanction, or in serious cases of physical or sexual violence. No applicant was permanently excluded from reception in 2017.²⁸²

Sanctions are taken by the managing director of the centre and have to be motivated. The person who received the sanction has to be heard prior to the decision. Most sanctions can be appealed before the managing authority of that reception centre (the Director-General of Fedasil, the NGO partner or the

²⁷⁶ CJEU, Case C-79/13 *Federaal agentschap voor de opvang van asielzoekers (Fedasil) v Selver Saciri and OCMW Diest*, Judgment of 27 February 2014.

²⁷⁷ Article 45 Reception Act.

²⁷⁸ Royal Decree of 15 May 2014 on the procedures for disciplinary action, sanctions and complaints of residents in reception centres.

²⁷⁹ Article 45(8) Reception Act.

²⁸⁰ Information provided by Fedasil, February 2018.

²⁸¹ Article 45(9) Reception Act.

²⁸² Information provided by Fedasil, February 2018.

administrative council of the PCSW). An onward appeal is possible with the Labour Court.²⁸³ As with every other administrative or judicial procedure, the asylum seeker is entitled to legal assistance, which will be free of charge if he or she has no sufficient financial means. In all of these cases, the reception conditions will be reinstated as soon as the sanction – mostly temporary in nature – has elapsed.

The sanctions that exclude the asylum seeker from the reception facilities (one month or permanently) have to be confirmed within 3 days by the Director-General of Fedasil. If they are not confirmed, the sanction is lifted. During the time of exclusion the asylum seeker still has the right to medical assistance from Fedasil. He or she also has the legal right to ask Fedasil for a reconsideration of this sanction, in case he or she can demonstrate that he or she has no other possibility to ensure living conditions in accordance with human dignity. Fedasil should answer this request within 5 days. An onward appeal is again possible with the Labour Court.²⁸⁴

Before its adoption, the permanent exclusion sanction was met with criticism by UNHCR who highlighted that Article 20(1)-(4) of the recast Reception Conditions Directive only allows a limited amount of situations in which reception facilities can be withdrawn or reduced, and that exclusion as a sanction is not one of them. UNHCR recommends that attention should be given to Article 20(5) of the Directive which guarantees an individual, impartial and objective decision which takes into account the particular situation of the person (especially when he or she is vulnerable) and the principle of proportionality. Health care and a dignified standard of living should at all times be ensured. Further recommendations were to make sure the law mentions the possibilities on how to ensure dignified living conditions explicitly and to describe clearly in which situations this sanction applies.²⁸⁵

The Council of State advised as well that there should be an explicit guarantee in the law on how to ensure dignified living conditions for those excluded from the reception facilities.²⁸⁶

The possibilities on how to ensure dignified living conditions were in the end not clearly mentioned in the law, although Fedasil, during the preparatory works of the law, made clear they have a cooperation with an organisation that works for homeless people to which they could refer some of those excluded from shelter. In practice it is not clear yet how the new sanction will be applied.

3.2. Other grounds

Under the amended Article 4(1) of the Reception Act, Fedasil may refuse or withdraw the assignment of a reception place if:

1. Such a place has been abandoned by the asylum seeker. The asylum seeker has the right to ask for a new place but can be sanctioned;
2. The asylum seeker does not attend interviews or is unwilling to cooperate when asked for additional information in the asylum procedure. This ground was inserted with the 2017 reform and it is unclear yet how it will be applied. Worryingly, Fedasil is not required to await an official decision of the Asylum Office, CGRS or CALL on the asylum procedure in order to take a decision.
3. The applicant makes a [Subsequent Application](#).

According to the Reception Act, it is also possible to refuse, withdraw or reduce reception rights – with the exception of the right to medical assistance and the medical assistance already received – or even

²⁸³ Article 47 Reception Act.

²⁸⁴ Article 45 Reception Act.

²⁸⁵ UNHCR, *Commentaires du Haut Commissariat des Nations Unies pour les réfugiés relatifs à l'avant projet de loi modifiant la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (ci-après « avant-projet de loi »), introduisant des sanctions supplémentaires en cas de manquement grave au régime et règles de fonctionnement applicables aux structures d'accueil*, 22 April 2016, available at: <http://bit.ly/2kVJLHh>.

²⁸⁶ Council of State, Opinion 59/196/4, 27 April 2016, available at: <http://bit.ly/2kVBgvT>.

claim compensation if the asylum seeker has own financial resources. Such a sanction can also be imposed for not having declared such means.²⁸⁷ Until now, only the withdrawal of the reception place assigned to the asylum seeker has been decided in case of a proven sufficient and sufficiently stable income in practice.

If an asylum seeker resides in a reception facility (LRI or collective centre) and is employed, he or she has an obligation to contribute with a percentage of his or her income to the reception facility (from 35% on an €80 monthly income to 75% on a monthly income of more than €500) and is excluded from any material reception conditions if his or her income is higher than the social welfare benefit amounts mentioned above and the working contract is sufficiently stable.²⁸⁸ The applicant also has an obligation to inform the authorities thereof. Though a control mechanism is provided for in a Royal Decree, it is not frequently carried out by Fedasil in practice due to lack of operational means. Most local PCSW have more opportunities to carry out such controls. In 2017, 44 persons had their reception rights suspended due to sufficient means obtained by employment, while 435 persons contributed financially to the costs of their reception.²⁸⁹

No reduction of material reception conditions is legally foreseen in case the asylum seeker has not introduced his asylum application within a “reasonably practicable” period after arrival. This is only a relevant criterion for the CGRS when determining the well-foundedness of the application itself.

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?
 Yes No
2. Does the law provide for restrictions on freedom of movement? Yes No

Asylum seekers who stay in an open reception centre enjoy freedom of movement across the national territory without restrictions (as long as they are not detained). If the asylum application is refused, the rejected asylum seeker is transferred to a so called “open return place” in a regular centre, where he or she can enjoy full reception rights until the end of the right to reception. So there as well, he or she enjoys freedom of movement.

On the other hand, an asylum seeker cannot choose his or her place of reception. As explained in [Criteria and Restrictions to Access Reception Conditions](#), the reception structure is assigned by Fedasil’s Dispatching service under a formal decision called “assignment of a Code 207”. Asylum seekers can only enjoy the material and other provisions they are entitled to in the reception place they are assigned to. If the asylum seeker refuses the place assigned or leaves it for longer than a couple of days without prior notice or permission, Fedasil can decide to refuse him or her material conditions. If he or she applies for it again afterwards, he or she will regain their right, but might get a sanction from Fedasil.²⁹⁰

²⁸⁷ Articles 35/1 and 35/2 Reception Act.

²⁸⁸ Articles 35/1 Reception Act and Royal Decree, 12 January 2011, on Material Assistance to Asylum Seekers residing in reception facilities and who are employed (original amounts without indexation).

²⁸⁹ Information provided by Fedasil, February 2018.

²⁹⁰ Article 4 Reception Act.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of collective reception centres: ²⁹¹	84
2. Total number of places in the collective reception centres:	12,664
3. Total number of places in LRI:	8,760
4. Total number of places in open return places:	310
5. Type of accommodation most frequently used in a regular procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other	
6. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	

Accommodation may be collective i.e. a centre or individual reception facilities i.e. a house, studio or flat,²⁹² depending on the profile of the asylum seeker and the phase of the asylum procedure the asylum seeker is in (see section on [Forms and Levels of Material Reception Conditions](#)).

Fedasil was established in 2001 to manage the network of reception centres in an efficient and coordinated way and has fallen under the competence of the Secretary of State for Migration and Integration since the end of 2011. Fedasil is in charge of the management and coordination of the network, which includes collective and individual reception places, in addition to other responsibilities such as coordinating the voluntary return programs, the observation and orientation of unaccompanied children and the integration of reception facilities in the municipalities.²⁹³ To implement its coordinating and executing competencies, Fedasil regularly issues instructions on different aspects of material reception conditions in practice.

The practical organisation is done in partnership between government bodies, NGOs and private partners.²⁹⁴ The partners include the Flemish and the Francophone Red Cross, Ciré, Caritas International and the communal PCSW. Private companies e.g. Senior Assist, Bridgestock and G4S had also become temporary reception partners in 2015. However, with the closure of 10,000 reception places in 2016 and 2017, the privately run reception structures are currently all closed. A further closure of reception centres was announced in 2018, though it is not clear which places are concerned and what buffer capacity will be foreseen.²⁹⁵

The 54 main collective reception centres as of 25 January 2018 are mainly managed and organised by:

Collective reception centres: Management and capacity		
Partner	Number of centres	Total capacity
Fedasil	17	4,554
Croix Rouge	22	5,401
Rode Kruis	15	2,709

Source: Fedasil, February 2018. In addition, there are 30 often small-scale collective centres of other partners such as Caritas, Samu Social, Mutualité Socialiste, and Synergie 14.

²⁹¹ Both permanent and for first arrivals. This are only the collective reception centres and do not include the hundreds of individual LRIs. A map may be found at: <http://fedasil.be/nl/inhoud/alle-opvangcentra>.

²⁹² Article 16, 62 and 64 Reception Act.

²⁹³ Article 56 Reception Act.

²⁹⁴ Article 62 Reception Act.

²⁹⁵ Information provided by Fedasil, February 2018.

The individual reception initiatives are mainly run by the PCSW and by NGO partners. As of 25 January 2018, the PCSW have 8,760 places in LRI, while NGO partners currently have 554.

The entire reception system had a total 22,840 places, of which 17,334 (76%) were occupied on 25 January 2018.

There are also specialised centres for specific categories of applicants (see [Special Reception Needs](#)).

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? 11-12 months
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

2.1. Average duration of stay

The law provides for accommodation to be adapted to the individual situation of the asylum seeker,²⁹⁶ but in practice places are mostly assigned according to availability and preferences under the reception model introduced in 2015. It was then decided that reception should mainly be provided in collective centres, while only certain cases would benefit from individual accommodation. This was based on the assumption that an average asylum procedure would not exceed 6 months and that asylum seekers would be able to transfer to individual housing after 4 months, as was the case before. Accordingly, the deadline after which an applicant can ask for transfer to an individual shelter was prolonged to 6 months.²⁹⁷

In practice, however, asylum seekers are unable to secure a transfer even after 6 months, as this is reserved to specific vulnerable cases, beneficiaries of international protection and nationalities with a high recognition rate. This means that all other applicants stay in collective centres for the entire procedure, which lasted more than 6 months for many people. This meant that a percentage of 17% to 53% of residents in collective centres – depending on the centre – had stayed there for over a year.²⁹⁸ NGOs have requested for an evaluation of the current reception model but this is currently not planned according to Fedasil.

The Court of Auditors (*Rekenhof / Cour des comptes*) conducted a financial and qualitative audit of the functioning of Fedasil in 2017. It found that the average duration of stay in collective reception centres was too long and that refusals to transfer asylum seekers after 6 months not only has negative consequences for their well-being and psychological health of the individuals concerned but also for the management and personnel of centres, as it causes tensions and conflicts.²⁹⁹

The Court of Auditors also found that reception in collective centres is more expensive than individual accommodation, although a lot more individual accommodation places were empty at the time of the report. It recommended the government to take into account criteria such as cost-effectiveness and quality in prospective closures of reception places. To this end, Fedasil should continue its efforts in developing common quality norms and audit mechanisms, collect more data on duration of stay in the centres, duration of procedures, numbers of transfers, numbers of vulnerable persons and so forth.³⁰⁰

²⁹⁶ Articles 11, 22, 28 and 36 Reception Act.

²⁹⁷ Article 12(1) Reception Act.

²⁹⁸ Court of Auditors, *Opvang van asielzoekers*, October 2017, available in Dutch at: <http://bit.ly/2EhhMI5>, 22-23.

²⁹⁹ *Ibid*, 22-23 and 61.

³⁰⁰ *Ibid*, 61-62.

2.2. Overall conditions

The minimum material reception rights for asylum seekers are described in the Reception Act, most only in a very general way.³⁰¹ Fedasil puts them into 4 categories of aid:³⁰²

- a. “Bed, bath, bread”: the basic needs i.e. a place to sleep, meals, sanitary facilities and clothing;
- b. Guidance, including social, legal, linguistic, medical and psychological assistance;
- c. Daily life, including leisure, activities, education, training, work and community services; and
- d. Neighbourhood associations.

Many of those aspects such as the social guidance during transition to financial aid after a person has obtained a legal stay, the general house rules and the quality norms for reception facilities have not yet been regulated by implementing decrees as the law has stipulated. Until then, those are left to be determined by the individual reception facilities themselves or in a more coordinated way by Fedasil instructions.³⁰³

Due to this, the quality norms for reception facilities for example are also still not a public document to this day. In 2015 Fedasil started setting up a framework to conduct quality audits on the basis of uniform standards shared with all the reception partners. They already developed minimum standards regarding social and legal guidance, material assistance, infrastructure, contents and safety, but these are not public yet. Throughout 2017, Fedasil did some test audits: 4 in the federal centres, 10 in partners’ centres and LRI and 17 in centres which are already closed down. Developing minimum standards and an audit mechanism is a difficult process as different partners like the Red Cross have developed their own norms and standards over the years and are not agreeing on audits being performed by Fedasil rather than an independent authority.³⁰⁴ The outcomes of the test audits are unknown.

As of the end of 2017, there is still no independent, external and structural monitoring system put in place, although a Royal Decree on quality norms is expected.

In February 2017, Fedasil published the first findings of a study on the reception needs of vulnerable persons.³⁰⁵ Further findings will be published in spring 2018 (see [Special Reception Needs](#)).

Due to the reduction of arrivals compared to 2015, as many as 10,000 places have been phased out in 2016 and 2017, while the government is planning more closures in 2018. It has also decided to cut the budget of the Integration Agency (*Agentschap Inburgering en Integratie*) which provides *inter alia* legal advice and integration courses. Critics, however, argue that asylum seekers arriving in 2015 and waiting for over a year for a decision have still not started integration courses due to waiting lists.³⁰⁶

The unavoidable consequences of the governmental crisis management that focuses on providing material aid – “bed, bath, bread” – and stimulating (voluntary and forced) return, are that standards of reception conditions cannot be guaranteed in all situations anymore and that immaterial assistance (legal, psychological, social aid) risks being seriously underfunded, definitely when it comes to non-governmental services. Organisations such as Vluchtelingenwerk Vlaanderen and the Belgian Refugee Council (CBAR-BCHV) have lost such substantial parts of their public funding, meaning that certain projects have been put on hold or, in case of the latter, the organisation has disappeared altogether. The budget cuts for the Integration Agency are the latest development in this direction.

³⁰¹ Articles 14-35 Reception Act.

³⁰² Fedasil, *About the Reception Centres*, available at: <http://bit.ly/1IuvC6u>.

³⁰³ Vluchtelingenwerk Vlaanderen, *Annual Report 2013*, available at: <http://bit.ly/1dvBxgS>, 7-8.

³⁰⁴ Court of Auditors, *Opvang van asielzoekers*, October 2017, 47-48.

³⁰⁵ Fedasil, *Syntheserapport kwetsbare personen 2016*, February 2017, available at: <http://bit.ly/2kvZyef>.

³⁰⁶ De Standaard, ‘Mogelijk 170 banen op de tocht bij Agentschap Integratie en Inburgering’, 2 October 2017, available in Dutch at: <http://bit.ly/2siiZNH>; ‘Onzichtbare wachtrij voor cursus inburgering’, 7 February 2018, available in Dutch at: <http://bit.ly/2G1bTyZ>.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? Yes No
❖ If yes, when do asylum seekers have access the labour market? 4 months
2. Does the law allow access to employment only following a labour market test? Yes No
3. Does the law only allow asylum seekers to work in specific sectors? Yes No
❖ If yes, specify which sectors:
4. Does the law limit asylum seekers' employment to a maximum working time? Yes No
❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice? Yes No

The framework legislation on employment conditions falls under the competence of the federal government. The implementation of this law is to a large extent part of the competence of the regional authorities, which includes among others the granting of work permits to third-country nationals. Conditions to be allowed to work are determined by the federal legislator in the Law of 30 April 1999 on the Employment of Foreign Workers and its implementing Royal Decrees. Depending on the type of work permit that is applied for, the place of residence of the employer or of the employee will be decisive to determining which regional authority (Flanders, Wallonia, Brussels-Capital or the German-speaking community) is competent for granting the permit.

In January 2014, the Federal Parliament adopted the so-called Sixth State Reform Special Law, transferring a range of competences from the level of the federal legislator to the communities and the regions, among which also the competence to legislate (and not only implement legislation) on work permits for foreigners was transferred to the regions, with the exception of the temporary work permit C for foreigners with a right to stay on another legal basis.³⁰⁷ Only once new regional parliaments execute this competence will the old federal law cease to be applicable.

Asylum seekers who have not yet received a first instance decision on their asylum case within 4 months following the registration of their asylum application are allowed to work with a permit card C. By Royal Decree of 29 October 2015, the federal government brought this period to from 6 to 4 months.³⁰⁸ These asylum seekers can work until a decision is taken by the CGRS, or in case of an appeal, until a negative decision has been notified by the CALL. Such a permit cannot be applied for anymore during the appeal procedure before the CALL if the procedure at the CGRS did not last for longer than 4 months, however.³⁰⁹

The work permit C allows the asylum seeker to do whatever job in paid employment for whatever employer, and is valid for 12 months and renewable.³¹⁰ The asylum seeker has to apply for the permit with the competent regional authority. The permit automatically ceases to be valid once the asylum procedure has ended with a final negative decision by the CGRS or the CALL. In principle the employer is supposed to check on the residence status of his or her employees, but in practice employment is tolerated by the social inspection authorities until the date of validity mentioned on the working permit has expired.

³⁰⁷ Article 22 Special Law of 6 January 2014 relating to the Sixth Reform of the State.

³⁰⁸ Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers (published in the Belgian State Monitor of 9 November 2015), available at: <http://bit.ly/1MAdXxY>.

³⁰⁹ Article 17 Royal Decree on Foreign Workers.

³¹⁰ Article 3 Royal Decree on Foreign Workers.

Adult asylum seekers who have access to the labour market can register as job-seekers at the regional Offices for Employment and are then entitled to a free assistance programme and vocational training. In practice, however, finding a job is very difficult while in the asylum procedure because of the provisional and precarious residence status, the mostly very limited knowledge of the national languages, the fact that many foreign diplomas are not considered equivalent to national diplomas, and high discrimination in the labour market.

If an asylum seeker resides in a reception facility (LRI or collective) and is employed, he or she has an obligation to contribute with a percentage of his or her income to the reception facility and is excluded from any material reception conditions if his or her income is higher than the social welfare benefit amounts mentioned above and the working contract is sufficiently stable (see [Reduction or Withdrawal of Reception Conditions](#)).³¹¹

Self-employment

Asylum seekers are also eligible for self-employed labour under the condition that they apply for a professional card. Only small-scale and risk-free projects will be admitted in practice.

Volunteering

Since the adoption of the Law of 22 May 2014, that amends the Law of 3 July 2005, asylum seekers are allowed to do voluntary work during their asylum procedure and for as long as they have a right to reception.

Community services

Asylum seekers are also entitled to perform certain community services (maintenance, cleaning) within their reception centre as a way of increasing their pocket money.³¹²

2. Access to education

Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? Yes No
2. Are children able to access education in practice? Yes No

Schooling is mandatory for all children between 6 and 18 in Belgium, irrespective of their residence status. Classes with adapted course packages and teaching methods, the so-called “bridging classes” (in the French speaking Community schools) and “reception classes” (in the Flemish Community schools), are organised for children of newly arrived migrants and asylum seekers. Those children are later integrated in regular classes once they are considered ready for it. Some of the bigger collective reception centres organise education within the centre itself, but most asylum-seeking children are integrated in local schools.

In practice, the capacity of some local schools is not always sufficient to absorb all asylum-seeking children entitled to education. Also, transfers of families to another reception centre or to a so-called “open return place” after having received a negative decision might entail a move to another (sometimes even linguistically different) part of the country, which can have a negative impact on the continuity in education for the children. In that respect, it is noteworthy to recall that courts have endeavoured to guarantee asylum seeking children the right to education. In a ruling of 6 May 2014, for example, the Labour Court

³¹¹ Articles 35/1 Reception Act and Royal Decree, 12 January 2011, on Material Assistance to Asylum Seekers residing in reception facilities and who are employed (original amounts without indexation).

³¹² Article 34 Reception Act.

of Charleroi found that the transfer of a family to the family centre of the **Holsbeek** open return place (in Dutch speaking Flanders) would result in a violation of the right to education since it would force the children to change from a French speaking school to a Dutch speaking one.³¹³

In reception centres for asylum seekers, all residents can take part in activities that encourage integration and knowledge of the host country. Also, they have the right to attend professional training and education courses.³¹⁴ The regional Offices for Employment organise professional training for asylum seekers who are allowed to work with the purpose of assisting them in finding a job. Also, they can enrol in adults' education courses for which a certain level of knowledge of one of the national languages is required, but not all regions equally take charge of the subscription fees and transport costs.

The costs of transportation to school and trainings should be paid by the reception centres (this is part of the funding Fedasil gives) but due to the fact that the quality norms are not a public document (see section **Conditions in Reception Facilities**) this varies in practice among the different reception facilities.

D. Health care

Indicators: Health Care			
1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. Do asylum seekers have adequate access to health care in practice?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No

The material aid an asylum seeker is entitled to includes the right to medical care necessary to live a life in human dignity.³¹⁵ This entails all the types of health care enumerated in a list of medical interventions that are taken charge of financially by the National Institute for Health and Disability Insurance (RIZIV/INAMI). For asylum seekers, some exceptions have explicitly been made for interventions not considered to be necessary for a life in human dignity, but also they are entitled to certain interventions that are considered to be necessary for such a life albeit not enlisted in the nomenclature.³¹⁶ In addition to the limitations foreseen in the law, Fedasil often makes other exceptions on the ground that costs are too high. For example, the latest treatment for Hepatitis C has an average cost of €90,000. Fedasil refuses to pay back these expenses even though they are on the RIZIV/INAMI list; they only pay back expenses for older, cheaper treatment.³¹⁷

Asylum seekers, unlike nationals, are not required to pay a so-called "franchise patient fee" ("*Remgeld / ticket modérateur*"), the amount of medical costs a patient needs to pay without being reimbursed by health insurance, unless they have a professional income or receive a financial allowance.

Collective centres and individual shelters other than LRI often work together with specific doctors or medical centres in the area of the centre or reception place. Asylum seekers staying in these places are not allowed to visit a doctor other than the one they are referred to by the social assistant, unless they ask for an exception. Only in 8 centres of Fedasil is there still a doctor present in the centre. This doctor may refer asylum seekers to a specialist where necessary.

³¹³ Labour Court of Charleroi, Judgment of 6 May 2014, available at: <http://bit.ly/1F5Hyqq>.

³¹⁴ Article 35 Reception Act.

³¹⁵ Article 23 Reception Act.

³¹⁶ Article 24 Reception Act and Royal Decree of 9 April 2007 on Medical Assistance.

³¹⁷ Court of Auditors, *Opvang van asielzoekers*, October 2017, 57.

Most LRI also have agreements with local doctors and medical centres, but the costs are not refunded by Fedasil but by the federal Public Planning Service Social Integration (*Programmatorische Federale Overheidsdienst Maatschappelijke Integratie*). This service bases its decisions only on the RIZIV/INAMI list, so for the costs mentioned in the Royal Decree of 2009 but not in the RIZIV/INAMI list the PCSW to which the LRI is connected has to make exceptions. Not all PCSW are familiar with the Royal Decree of 2009, however, thereby causing disparities in costs refunded for asylum seekers in LRI and those refunded in other reception places.³¹⁸

When the asylum seeker is not staying in the reception place given to him or her or when the material reception conditions are reduced or withdrawn as a sanction measure, the right to medical aid will not be affected,³¹⁹ although accessing medical care can be difficult in practice. Asylum seekers who are not staying in a reception structure (by choice or following a sanction) have to ask for a promise of repayment (*requisitorium*) before going to a doctor. This can be a very time-consuming process. It can take up to a few weeks before the medical service of Fedasil answers. However, the backlog had been cleared by the end of October 2017.³²⁰

Once the asylum application has been refused and the reception rights have come to an end, the person concerned will only still be entitled to emergency medical assistance, for which he or she must refer to the local PCSW.³²¹

Fedasil refunds the costs of all necessary psychological assistance for asylum seekers who fall under their responsibility, although these costs are not on the RIZIV/INAMI list. There are services specialised in the mental health of migrants but they are not able to cope with the demand. Public centres for mental health care are open to asylum seekers and have adapted rates but mostly lack specific expertise. Additionally, there is a lack of qualified interpreters.

Those centres that have this kind of asylum-related expertise have to work with waiting lists. In **Wallonia**, there is a specialised Red Cross reception centre (*Centre d'accueil rapproché pour demandeurs d'asile en souffrance mentale*, Carda) for traumatised asylum seekers, but this centre also has a waiting list. As stated above, medical care in LRI is reimbursed by another fund than the other reception facilities. This generates disparities with regard to access to private psychologists. The Reception Act allows Fedasil or reception partners to make agreements with specialised services. The Secretary of State accords funding for certain projects or activities by royal decree, but these are always short-term projects or activities so the sector mainly lacks long-term solutions.³²²

³¹⁸ Court of Auditors, *Opvang van asielzoekers*, October 2017, 57-58; Information provided by VVSG, February 2018.

³¹⁹ Article 45 Reception Act.

³²⁰ Court of Auditors, *Opvang van asielzoekers*, October 2017, 58.

³²¹ Articles 57 and 57ter/1 of the Organic Law of 8 July 1976 on the PCSW.

³²² Court of Auditors, *Opvang van asielzoekers*, October 2017, 55-56.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
 Yes No

Following the reform entering into force on 22 March 2018, the law enumerates as vulnerable persons: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.³²³

1. Detection of vulnerabilities

At the Dispatching Desk of Fedasil, the specific situation of the asylum seeker (family situation, age, health condition) should be taken into consideration before assigning him or her to a reception centre, since some are more adapted to specific needs than others. The Dispatching has access to the “Evibel” database in which the Aliens Office can register the elements that indicate a specific vulnerability that has become apparent at the moment of the registration of the asylum application. Since August 2016 the Aliens Office uses a new registration form in which they should indicate if a person is a (non-accompanied) minor, + 65 years old, pregnant, a single woman, LGBTI, a victim of trafficking, victim of violence (physical, sexual, psychological), has children, or has medical or psychological problems.³²⁴ In addition to this, the Dispatching does its own evaluation, but this is mostly on medical grounds. A medical worker of Dispatching meets personally with the asylum seeker in case the Aliens Office has mentioned a medical problem during the registration, in case the workers of dispatching notice a medical problem themselves, or in case an external organisation draws attention to the specific reception needs of an asylum seeker.

Additional to this, Fedasil medical staff conduct a medical screening of newly arrived asylum seekers.³²⁵ In case there is a need for a specifically adapted place due to medical reasons the medical worker of dispatching will fill in a “medical checklist” and Fedasil will look for the most adapted place possible. In practice most asylum seekers are assigned to a collective centre, only exceptionally, mostly in case of serious health problems, they will be directly assigned to individual housing of NGOs or LRI (see [Forms and Levels of Material Reception Conditions](#)). It is mostly only in the reception centres that other vulnerabilities than medical ones are identified by the social workers.

The identification of vulnerability is not conducted under a formal assessment as required by the recast Reception Conditions Directive.

A legal mechanism is put in place to assess specific needs of vulnerable persons once they are allocated in the reception facilities. Within 30 calendar days after having been assigned a reception place, the individual situation of the asylum seeker should be examined to determine if the accommodation is adapted to his or her personal needs. Particular attention has to be paid to signs of vulnerability that are not immediately detectable.³²⁶ A Royal Decree has formalised this evaluation procedure, requiring an interview with a social assistant, followed by a written evaluation report within 30 days, which has to be continuously and permanently updated, and should lead to a conclusion within a maximum of 6 months. The evaluation should contain a conclusion on the adequacy of the accommodation to the individual medical, social and psychological needs, with a recommendation as to appropriate measures to be taken,

³²³ Article 36(1) Reception Act, as amended by the Law of 21 November 2017.

³²⁴ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

³²⁵ Information provided by Fedasil, February 2018.

³²⁶ Article 22 Reception Act.

if any.³²⁷ A finding of vulnerability may lead to a transfer to more adequate accommodation, if necessary. In practice, a transfer is often not possible, due to insufficient specialised places or to political preferences for a collective rather than individual accommodation model. The evaluation mechanism is often insufficiently implemented, if at all, and almost never leads to a transfer to a more adapted place.³²⁸

In a report from February 2017, Fedasil has highlighted several barriers to identification of vulnerable persons with specific reception needs.³²⁹ These include a lack of time, language and communication barriers, a lack of information handover and a lack of training and experience related to vulnerable persons. The report also found that the identification tools are not applied in a coordinated manner and strongly influenced by the reception context. In terms of communication, adapted means of communication with deaf and blind persons are lacking, as well as specialised interpreters. The study concluded that the way in which reception is organised can have an impact on vulnerable persons due to location (remote small villages), size (less privacy in big centres) and facilities (lack of adapted sanitary facilities).

Since 2016 Fedasil has set up cooperation with two organisations specialised in prevention against and support in case of female genital mutilation (FGM), *Intact* and *GAMS*. In the framework of the project FGM Global Approach, funded by the Asylum, Migration and Integration Fund, they set up a process in the reception centres for early detection of FGM and social, psychological and medical support, and for the protection of girls who are at risk of FGM. In each collective Fedasil centre there is a reference person trained by these organisations. Each social assistant and the medical service of the centre need to conduct the identification within the first 30 days after the person's arrival in the centre. A checklist was created to guide the personnel of the centre through each step of the process. Each victim of FGM should be informed of this but can choose to take part in it or not. This process is currently only implemented in the federal centres of Fedasil, not in the other centres. A similar process will be set up for LRI.³³⁰

2. Specific and adapted places

There are a number of specialised centres or specific individual accommodation initiatives for:

- ❖ Unaccompanied minors;
- ❖ Pregnant minors;
- ❖ Vulnerable single women with or without young children;
- ❖ Young single women with children;
- ❖ Minors with behavioural problems (time-out);
- ❖ Persons with psychological problems;
- ❖ Victims of trafficking (although these places are not managed by Fedasil);
- ❖ Refugees who were resettled;
- ❖ Vulnerable persons who received the refugee status or subsidiary protection and who are experiencing problems (linked to their vulnerability) with finding their own house and leaving the shelter.

There are also a number of specialised medical centres or specific medical individual accommodation initiatives for:

- ❖ Persons with limited mobility, for example when they are in wheelchairs;
- ❖ Persons who are unable to take care of themselves (prepare food, hygiene, eat, take medication) without help;
- ❖ Persons with a mental or physical disability;

³²⁷ Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

³²⁸ Court of Auditors, *Opvang van asielzoekers*, October 2017, 63.

³²⁹ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

³³⁰ Fedasil, *Note on the FGM trajectory in the framework of the Gamsproject, steps and tasks for implementation within federal centre*, 20 September 2017.

- ❖ Persons who receive medical help in a specific place for example dialysis, chemotherapy;
- ❖ Persons with a serious psychological dysfunction;
- ❖ Persons for who it is necessary to have adapted conditions of reception due to medical reasons, for example special diet, a private toilet, a private room.

2.1. Reception of unaccompanied children

The reception of unaccompanied children follows three phases:

1. **Orientation and Observation Centres:** Unaccompanied children should in principle first be accommodated in specialised reception facilities: Orientation and Observation Centres (OOC). While in these centres, a decision should be made on which reception facility is most adapted to the needs of the specific child.³³¹ Currently, there are 183 places in OCC, currently occupied at 45%.
2. **Specific places in reception centres:** There are some specialised centres and specific places in regular reception facilities such as collective centres, NGO centres and LRI, although it is important to add that, in an instruction of 9 November 2016, Fedasil provides the possibility of accommodating children who are older than 17 and children with a pending age assessment in general collective centres for adults. As of February 2018, there are no children residing in places for adults. There are 1,706 places in collective reception centres, currently occupied at 56%.
3. **Individual accommodation:** Once a child of at least 16 and with sufficient maturity receives a positive decision, a transfer can be made to a specialised individual place. There he or she will get 6 months to prepare for living independently and to look for a house or apartment. This stay can be prolonged until the child reaches the age of 18. There are 334 places in individual reception facilities, currently occupied at 87%.

At the moment, there is enough capacity in the OOC to correctly follow up with children according to their needs and vulnerabilities. In the second phase, when the child is transferred to another shelter, Fedasil can take into account the age of the child for instance: when he or she is under 15 and is in need of a more structured and small scale shelter, Fedasil can refer to youth welfare services, *Administration Générale de l'aide à la Jeunesse* (AGAJ) for the French-speaking side and *Agentschap Jongerenwelzijn* (AJW) for the Dutch-speaking side. Through Mentor-Escale and Minor Ndako, some unaccompanied minors can also be sheltered in a foster home.

For minor pregnant girls or young girls with children there are specific places in **Rixensart**, which had 30 places at the end of 2017.

Children with behavioural problems or minors who need some time away from their reception place can be temporarily transferred to “time-out” places: in the reception centres of **Sint-Truiden**, **Sugny**, **Synergie 14**, **Pamex-SAM asbl Liège**, **Carda** and **Oranje Huis**. There were 27 of these places available by the end of 2017, occupied at a rate of 96%.

For unaccompanied children who have not applied for asylum there is a special reception facility in **Sugny** that meets the requirements needed for their particular vulnerabilities; for example, often they have been living on the street, or had a lack of structure for longer periods of time. Unaccompanied children whose asylum procedure ends with a negative decision can apply for specific accompaniment in the collective centres in **Bovigny** and **Arendonk**. There they will be helped intensively to make informed decisions on

³³¹ Article 41 Reception Act; Royal Decree of 9 April 2007 on the centres for the orientation and observation of unaccompanied minors.

their future. They are advised on their further options like voluntary return, future in illegal stay and secondary migration.

2.2. Reception of families

There are only about 70 places in 21 apartments run by Caritas in **Louvringes** (25 places for women and a maximum 53 for children) and some individual reception initiatives for single women with children, where they get a specifically adapted accompaniment.

Otherwise, families with children are allocated in a family room in the reception centre, guaranteeing more privacy.

Fedasil also has to ensure the reception of a families with children without legal stay when the parents cannot guarantee their basic needs.³³² The open return centre in **Holsbeek** operated to this effect. This open return centre for families has been harshly criticised by the Federal Ombudsman, together with the Commissioners for children's rights, in his annual report of 2013. Major criticisms relate to violations of the United Nations Convention on the Rights of the Child and the Belgian Constitution, because the right to education is not guaranteed and social assistance focusses mainly on return assistance. Additionally it is the Aliens Office, and not Fedasil, who deliver the material aid, making this right to material aid conditional on the collaboration of the children's parents with the return.³³³ The Labour Courts of Bruges and Liege have also ruled this conditionality to be a violation of the fundamental rights of the child. They ordered Fedasil, and not the Aliens Office, to provide accommodation also after the 30-day period for the execution of the return decision. This would be in accordance to the Royal Decree of 24 June 2004 on the conditions and modalities of material aid to minor foreigners who reside stay with their parents on the territory illegally.³³⁴

In a Judgment of 24 April 2015, the Council of State declared the agreement of 2013 between Fedasil and the Aliens Office concerning the reception conditions of families with minor children in the Holsbeek open return centre in violation of the 2004 Royal Decree. The argument was that it only provides in accommodation for 30 days instead of accommodation according to the needs, health and development of the child. Nevertheless, the judgment allowed Fedasil to subcontract their obligation to the Aliens Office.³³⁵ In June 2015 the open return centre in Holsbeek was closed due to a lack of staff in detention centres. Up until today it has not been reopened. The families currently are sheltered in "open return houses" organised by the Aliens Office. These houses are used an alternative for detention for families with children as well.

According to the latest government plans Holsbeek will be converted into a closed centre (see [Detention of Vulnerable Applicants](#)).

2.3. Reception of victims of trafficking and traumatised persons

There are specialised centres such as **Payoke, Pagasa, Surya**, which are external to the Fedasil-run reception network, for victims of trafficking and for persons with psychological problems (40 places in the

³³² Article 60 Reception Act and Royal Decree of 24 June 2014, about the conditions and modalities for reception of minors who reside in Belgium illegally with their families.

³³³ Federal Ombudsman, *Annual Report 2013*, available at: <http://bit.ly/1AZrewH>, 26-30.

³³⁴ Labour Court of Bruges, Judgment 13/1179/A of 19 February 2014, available at: <http://bit.ly/1QHEkA9>. Labour Court of Liege, Judgment 2014/AN/90 of 18 November 2014, available at: <http://bit.ly/1NWMLug>. The Labour Court of Charleroi has also found the transfer of a family to the family centre in Holsbeek (in Dutch speaking Flanders) a violation of the right to education guaranteed for children of irregularly residing families by the Royal Decree of 24 June 2004 on the conditions and modalities of material aid to minor foreigners who reside stay with their parents on the territory illegally since it would force the children to change from a French speaking school to a Dutch speaking one. Labour Court of Charleroi, Judgment of 6 May 2014, available at: <http://bit.ly/1F5Hyqq>.

³³⁵ Council of State, Judgment No 230.947 of 23 April 2015, available in French at: <http://bit.ly/1RZgJg8>.

Croix Rouge **Carda** centre, of which 5 places for children) and “medical rooms” in the regular network adapted for people with specific medical needs and their family members (84 places in Fedasil centres– and 147 places run by Ciré and Vluchtelingenwerk Vlaanderen). Finally, it is also possible to refer people to more specialised institutions such as retirement homes or psychiatric institutions outside the reception network.

2.4. Reception of persons with medical conditions and single women

There are 400 “medical places” in the reception network adapted for people with specific medical needs and their family members, and for vulnerable persons like single women with children. These include 90 places in Fedasil centres and 289 places run by Ciré, Caritas, LRI and a small-scale centre in Gent called “SOI Gent”. The places for single women with children are in Caritas Louvranges, and the Fedasil centres of Arendonk and Sint-Truiden. For persons with psychological problems, there are 40 places in the Croix Rouge CARDA centre, of which 5 places for children.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The Reception Act requires Fedasil to provide the asylum seeker with an information brochure on the rights and obligations of the asylum seekers as well as on the competent authorities and organisations that can provide medical, social and legal assistance, in a language he or she understands (see section on [Information to Asylum Seekers and Access to NGOs and UNHCR](#)).³³⁶ The brochure “Asylum in Belgium” currently distributed is available in ten different languages³³⁷ and in a DVD version. These brochures are being distributed in the reception facilities.

As for the specific rights and obligations concerning reception conditions, the asylum seeker also receives a copy of the house rules; also available in different languages. According to the Reception Act this should be a general document applicable in all reception facilities and regulated by Royal Decree.³³⁸ Currently Fedasil is working on a harmonised internal code of conduct as a preparation for this Royal Decree, which should be published in 2018. Until this is ready the content differs between different reception facilities.

This written information, although handed over to every asylum seeker, is not always very adequate or sufficient in practice, since some asylum seekers need to have it communicated to them orally in person or have it repeated several times, *inter alia* due to the fact that some asylum seekers are illiterate.

By law asylum seekers accommodated in one of the reception structures should have access to the interpretation and translation services to exercise their rights and obligations.³³⁹ In practice in many reception structures there are not enough interpreters available.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
 Yes With limitations No

³³⁶ Article 14 Reception Act.

³³⁷ Dutch, French, English, Albanian, Russian, Arabic, Pashtu, Farsi, Peul and Lingala, available on the website of Fedasil and of the CGRS: <http://bit.ly/2kvQQcP>.

³³⁸ Article 19 Reception Act.

³³⁹ Article 15 Reception Act.

The Reception Act provides for a guaranteed access to first and second line legal assistance.³⁴⁰ In practice most centres refer to the free assistance of lawyers. Although some of them provide first line legal advice themselves as well. So there are substantial differences between the different reception centres in the way the asylum seeker is assisted in the follow-up of his or her asylum procedure and in the contact with his or her lawyers.³⁴¹ Asylum seekers are entitled to public transport tickets to meet with their lawyer at the lawyer's office.

Further, according to the law, lawyers and UNHCR and implementing partners have the right to visit their clients in the reception facilities to be able to advise them. Only in case of security threats their access can be refused. Collective centres also have to make sure there is a separate room in which private conversations can take place.³⁴²

In practice, access does not seem to be problematic, but only few lawyers go visit asylum seekers in the centres themselves. UNHCR and other official instances have access to the centres, but for NGOs and volunteer groups access depends on the specific centre. In some reception centres visitors are limited to the visitors' area.

G. Differential treatment of specific nationalities in reception

In the Reception Act, there is no difference in treatment with regard to reception based on nationality. Asylum seekers from safe countries of origin will have a reception place assigned to them, as will those who have a recognised refugee status in another EU country.

EU citizens applying for asylum and their family members are entitled to reception as well, although in practice they are not accommodated by Fedasil anymore. Fedasil argues that EU citizens are legally on the territory since they are exercising their freedom of movement, but the Federal Ombudsman has discarded this argument because it goes against the interpretation of "legal residence" by the Constitutional Court and violates provisions of the Convention on the Rights of the Child and the constitutional non-discrimination and equality principles, when it considers EU families with minor children.³⁴³ EU citizens applying for asylum can challenge the formal refusal decision of Fedasil (known as the "Code 207 no show") before the Labour Court.

In the current reception model, asylum seekers with a nationality which has a **recognition rate above 90%** are entitled to be transferred from collective asylum centres to individual places after 4 months. People from other nationalities can only ask for a transfer after 6 months. In practice only the first group is transferred (see [Forms and Levels of Material Reception Conditions](#)).

At the height of the influx in the autumn of 2015, **Iraqis** and, to a lesser extent, **Afghans** were deterred from applying for asylum in personalised written communications from the State Secretary, only registered with delays of up to more than two weeks and were thus not able to secure an accommodation place quickly. This has led to at least one judgment of the Labour Court condemning Fedasil to provide for accommodation for an Afghan asylum seeker.

³⁴⁰ Article 33 Reception Act.

³⁴¹ In the Flemish Red Cross (Rode Kruis) centres, the policy of neutrality is interpreted as reticence to do more than point the asylum seeker to his or her right to a "pro-Deo" lawyer and the right to appeal.

³⁴² Article 21 Reception Act.

³⁴³ Federal Ombudsman, *Annual Report 2013*, available at: <http://bit.ly/1AZrewH>, 30-35.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2017: ³⁴⁴	Not available
2. Number of asylum seekers in detention at the end of 2017:	Not available
3. Number of detention centres:	5
4. Total capacity of detention centres:	583

No final and unambiguous numbers on the detention of asylum seekers are made publicly available by the Aliens Office for 2017. A total 6,311 migrants, including asylum seekers, were detained in the course of 2016.³⁴⁵ According to Myria, this number included 169 asylum seekers at the border (2%) and 812 asylum seekers who applied for asylum on the territory (12%).³⁴⁶ This breakdown does not reflect the numbers of persons who were detained and subsequently applied for asylum.

In 2017, 469 asylum applications were made at the border.³⁴⁷

Belgium has a total of 5 detention centres, commonly referred to as “closed centres”:³⁴⁸ the **127bis** repatriation centre; the “**Caricole**” near Brussels Airport; and 3 Centres for Illegal Aliens located in **Bruges** (CIB), in **Merksplas** near Antwerp (CIM) and in **Vottem** near Liege (CIV). In addition to the Caricole building, there are also some smaller **INAD** centres in the five regional airports that are Schengen border posts. Unlike the open reception centres, the detention centres fall under the authority of the Aliens Office. The provisions of the Reception Conditions Directive are still not applicable to them.

In his Policy Note of October 2017, the State Secretary noted that there were 583 detention places. The government decided on 14 May 2017 to maximise the number of places in existing detention facilities, to transform one open reception centre (**Holsbeek**) into a closed centre and to build two additional detention centres in **Zandvliet** and **Jumet**. These plans will bring Belgium’s detention capacity up to 1,066 places.³⁴⁹

The government also envisages the opening of five family units in the **127bis** repatriation centre, as a result of which families with children will be detained again. Detention will be applied where the family manifestly refuses to cooperate with the return procedure.³⁵⁰

While in detention, the CGRS prioritises the examination of the asylum application, although no strict time limit is foreseen.³⁵¹ The appeal must be lodged within 10 days after the first instance decision.³⁵²

³⁴⁴ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

³⁴⁵ Myria, *Detentie, terugkeer en verwijdering*, November 2017, available in Dutch at: <http://bit.ly/2BUy1sq>, 21.

³⁴⁶ *Ibid*, 23.

³⁴⁷ Based on monthly calculation of information provided by the Aliens Office during Myria Contact meetings.

³⁴⁸ For an overview, see Getting the Voice Out, ‘What are the detention centres in Belgium?’, available at: <http://bit.ly/1GxZAJd>.

³⁴⁹ Chamber of Representatives, *Policy Note on asylum and migration*, 19 October 2017, available in Dutch and French at: <http://bit.ly/2yfDCZp>, 33.

³⁵⁰ *Ibid*, 34.

³⁵¹ Article 57/6(2) Aliens Act, as amended by the Law of 21 November 2017.

³⁵² Articles 39/57 and 39/77 Aliens Act.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
 - ❖ on the territory: Yes No
 - ❖ at the border: Yes No
2. Are asylum seekers detained in practice during the Dublin procedure?
 Frequently Rarely Never
3. Are asylum seekers detained during a regular procedure in practice?
 Frequently Rarely Never

The law entering into force on 22 March 2018 introduces grounds for detaining asylum seekers during the asylum procedure as set out by Article 8(3) of the recast Reception Conditions Directive.

1.1. Border detention

At the border, asylum seekers arriving without travel documents are automatically detained. Following the law of 21 November 2017 a new paragraph was added stating that a “foreigner cannot be maintained for the sole reason that he has submitted an application for international protection.”³⁵³

UNHCR remains concerned that this addition is still not sufficient to prevent arbitrary detention. It regretted that, contrary to Article 74/6 on detention on the territory, Article 74/5 on detention at the border does not contain any guarantees such as the test of necessity, the obligation to consider the possibility of less coercive measures, the need for an individual assessment and an exhaustive list of reasons for detention. UNHCR therefore recommended the incorporation of the same guarantees in Article 74/6 and 74/5. This recommendation has not been taken into account.

1.2. Detention on the territory

On the territory, an asylum seeker may be detained, where necessary, on the basis of an individualised assessment and where less coercive alternatives cannot effectively be applied:³⁵⁴

- a. In order to determine or verify his or her identity or nationality;
- b. In order to determine the elements on which the asylum application is based, which could not be obtained without detention, in particular where there is a risk of absconding;
- c. When he or she is detained subject to a return procedure and it can be substantiated on the basis of objective criteria that he or she is making an asylum application for the sole purpose of delaying or frustrating the enforcement of return;
- d. When protection or national security or public order so requires.

Before the entry into force of the law asylum seekers who have served a sentence or been placed at the disposal of the government were also detained during the asylum procedure, which had its legal basis in a specific article in the Aliens Act attributing this power to the Minister.³⁵⁵ With the new law this article has been withdrawn and this possibility is translated into Article 74/6(1)(d). In 2016 and 2017 we have noticed an increased use of this possibility, even though official numbers are not available.

³⁵³ Article 74/5(1) Aliens Act, as amended by the Law of 21 November 2017.

³⁵⁴ Article 74/6(1) Aliens Act, as amended by the Law of 21 November 2017.

³⁵⁵ Article 74/8 Aliens Act.

Asylum seekers can also be detained during the Dublin procedure if there are indications that another EU Member State might be responsible for handling the asylum claim, but before their responsibility has been accepted by that state.³⁵⁶ However, until the entry into force of the law in 2018, no objective criteria that indicate a risk of absconding in case of a Dublin transfer were specified in the Belgian law, as demanded under Article 2(n) of the Dublin III Regulation. As a result of the *Al Chodor* ruling of the CJEU,³⁵⁷ the Aliens Office stopped issuing detention orders on the basis of a risk of absconding in the context of Dublin procedures in 2017, while detention remained possible if other grounds were met.³⁵⁸

The objective criteria for determining a “risk of absconding” are set out in the amended Article 1(2) of the Aliens Act, in line with the *Al Chodor* ruling of the CJEU. They include situations where the applicant:

1. Has not applied for a permit after irregularly entering the country or has not made an asylum application within the 8-day deadline set out by the law;
2. Has provided false or misleading information or false documents or has resorted to fraud or other illegal means in the context of an asylum procedure or an expulsion or removal procedure;
3. Does not collaborate with the authorities competent for implementing and/or overseeing the provisions of the law;
4. Has declared his intention not to comply or has already resisted compliance with measures including return, Dublin transfer, liberty-restrictive measures or alternatives thereto;
5. Is subject to an entry ban in Belgium or another Member State;
6. Has introduced a new asylum application immediately after being issued a refusal of entry or being returned;
7. After being inquired, has concealed the fact of giving fingerprints in another Dublin State;
8. Has lodged multiple asylum applications in Belgium or one or several other Member States, which have been rejected;
9. After being inquired, has concealed the fact of lodging a prior asylum application in another Dublin State
10. Has declared – or it can be deduced from his or her files – that he or she has arrived in Belgium for reasons other than those for which he or she applied for asylum or for a permit;
11. Has been fined for lodging a manifestly abusive appeal before the CALL.

The reform has been heavily criticised by civil society for laying down overly broad criteria for the determination of a risk of absconding.³⁵⁹ More particularly as regards third criterion, the provision is liable to wide interpretation and abuse insofar as there is no definition of “non-cooperation” with the authorities in the Aliens Act.

On 20 December 2017, the Court of Cassation ruled in the case of a Sudanese national who was detained in Belgium pending his expulsion to Sudan, while the detention decision explicitly stated that the applicant had to be detained “in order to issue a take back request to Italy”, where he had previously lodged an asylum application. The Court of Appeal of Brussels had followed the government’s argumentation that, in the absence of a new asylum application, the Dublin III Regulation was not applicable in relation to the detention of the asylum applicant. The Court of Cassation disagreed with the Court of Appeal and ruled that, in accordance with Article 18(2) of the Dublin III Regulation, the responsible Member State must take back “an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document”. Therefore, the Court of Cassation concluded that the provisions of the Dublin III Regulation are applicable even in cases where a new application for asylum has not been introduced in the requesting Member

³⁵⁶ Article 51/5 Aliens Act.

³⁵⁷ CJEU, Case C-528/15 *Al Chodor*, Judgment of 15 March 2017.

³⁵⁸ Information provided by the Aliens Office: Myria, Contact meeting, 21 June 2017, available at: <http://bit.ly/2BVIncU>.

³⁵⁹ See e.g. Vluchtelingenwerk Vlaanderen, ‘Nieuw wetsontwerp betekent achteruitgang voor mensen op de vlucht’, 4 July 2017, available in Dutch at: <http://bit.ly/2EDO7tu>.

State, including the provisions regarding the detention of an asylum applicant who is subjected to a take charge or take back request.³⁶⁰

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law? Reporting duties
 Surrendering documents
 Financial guarantee
 Residence restrictions
 Other: Special centres
2. Are alternatives to detention used in practice? Yes No

Articles 74/6 and 51/5 of the Aliens Act refer to the need for less coercive alternative measures to be considered before imposing detention. These alternatives are to be defined by Royal Decree, which has not yet been adopted.

While detention was originally provided for those who applied for asylum invoking manifestly unfounded grounds, asylum procedures at the border are now generally considered to be procedures on the access of irregular immigrants to the territory, thus allowing detention until a decision has been made on this (or until the maximum detention period has elapsed). The detention measure is not evaluated on its necessity or proportionality by the Aliens Office, and the judicial review is mostly limited to the question of legality (see [Procedural Safeguards: Judicial Review](#)).³⁶¹ The amended Aliens Act does not contain any reference to less coercive measures or to an individual assessment prior to applying detention at the border. UNHCR has stated that this provision does not offer sufficient guarantees against arbitrary detention.³⁶²

Nevertheless, alternative measures were already provided for vulnerable applicants such as families with children and unaccompanied children (see [Detention of Vulnerable Applicants](#)).

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 Frequently Rarely Never
- ❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?
 Frequently Rarely Never

Families with minor children who claim asylum at the border are explicitly excluded from detention in a closed centre and are placed in facilities adapted to the needs of such families.³⁶³ Following the ECtHR's

³⁶⁰ Court of Cassation, Decision No 9.17.1192.F, 20 December 2017.

³⁶¹ See also BCHV-CBAR, *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen*, January 2012, available in Dutch at: <http://bit.ly/1wNTXfc>.

³⁶² UNHCR, *Commentaires relatifs aux : Projet de loi 2548/003 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines catégories d'étrangers (ci-après « Projet de loi monocaméral »)*. - *Projet de loi 2549/003 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (ci-après « Projet de loi bicaméral »)*, 4 October 2017, available in French at: <http://bit.ly/2ilDj3>.

³⁶³ Article 74/9 Aliens Act. Article 74/9(3)(4) still allows for a limited detention of the family in case they do not respect the conditions they accepted in a mutual agreement with the Aliens Office, but this seems not to be applied in practice at all.

Muskhadzhiyeva judgment,³⁶⁴ and before *Kanagaratnam*,³⁶⁵ the then Secretary of State decided that from 1 October 2009 onwards families with children, arriving at the border and not removable within 48 hours after arrival, should be accommodated in a family unit.

Article 74/9(3)(4) of the Aliens Act allows for a limited detention of the families with children in case they do not respect the conditions they accepted in a mutual agreement with the Aliens Office. So far this did not seem to be applied in practice at all. However, in his policy note of late 2017 the Secretary of State announced the opening of closed centres for families close to the **127bis** repatriation centre near the Brussels National Airport at the beginning of 2018, with a view to carrying out returns. These are set to open in spring 2018.³⁶⁶ In a letter addressed to the Secretary of State, Council of Europe Commissioner for Human Rights Muižnieks warns against resuming the practice of detaining migrant families with children. The Commissioner for Human Rights states that Immigration detention, even as a measure of last resort and for a short period of time, should never apply to children because it is a disproportionate measure which may have serious detrimental effects on them.³⁶⁷

The detention of unaccompanied children is also explicitly prohibited by law.³⁶⁸ Since the entry into force of the Reception Act, unaccompanied children are in principle no longer placed in detention centres. When they arrive at the border, they are assigned to a so-called Observation and Orientation Centre (OOC) for unaccompanied children.³⁶⁹ This only applies to those unaccompanied children with regard to whom no doubts were raised about the fact that they are below 18 years of age and are identified as such by the Guardianship Service (see [Asylum Procedure: Identification](#)). Also, this OOC is legally considered to be a detention centre at the border, which means that the unaccompanied child is not considered to have formally entered the territory yet.³⁷⁰ Within 15 calendar days, the Aliens Office has to find a durable solution for the child, which may include return after an asylum application has been refused. Otherwise access to the territory has to be formally granted.

No other vulnerable categories of asylum seekers are excluded from detention by law. Besides the consideration of the minority of age, no other vulnerability assessment is made whatsoever before deciding on the detention of asylum seekers, especially at the border. In practice, the detention of vulnerable persons remains problematic. Organisations visiting detention centres have reported the presence of pregnant women and persons with physical and mental health conditions in detention, who do not always have access to the necessary mental health assistance.

³⁶⁴ ECtHR, *Muskhadzhiyeva and Others v Belgium*, Application No 41442/07, Judgment of 19 January 2010. The Court found a violation Articles 3 and 5(1) ECHR due to the administrative detention for one month of a Chechen woman and her four small children who had applied for asylum in Belgium while waiting to be expelled to Poland, the country through which they had travelled to Belgium.

³⁶⁵ ECtHR, *Kanagaratnam and Others v Belgium*, Application No 15297/09, Judgment of 13 December 2011. The Court found a violation of Articles 3 and 5(1) ECHR due to the detention of a Sri Lankan asylum seeking (who was eventually recognised as a refugee) mother with three underage children for more than three months.

³⁶⁶ Chamber of Representatives, *Policy Note on asylum and migration*, 19 October 2017, available in Dutch and French at: <http://bit.ly/2yfDCZp>, 34.

³⁶⁷ Council of Europe, 'Belgium urged not to resume detention of migrant children and to expand alternatives to immigration detention for families with children', 19 December 2016, available at: <http://bit.ly/2i6v9iQ>.

³⁶⁸ Article 74/19 Aliens Act.

³⁶⁹ Article 40 Reception Act.

³⁷⁰ On the technicality of this legal fiction, see *inter alia* Council of State, Judgment No 102.722, 21 January 2002 and Judgment No 57.831, 25 January 1996.

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 6 months |
| 2. In practice, how long in average are asylum seekers detained? | Not available |

The law provides for a maximum of a 2-month detention period for asylum seekers. Detention can be prolonged for another 2 months for reasons of national security or public order.³⁷¹ Where extended for these reasons, a one-month prolongation if possible each time. The maximum duration of detention on territory therefore cannot exceed 6 months (2+2+1+1). The detention at the border may not exceed 5 months. However, the period of detention is suspended for the time provided to appeal the decision on the asylum application.

Since the entry into force of the new law, asylum seekers in the Dublin procedure may be detained in order to determine the responsible Member State and in order to secure a transfer. In both cases detention may not exceed 6 weeks. Contrary to the Dublin III Regulation the law does not mention that the detention should be as short as possible. Furthermore, when a transfer decision is being appealed through an extremely urgent necessity procedure the detention period will start again. This means that a new period of six weeks will start after the rejection of the appeal in the extremely urgent necessity procedure.

In 2014, the last year for which data were published, the average overall detention period per closed centre was as follows: 11.75 days at **Caricole**; 29.4 days at the **127bis** repatriation centre; 30.04 days at **Bruges**; 39.9 days at **Merksplas**; and 40.2 days at **Vottem**.³⁷²

When detained at the border, asylum seekers generally spent more time in detention than other migrants in detention. Since the entry into force of the reform the asylum seeker will be admitted to the territory if the CGRS has not taken a decision within four weeks, or when the CGRS decides that further investigation is necessary.³⁷³ For people detained on the territory the average detention period is less long for Dublin-asylum seekers as for other asylum seekers whose application is deemed to be suspicious.

The longest detention period concerns those people in irregular stay who have applied for asylum once detained in a closed centre. On average they are detained for 59 days.³⁷⁴

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

- | | | |
|--|------------------------------|--|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Asylum seekers are detained in specialised facilities and are not detained with ordinary prisoners.³⁷⁵ The Criminal Procedures Act, as well as the Aliens Act, provide for a strict separation of persons illegally

³⁷¹ Articles 74/5 and 74/6 Aliens Act.

³⁷² Vluchtelingenwerk Vlaanderen, *Gesloten centra voor vreemdelingen in België, een stand van zaken – 2016*, available at: <http://bit.ly/2klkWRY>, 35.

³⁷³ Article 74/5(4)(4) and (5) Aliens Act, as amended by the Law of 21 November 2017.

³⁷⁴ Vluchtelingenwerk Vlaanderen, *Gesloten centra voor vreemdelingen in België, een stand van zaken – 2016*, 36.

³⁷⁵ Article 4 Royal Decree on Closed Centres, referring to Articles 74/5 and 74/6 Aliens Act.

entering or residing on the territory and criminal offenders or suspects.³⁷⁶ Asylum seekers can be detained with other third-country nationals and the same assistance is given to them as to irregular migrants in detention centres.

1.1. Closed centres

Detention centre	Capacity
127 bis (Steenokkerzeel)	120
Caricole	90
Centrum voor 'illegalen' Brugge (CIB)	112
Centrum voor 'illegalen' Merksplas (CIM)	142
Centrum voor 'illegalen' Vottem (CIV)	107
Total	583

In 2016, the overall capacity of the closed centres was of 583 places, up from 452 in 2015. In 2016, 6,311 persons were detained in a detention centre.³⁷⁷ Capacity remained the same in 2017.

According to a decision by the government of 14 May 2017, the number of places in existing detention facilities will be expanded. At the same time, the government plans to transform one open reception centre (**Holsbeek**) into a closed centre and to build two additional detention centres in **Zandvliet** and **Jumet**. These plans will bring Belgium's detention capacity up to 1,066 places.³⁷⁸

1.2. INAD centres

In addition to the closed centres, there are a number of centres for inadmissible persons (INAD) in the five regional airports that are Schengen border posts. There is no information available on the number of persons detained in INAD centres.

1.3. Housing units for families

As regards families with children, the family or housing units are individual houses or apartments provided for a temporary stay. Legally these persons are not considered to have entered the territory and are in detention, but in practice these families have a certain liberty of movement, under the control of a so-called "return coach".³⁷⁹ Children are able to go to school and adults can go out if they get permission to do so.³⁸⁰

In 2016 there were 27 housing units with a capacity of 169 beds spread over 5 communes. In 2016, 530 persons (214 adults and 316 children) resided in these units. Of these 144 families, 27% were released, of which 10 obtained refugee status, 1 subsidiary protection and 6 were in a pending asylum procedure.³⁸¹

³⁷⁶ Article 609 Criminal Procedures Act and Article 74/8 Aliens Act. The latter provision only allows for a criminal offender who has served his sentence to be kept in prison for an additional 7 days, as long as he or she is separated from the common prisoners.

³⁷⁷ Myria, *Detentie, terugkeer en verwijdering*, November 2017, available in Dutch at: <http://bit.ly/2BUy1sq>, 21.

³⁷⁸ Chamber of Representatives, *Policy Note on asylum and migration*, 19 October 2017, available in Dutch and French at: <http://bit.ly/2yfDCZp>, 33.

³⁷⁹ Return coaches are staff members of the Aliens Office that assist the families concerned during their stay in the family unit. For further information see Vluchtelingenwerk Vlaanderen *et al*, *An Alternative to detention of families with children. Open housing units and coaches for families with children as an alternative to forced removal from a closed centre: review after one year of operation*, December 2009.

³⁸⁰ Royal Decree on Closed Centres, amended in October 2014.

³⁸¹ Myria, *Detentie, terugkeer en verwijdering*, November 2017, 20.

This alternative to detention has been broadly recognised as a good practice, also by NGOs.³⁸² Nevertheless, the government is planning the establishment of family units within the closed centres with a view to reinstating detention for families in 2018, a practice suspended after Belgium was convicted by the ECtHR in the past.³⁸³

As for unaccompanied children, the Observation and Orientation Centres (OOC) are not closed centres but they are “secured” and fall under the authority of Fedasil instead of that of the Aliens Office.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

So far, the Reception Conditions Directive has not been transposed as to its application in the context of detention. The failure of the recent reform to transpose these provisions is a missed opportunity.

The 2002 Royal Decree on Closed Centres provides for the legal regime and internal organisational guidelines. The closed centres are managed by the Aliens Office, not by Fedasil as are the open reception centres. The “Transit Group”, a group of several Belgian human rights organisations, released a report on the state of closed centres for administrative detention in Belgium. Caritas, Vluchtelingenwerk Vlaanderen, Ciré and others worked together to produce this report, which is the first of its kind in 10 years.³⁸⁴ It does not concern the detention conditions as such but treats subjects such as the profiles of the detainees, the legality control on detention, the right to family life etc.

In 2017, the Aliens Office indicated that it has prepared a questionnaire to persons detained in closed centres to comply with the right to be heard under Article 41 of the EU Charter of Fundamental Rights. The questionnaire enables detainees to express their view relating to: family life, medical conditions, as well as the modalities of detention and return.³⁸⁵

2.1. Overall conditions

The most essential basic rights of the asylum seeker are guaranteed by the Royal Decree on Closed Centres, including its amendment by the Royal Decree of 7 October 2014 which has established a complaints mechanism. The managing director of the centre has broad competences to limit or even refuse the execution of most of these rights if he or she deems this necessary for the public order or safety, to prevent criminal acts or to protect the health, morality or the rights of others. A whole range of measures of internal order, disciplinary measures, measures of coercion and body search can be imposed by the managing director of the centre, and in some case by other staff members.³⁸⁶ The Aliens Office organises training for the security personnel at the detention centres on the use of coercion, as provided for by law.³⁸⁷ Within the first year of employment, each member should get a 3-day course on the theoretical aspects and techniques of coercion, followed by a refresher course with situational practices of 3 hours every third year afterwards. These are given by an internal Aliens Office instructor. Also, training sessions on dealing with aggression and on intercultural communication are organised.

³⁸² Vluchtelingenwerk Vlaanderen *et al.*, *Open housing units: ‘Coaches’ for families with minor children as an alternative to detention*, October 2012, available in French at: <http://bit.ly/1luVZJD> and Dutch at: <http://bit.ly/1S3RIkP>. See also L Schockaert, ‘Alternatives to detention: open family units in Belgium’, *Forced Migration Review* No 44, September 2013, available at: <http://bit.ly/111cju>.

³⁸³ ECtHR, *Muskhadzhiyeva v. Belgium*, Application No 41442/07, Judgment of 19 January 2010.

³⁸⁴ Vluchtelingenwerk Vlaanderen *et al.*, *Closed centres for foreigners in Belgium*, January 2017, available in French at: <http://bit.ly/2k3PIQD> and in Dutch at: <http://bit.ly/2klkWRy>.

³⁸⁵ Information provided by the Aliens Office: Myria, Contact meeting, 21 June 2017.

³⁸⁶ Articles 85-111/4 Royal Decree on Closed Centres.

³⁸⁷ Article 74/8 Aliens Act and Royal Decree on the Use of Coercion for Security Personnel.

The Royal Decree on Closed Centres characterises daily life in the closed centres as being collective during daytime. Detention facilities have separated rooms or wings for families and single women, including at the border. Women and men are separated in the sleeping and sanitary facilities and only assisted by staff members from the same sex.³⁸⁸ For persons who appear not to be able to adapt to the collective regime, the managing director can decide to apply a more secluded “room regime”.

3 meals a day are provided, special diets can be delivered on medical prescription, pork meat is never to be served and alcohol is prohibited.³⁸⁹ The asylum seekers get the opportunity to wash themselves on a daily basis and toiletries are at their disposal free of charge.³⁹⁰ The asylum seeker can have clothes delivered at their own expense, but the centre is to provide free clothing in case he does not dispose of appropriate clothing.³⁹¹

In practice, conditions vary from one centre to another.

2.2. Activities

In detention centres asylum seekers do have access to open air spaces. In some centres they are allowed to get out in open air during day time whenever they want. In other centres this is strictly regulated. A minimum of two hours exercise outside is to be provided for.³⁹²

Assistance to religious services or non-confessional counselling is guaranteed in the detention centres and assistance of a minister of non-officially recognised cult can be applied for.³⁹³

The asylum seeker has an unlimited right to entertain correspondence during the day. Writing paper is provided for by the centre, as is assistance with reading and writing by staff members.³⁹⁴ When there are specific risk indications, this correspondence can be subjected to the control of the managing director of the centre, with the exception of letters directed to the lawyer or to certain public authorities and independent human rights and public monitoring instances.³⁹⁵ Calls can be made at the asylum seekers' own expenses during daytime to an unlimited extent.³⁹⁶

The social service of the centre has to organise sport, cultural and recreational activities.³⁹⁷ Every centre has a library at the disposal of the inhabitants and newspapers and other publication can be purchased at their own expense.³⁹⁸

2.3. Health care and special needs

Access to health care is legally determined to “what the state of health demands” and every centre has its own medical service to provide for it with independent doctors.³⁹⁹ The doctor attached to the centre can decide that a person has to be transferred to a specialised medical centre.⁴⁰⁰ In practice, persons detained may have difficulties in accessing and obtaining sufficient medical care, as was made clear by

³⁸⁸ Article 83 Royal Decree on Closed Centres.

³⁸⁹ Articles 79-80 Royal Decree on Closed Centres.

³⁹⁰ Article 78 Royal Decree on Closed Centres.

³⁹¹ Article 76 Royal Decree on Closed Centres.

³⁹² Article 82 Royal Decree on Closed Centres.

³⁹³ Articles 46-50 Royal Decree on Closed Centres.

³⁹⁴ Articles 19, 22 and 23 Royal Decree on Closed Centres.

³⁹⁵ Articles 20-21/2 Royal Decree on Closed Centres.

³⁹⁶ Article 24 Royal Decree on Closed Centres.

³⁹⁷ Articles 69-70 Royal Decree on Closed Centres.

³⁹⁸ Articles 71-72 Royal Decree on Closed Centres.

³⁹⁹ Article 53 Royal Decree on Closed Centres.

⁴⁰⁰ Article 54-56 Royal Decree on Closed Centres.

the ECtHR in the case of *Yoh-Ekale Mwanje v Belgium*, in which the Court found that Belgium violated Article 3 ECHR for not providing the necessary medical care.⁴⁰¹ At the same time, the quality of the health care available depends a lot on the medical infrastructure and individual doctor in the centre; in some cases it might even be better than the one dispensed at some open reception centres.

When the medical doctor finds a person not suited for detention or forced removal because it could damage his or her mental or physical health, the managing director of the centre has to transfer these observations to the Director-General of the Aliens Office, who has to decide on the suspension of the detention or removal measure or ask for the opinion of the medical doctor of another centre, and in case of a dissenting opinion for that of a third one.⁴⁰² After every failed attempt of removal, the doctor has to examine the person concerned.⁴⁰³ There have been no reports of the way this is applied in practice to date. No other procedures to identify other vulnerable individuals in detention is provided for by law.

Finally, the Royal Decree of 9 April 2007 on OOC regulates the functioning of the OOC for unaccompanied children. Specific measures are taken to protect and accompany the children. During their stay of maximum 15 days, their contacts are subjected to special surveillance. During the first 7 days of their stay, they are not allowed to have any contact with the outside world other than with their lawyer and their guardian. The modalities of the visits, outside activities, telephone conversation and correspondence are strictly determined in the house rules. When a child is absent for more than 24 hours or whenever extremely vulnerable children (younger than 13 years, children with psychological problems or victims of human trafficking) are absent without informing the staff, the police and the guardian or the Guardianship Service are alerted.⁴⁰⁴

The provision of medical assistance varies from centre to centre. There have been reports that in some centre medical care is only for the purpose of repatriation; there is no budget for serious interventions. Transfer to the hospital for urgent medical treatment is rather exceptional. In some centres people complain about the fact that they only get painkillers and sleeping pills. A lack of adequate medical assistances for detainees with mental issues has also been reported.

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

Lawyers always have access to their client in detention.⁴⁰⁵ Also, UNHCR has the right to access, as do the Children's Rights Commissioner, Myria and supranational human rights institutions.⁴⁰⁶ NGOs need to get permission from the Aliens Office managing director in advance to get access to the detention centres.⁴⁰⁷ In general, an individualised accreditation is issued for specific persons who conduct these visits for an NGO, as is the case for employees of Vluchtelingenwerk Vlaanderen, the Jesuit Refugee Service, Caritas International and Nansen. Members of Parliament and of the judicial and executive

⁴⁰¹ ECtHR, *Yoh-Ekale Mwanje v. Belgium*, Application No 10486/10, Judgment of 20 December 2011. Not the threatened deportation at an advanced stage of her HIV infection to Cameroon, her country of origin, without certainty that the appropriate medical treatment would be available was considered in itself to constitute a violation of Article 3 ECHR, but the delay in determining the appropriate treatment for the detainee at that advanced stage of her HIV infection.

⁴⁰² Article 61 Royal Decree on Closed Centres.

⁴⁰³ Article 61/1 Royal Decree on Closed Centres.

⁴⁰⁴ Articles 10 and 11 Royal Decree on OOC.

⁴⁰⁵ Article 64 Royal Decree on Closed Centres.

⁴⁰⁶ Article 44 Royal Decree on Closed Centres.

⁴⁰⁷ Article 45 Royal Decree on Closed Centres.

powers can visit specific detainees if they are identified beforehand and if they can indicate to the managing director of the centre that such a visit is part of the execution of their office.⁴⁰⁸ Journalists need the permission of the managing director of the centre and the permission of the individual asylum seeker; they are not allowed to film.⁴⁰⁹

The asylum seeker is entitled to visits from his or her direct relatives and family members for at least 1 hour a day, if they can provide a proof of their relation.⁴¹⁰ So called intimate visits from a person with whom the asylum seeker has a proven durable relation are allowed once a month for 2 hours.⁴¹¹ All visits, except for the so called 'undisturbed' (intimate) ones, in case of serious illness and those by the lawyer, diplomats or representatives of public authorities, take place in the visitors' room in the 'discreet' presence of staff members, who are present in the room but do not listen.⁴¹²

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention? Yes No
2. If yes, at what interval is the detention order reviewed?

When asylum seekers are detained, they are informed in writing of the detention decision, its reasons and the possibility to lodge appeal. Those reasons are mostly limited to very general considerations such as "having tried to enter the territory without the necessary documents (at the border)", or "risk of absconding (in Dublin cases)". Translation of the detention decision in the language of the asylum seeker is not provided for by law, though in some centres a social interpreter is arranged by the centre's social assistant on demand by the detainee.

National legislation does provide for judicial review of the lawfulness of detention. No habeas corpus writ is automatically brought before a judge when an asylum seeker is being detained, but he or she can lodge a request to be released with the Council Chamber of the Criminal Court every month.⁴¹³ The Council Chamber has to decide within 5 working days, and if this time limit is not respected, the asylum seeker has to be released from detention.⁴¹⁴ An appeal can be lodged against the decision of the Council Chamber before the Indictment Chamber at the Court of Appeal (*Chambre des mises en accusation / Kamer van Inbeschuldigingstelling*) within 24 hours. Against this final decision, a purely judicial appeal can be introduced at the Court of Cassation.

When the Aliens Office decides to prolong the detention for another month after the applicant has spent already 4 months in detention, an automatic review by the Council Chamber of the Criminal Court takes place.⁴¹⁵

The judicial review of detention remains very restrictive in scope. Only the legality of the detention can be examined, not the appropriateness or proportionality of it. This means that only the accuracy of the factual motives of the detention decision can be scrutinised i.e. whether the reasons are based on manifest misinterpretations or factual errors or not. The logic behind this is that the competence to decide on the removal of the foreigner, and as such on the appropriate measures to execute such a decision, lays with

⁴⁰⁸ Articles 33, 42 and 43 Royal Decree on Closed Centres.

⁴⁰⁹ Articles 37 and 40 Royal Decree on Closed Centres.

⁴¹⁰ Article 34 Royal Decree on Closed Centres.

⁴¹¹ Article 36 Royal Decree on Closed Centres.

⁴¹² Articles 29-30 Royal Decree on Closed Centres.

⁴¹³ Article 71 Aliens Act.

⁴¹⁴ Article 72 Aliens Act.

⁴¹⁵ Article 74 Aliens Act.

the Aliens Office and the CALL, not with the criminal courts. However, an appeal against a “*refoulement* decision” issued when applying for asylum at the border by the CALL will only be done once the execution becomes imminent, which is only the case once the asylum application has been refused (see [Border Procedure](#)).

Of course the limits of the legality of a decision are almost arbitrary and the Court of Cassation itself is ambiguous about the interpretation of such legality in its own jurisprudence, by including assessments of conformity of detention with the Return Directive or the ECHR, following the ECtHR’s ruling in *Saadi v. United Kingdom*.⁴¹⁶ The Council or Indictment Chambers have even sometimes considered the principle of proportionality itself to be a part of the legality of a decision, but in most cases they limit their review to the legal basis for the decision, without ever considering any of the provisions of the Reception Conditions Directive. The fact that the person detained is an asylum seeker is generally not taken into consideration as an argument to limit the use of detention, nor are even more specific elements of vulnerability.⁴¹⁷ The law that entered into force on 22 March 2018 states that an asylum seeker can be detained, when necessary and on the basis of an individual assessment of his case, and if other less coercive alternative measures cannot be applied effectively to. These less coercive measures have not yet been listed by way of Royal Decree. Seeing the recent entry into force of the reform, we cannot yet evaluate how this is being put into practice.

The procedure before the courts is determined in the Law on the Provisional Custody that applies in criminal law proceedings.⁴¹⁸ In practice, the time limits set in the law are respected, unless an appeal at the Court of Cassation is introduced against a judgment ordering release by the Court of Appeal. Since this cassation appeal suspends the detention period and it is not commonly treated within a reasonable time period, the detention period can exceed the legal maximum and result in the asylum seeker remaining in detention for prolonged periods. This practice has repeatedly been found by the ECtHR to be a violation of Article 5(4) ECHR.⁴¹⁹

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
 Yes No
2. Do asylum seekers have effective access to free legal assistance in practice?
 Yes No

The law provides for access to free legal assistance for the judicial review of the detention decision. Free legal assistance is provided for in the Judicial Code under the same conditions as for other asylum-related procedures. A rebuttable presumption applies that the person detained has no financial means to pay for legal assistance (see section on [Regular Procedure: Legal Assistance](#)). The Royal Decree on Closed Centres also explicitly guarantees legal assistance for every resident of a closed centre and free and uninterrupted contact between him or her and his or her lawyer.⁴²⁰

In the closed centre in **Vottem**, a judicial permanence is organised by the bureau for legal assistance of the bar association. Their service is mainly limited to assigning a “pro-Deo” lawyer who is not present but has to ensure free legal assistance. The other centres have no first line legal assistance service and the assignment of a lawyer depends entirely on the social services in the centre. The “Transit group”

⁴¹⁶ ECtHR, *Saadi v the United Kingdom*, Application No 13229/03, Judgment of 29 January 2008.

⁴¹⁷ See for examples of jurisprudence and more on this issue, BCHV-CBAR, *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen*, January 2012.

⁴¹⁸ Law of 20 July 1990 concerning pre-trial detention, available in French at: <http://bit.ly/1B626nE> and Dutch at: <http://bit.ly/1KpjZzR>.

⁴¹⁹ ECtHR, *Firoz Muneer v. Belgium; M.D. v. Belgium*.

⁴²⁰ Articles 62 and 63 Royal Decree on Closed centres.

coordinates a system of regular visitors that monitors migrants entering detention, provides them with free first line advice and refers them to an NGO for more specialised assistance if necessary.

In practice, asylum seekers are often referred to inexperienced lawyers. Even if some bar associations, like the Brussels one, use short lists of lawyers that have expressed interest in assisting detained asylum seekers, these lists do not have specific qualification requirements. The system organised by the law does not offer sufficient means to enable lawyers to specialise themselves in migration and asylum law. This creates a structural shortage of qualified legal aid.

A report of December 2016 from the “Transit Group” shows that access to quality legal aid remains difficult. It reiterated that access to quality legal aid remains one of the basic principles that should be respected.⁴²¹ This concern still remains valid.

E. Differential treatment of specific nationalities in detention

Over the summer 2017, there was an increase of migrants from **Sudan** staying in and around the **Gare du Nord** area in Brussels, where the Aliens Office is located. Many of these Sudanese migrants did not apply for asylum. The authorities claim that proper information was given, yet the leaflet that was distributed by the authorities focused on voluntary return and did not mention the possibility of applying for asylum.

In mid-July 2017, we noticed an increase of Sudanese people in immigration detention. There were at least 48 Sudanese in the closed centres. The Aliens Office confirmed that its aim was to return them to Sudan. However, until then forced return was not possible due to a lack of cooperation of the Sudanese authorities.

Between 4 September and 4 October 2017, the police conducted 30 round-ups in the area, leading to the apprehension of 653 people considered to be irregularly present in the country, 215 of whom claimed to be Sudanese. 99 of the Sudanese were placed in closed centres pending deportation. The Belgian government aimed to return 47 of them to their country of origin, and the remaining 52 to the EU country where they had been first registered. The State Secretary for Asylum and Migration said that those detained had explicitly stated they did not intend to claim asylum in Belgium.

At the same time, since the Sudanese nationals whom Belgium sought to return to Sudan held no identification papers, the Belgian government invited a delegation of Sudanese officials to visit Belgium and the detained returnees, to confirm their nationality and provide them with travel documents. No bilateral readmission agreement was drafted, nor were any arrangements agreed in written form. Between 18 and 27 September 2017, a three-person delegation travelling from Sudan for that purpose, together with representatives from the Sudanese embassy in Belgium, interviewed 61 individuals in different Belgian detention centres. Media reported that members of the delegation were agents of Sudan’s National Intelligence and Security Service (NISS), a state agency that Amnesty International considers responsible for serious and widespread human rights violations.⁴²²

Nine of the individuals identified by the Sudanese delegation were forcibly returned to Khartoum. On 20 December 2017, the Tahrir Institute for Middle East Policy published information and extracts from interviews with individuals who had been returned from Belgium, alleging that shortly after their arrival in Khartoum they were detained in a police station nearby and beaten by Sudanese authorities.

⁴²¹ The full report can be consulted in French at: <http://bit.ly/2k3PIQD>, or in Dutch at: <http://bit.ly/2klkWRY>.

⁴²² Amnesty International, ‘Belgium: Returns to Sudan violated principle of non-refoulement’, 30 January 2018, available at: <http://bit.ly/2nDdAMn>.

Amnesty International, Vluchtelingenwerk Vlaanderen and others have heavily criticised the Belgian approach and state that the Belgian government has violated international law by failing to conduct a serious examination of risks of ill-treatment upon return. In returning Sudanese nationals to Sudan without first carefully assessing risks they may incur upon repatriation, Belgium showed disregard for both substantive and procedural obligations under the principle of *non-refoulement*. Courts have also held that the government has not proceeded to an in-depth examination. On 4 January 2018, the Court of Appeal of Brussels found that the authorities had failed to assess the risks that the appellant would face if returned to Sudan, in violation of Article 3 ECHR. The Belgian government had claimed that, since the third-country national had not expressed his wish to apply for asylum in Belgium, assessing the risk of a violation of Article 3 ECHR would be premature. The Court of Appeal rejected the argument and recalled that, based on the country of origin information available and the incidents concerning Sudanese who have been ill-treated upon return, the Secretary of State could not have envisaged the return of the Sudanese concerned without verifying all necessary information to dismiss any risk of an Article 3 ECHR violation. Finally, the Court of Appeal highlighted that the national authorities had failed to grant the Sudanese national the opportunity to be heard about his concerns to be sent back to Sudan before issuing a return decision.⁴²³

On 22 December 2017, the Deputy Prime Minister Jan Jambon asked the CGRS to carry out an independent inquiry regarding the risk in case of return to Sudan. On 8 February 2018 the CGRS issued a report in which it concluded that it could not determine whether or not torture or inhuman and degrading treatment occurred following return of some Sudanese that had been returned to Sudan and had claimed to have been tortured upon arrival. However, it did conclude that Article 3 ECHR check has not been conducted in a sufficient way, and therefor proposed recommendations.⁴²⁴ These recommendations are currently being taken into account in order to develop a new practice to be in line with the obligations under Article 3 ECHR.

⁴²³ Court of Appeal of Brussels, Decision 2018/25, 4 January 2018, available at: <http://bit.ly/2na4vup>.

⁴²⁴ CGRS, *Report on Sudan*, 8 February 2018, available at: <https://bit.ly/2FYTx6i>.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

- | | |
|--|---------|
| 1. What is the duration of residence permits granted to beneficiaries of protection? | |
| ❖ Refugee status | 5 years |
| ❖ Subsidiary protection | 1 year |

As of 2016, the duration of the right to residence for recognised **refugees** is 5 years.⁴²⁵ The previous provision allowed refugees to obtain the right to residence for an unlimited time, but status could be revoked within the first 10 years after the asylum application or even later in some cases (see [Cessation](#)). The residence right for recognised refugees is limited to 5 years, then to become unlimited unless the CGRS would decide cessation or revocation of the status according to Article 55/3 or 55/3/1 of the Aliens Act. Upon recognition, refugees receive an electronic “A card” valid for 5 years from the moment of the asylum application.⁴²⁶ After these 5 years they can receive an electronic B card.

Beneficiaries of **subsidiary protection** receive a residence right for one year. Unless the Aliens Office is convinced the situation motivating the status has changed, the residence right will be renewed after the first year and then after two years again. Five years after the asylum application, the subsidiary protection beneficiary receives an unlimited right to residence, unless the CGRS would apply cessation or revocation of the status according to Article 55/5 or 55/5/1 of the Aliens Act.⁴²⁷ Persons with subsidiary protection status receive an electronic “A card” valid for one year, renewable for two years twice. Upon receiving the right to residence for unlimited time the beneficiary receives an electronic B card.⁴²⁸

Once a person is recognised as a **refugee**, he or she can get registered in the Aliens Register at the commune and receives a residence permit (A card). This does not happen automatically, however; the refugee has to present the certificate of the CGRS stating he or she has been recognised.

If **subsidiary protection** status is granted, however, the Aliens Office itself gives instructions to the commune to register the person in the Aliens Register and issue the residence permit, which is an electronic A card in this situation.

Renewal of the residence card has to be demanded at the commune between the 45th and 30th day before its expiration date. When it is applied for in time, but the Aliens Office cannot timely prolong the card, a paper document temporarily covering the right to residence is issued by the commune, named an Annex 15.⁴²⁹

2. Civil registration

2.1. Civil birth registration and status of children

A child born in Belgium, regardless of the residence status of the parents, needs to be registered at the commune of the place of birth within 15 days. In some places a civil officer will come to the hospital to facilitate registration. In other places the parents will need to go to the commune.

⁴²⁵ Article 49 Aliens Act.

⁴²⁶ Article 76 Aliens Decree.

⁴²⁷ Article 49/2(2)(3) Aliens Act.

⁴²⁸ Article 77 Aliens Decree.

⁴²⁹ Article 33 Aliens Decree.

A child whose descent with both parents is established follows the residence status of the parent with the strongest residence status. The child will be registered in the same national register and will receive a residence title with the same period of validity.

Children that accompany their parents during the asylum procedure will be registered on the “Annex 25 or 26” of the mother. If they are solely accompanied by their father, then they will be registered on the Annex of the father.

When a child is born during the asylum procedure in Belgium, they need to be added to the “Annex 26” of one of the parents. First the child needs to be registered at the commune of the place of birth. The commune will forward this information to the Aliens Office, which will modify the waiting registry and add the child on the “Annex 26” of the mother.

Children born in Belgium after recognition of parents as **refugees** will not automatically be granted refugee status. The parents have to ask for their children born in Belgium to be granted refugee status:

- If both parents have been recognised as refugees in Belgium, the request needs to be sent to the “Helpdesk Recognised Refugees and Stateless Persons” of the CGRS;
- If one of the parents is not a recognised refugee in Belgium, the request needs to be addressed to the Aliens Office.

If paternity has not been legally established, the mother of a child born in Belgium can also apply to the “Helpdesk Recognised Refugees and Stateless Persons” but she must submit a recent copy of the child’s birth certificate.⁴³⁰

Children born in Belgium after the parents have been granted **subsidiary protection** must be entered by the municipality in the register of foreign nationals, provided they present their birth certificates. Children who arrived in Belgium after the parents were granted subsidiary protection status must be declared to the Aliens Office, if no family reunification procedure has been initiated.

2.2. Civil registration of marriage

A beneficiary of international protection can get married in Belgium when, at the time of solemnisation of the marriage, one of the spouses holds Belgian nationality or has legal residence in Belgium. Same-sex marriage is possible as long as one of the partners is Belgian or has been habitually resident in Belgium for more than three months.

The marriage can be solemnised by the Registrar of the commune where one of the future spouses is resident. If neither spouse has residence in Belgium or if the habitual residence of one of the spouses does not correspond to the place of residence, the marriage can be solemnised in the commune of habitual residence.

A foreign marriage certificate may be recognised in Belgium if the basic conditions for marriage applicable in the country of origin of the spouses and the official formalities of the country where the marriage was solemnised have been respected.

Certain documents may be needed for concluding a marriage in Belgium. For beneficiaries of **subsidiary protection** civil status documents might be harder to obtain. As the CGRS is not qualified to grant civil status documents e.g. certificate of birth, marriage certificate to persons holding subsidiary protection status, they will need to contact their embassy. For some procedures such as marriage or **Naturalisation**, an “act of notoriety” (*acte de notoriété*) can substitute a birth certificate. This can be requested from the justice of the peace (Civil Court) of the beneficiary’s place of residence.

⁴³⁰ For more information, see CGRS, ‘You are recognised as a refugee in Belgium. Your rights and obligations’, January 2018: available at: <http://bit.ly/2BjIRbd>.

Recognised refugees can contact the CGRS for the issuance documents that they can no longer obtain from the authorities of their country of origin: birth certificates; marriage certificates if both spouses are in Belgium; divorce certificates; certificates of widowhood; refugee certificates; certificates of renunciation of refugee status.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2017: Not available

The criteria and conditions for obtaining long-term resident status are laid down in Chapter IV of the Aliens Act, which refers to the Long-Term Residence Directive.⁴³¹ Some modalities can be found in the Aliens Decree.

Refugees and subsidiary protection beneficiaries are included in the scope of the Long-Term Residence Directive since 2011 and thus circumvent the first condition of being a third-country national. Other conditions to be cumulatively fulfilled are that the person concerned has to have:

- ❖ A right to residence for unlimited time (*in casu* electronic B card);
- ❖ Stayed legally and continuously within Belgium for 5 years immediately prior to the submission of the relevant application;
- ❖ Stable and regular resources which are sufficient to maintain himself/herself and the members of his or her family, without recourse to the social assistance system of the Member State concerned. For 2017 the required amount was set at 809 € per month, plus 270 € per dependent person.⁴³²
- ❖ Sickness insurance in respect of all risks normally covered in Belgium.

The legal and continuous stay within Belgium for five years only includes half of the time between lodging an asylum application and receiving either refugee status or subsidiary protection. Only if this period exceeds 18 months, the whole period will be taken into account. Periods of absence are not excluded if they are not longer than 6 consecutive months and do not exceed 10 months in total during the 5 years.

Excluded categories from long-term residence include asylum seekers and people who benefit from other forms of international protection. However, even though referred to in Article 15-bis(1)(3), in current Belgian legislation there is no third category of international protection. Also excluded from long-term residence status are persons considered a threat to public policy and public security.

The request to become the status of long-term resident (the so-called “Annex 16”) is lodged at the municipal authorities of the applicant’s place of residence.⁴³³ The municipal authorities confirm this by issuing a certificate of receipt (“Annex 16-bis”).⁴³⁴ The municipal authorities afterwards transfer the request to the Aliens Office, which takes a decision within 5 months. In the event of a positive decision, or the absence of a decision after 5 months, the applicant will be included in the civil register and receive an electronic D-card with a validity of 5 years and the mention “EC – long-term resident”. In addition to this the mention “international protection granted by Belgium on [date]” is written on the residence permit for long-term residents.⁴³⁵ The duration of validity of long-term residence status is unlimited, contrary to the residence card D itself.⁴³⁶

⁴³¹ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L016, 44-53.

⁴³² More info available at: <http://bit.ly/2jAyqvU>.

⁴³³ Article 29(1) Aliens Decree.

⁴³⁴ Article 29(2) Aliens Decree.

⁴³⁵ Article 30(2) Aliens Decree.

⁴³⁶ Article 18(1) Aliens Act.

In the event of a refusal, the municipal authorities will notify the applicant with a so-called Annex 17.⁴³⁷ Against this decision an appeal procedure is available. The possibilities for appeal are listed on the refusal document and are listed in Article 39/82 and 39/2(2) of the Aliens Act.

Article 18(3) of the Aliens Act holds the exception that in case the protection status a beneficiary of international protection is revoked on the basis of Article 55/3/1(2) or 55/5/1(2) Aliens Act, the Minister or his delegate hold the right to revoke the long-term residence status. Should this be the intent of the Minister or his delegate, several things such as the family bonds, the duration of stay in Belgium and the family, cultural and social ties to the country of origin have to be taken into account.

In 2016, there were 324 decisions granting the status of long-term residents overall; there is no breakdown available for beneficiaries of international protection.⁴³⁸

4. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	5 years
2. Number of citizenship grants to beneficiaries in 2017:	Not available

There are multiple systems for acquiring the Belgian nationality available for aliens. The main system is named “declaration of nationality”, whereas an exceptional system named “naturalisation” is also available for certain categories of aliens.

4.1. Naturalisation *stricto sensu*

Naturalisation in the narrow sense is a concessionary measure granted by the House of Representatives which is only available under the cumulative conditions laid down in the Code of Belgian Nationality:⁴³⁹

- ❖ The applicant has to be 18 years or older;
- ❖ The applicant has to stay legally in Belgium;
- ❖ The applicant must have achieved great things which shed a favourable light on the Kingdom of Belgium.

This achievement (i.e. *honoris causa*) can be either scientific, sportive or cultural and social. Since the Law of 4 December 2012 amending the Code of Belgian Nationality, this possibility is not available anymore for recognised refugees or beneficiaries of subsidiary protection.⁴⁴⁰ Legal stay implies a right to residence of unlimited duration.⁴⁴¹

The second possibility to become a Belgian citizen by naturalisation in the narrow sense through concessionary granting by the House of Representatives is only available for recognised stateless people who are 18 years or older and are staying legally in Belgium with a right to residence for unlimited time.⁴⁴²

⁴³⁷ Article 30(1) Aliens Decree.

⁴³⁸ Aliens Office, *Statistical Report 2016*, available in Dutch at: <http://bit.ly/2G6hViD>, 29.

⁴³⁹ Article 19 Code of Belgian Nationality and Circular of 8 March 2013, published on 14 March 2013, available at: <http://bit.ly/2klqOL2>.

⁴⁴⁰ Law of 4 December 2012 on changes to the Code of Belgian nationality in order to make obtaining Belgian nationality migration-neutral, 14 December 2012, 2012009519, 79998.

⁴⁴¹ Article 7-bis(2)(1) Code of Belgian Nationality.

⁴⁴² Article 19(2) Code of Belgian Nationality.

4.2. Declaration of nationality

Apart from the aforementioned possibilities for acquiring Belgian nationality, aliens can also resort to a system called “declaration of nationality”. This possibility is laid down in Article 12bis of the Code of Nationality and contains the following possibilities that are relevant for refugees and beneficiaries of subsidiary protection based *inter alia* on:

- ❖ 5 years of legal stay and integration;⁴⁴³
- ❖ 10 years of legal stay.⁴⁴⁴

5 years of legal stay and integration

The first option requires 5 years of uninterrupted legal stay and proof of integration. In order to acquire Belgian citizenship through this option an applicant has to be 18 years or older, have stayed legally in Belgium as primary residence for 5 years uninterrupted and prove knowledge of languages, social integration and economical participation. Legal stay again implies a right to residence of unlimited duration.⁴⁴⁵

The Code of Belgian Nationality provides for several options in order to prove social integration, such as having completed vocational training of 400 hours, having following an integration course, having been employed or working as an entrepreneur for 5 years or having obtained a degree. The language requirement is automatically fulfilled if integration is proved. Documents that prove sufficient knowledge of the national languages are listed in Article 1 of the Royal Decree 2013.⁴⁴⁶ In a judgment of the Court of Appeal in Ghent, the court decided that if one of the listed documents is provided, the actual knowledge of the languages is irrelevant.⁴⁴⁷ *In casu* a woman unable to speak any of the three national languages, was able to provide the document referred to in Article 1(5)(a) of the Royal Decree, which led to the conclusion that she satisfied the language condition. The court thus confirmed that the Belgian legislator opted for a documentary system and is not allowed to test the language condition in a conversation.

Economical participation can be proven by either having worked as an employee for 468 days during the past 5 years, or by having paid social contribution during at least 6 quarters in the past 5 years as an entrepreneur. The duration of either obtaining a degree or completing vocational training, as mentioned in the social integration condition can be subtracted from the 468 days or 6 quarters. Examples of this subtraction are provided in the circular March 2013.⁴⁴⁸ Specific details on the documents available to prove social integration, knowledge of languages and economic participation are provided for in the March 2013 Circular.⁴⁴⁹

10 years of legal stay

Article 12bis(1)(5) of the Code of Belgian Nationality refers to people who have legally stayed in Belgium for 10 years without a significant interruption. The first requirement is to have stayed in Belgium for 10 years and to have a right of residence of unlimited duration. The language requirement is explicitly mentioned as well. The new condition for this option is the fact that an applicant has to prove participation to life in the receiving society. There is no strict legal definition for ‘receiving society’ but the Circular of

⁴⁴³ Article 12-bis(1)(2) Code of Belgian Nationality.

⁴⁴⁴ Article 12-bis(2)(5) Code of Belgian Nationality.

⁴⁴⁵ Article 7-bis(2)(1) Code of Belgian Nationality.

⁴⁴⁶ Royal Decree of 14 January 2013 executing the law of 4 December 2012 on changes to the Code of Belgian nationality in order to make obtaining Belgian nationality migration-neutral, 21 January 2013, 2013009022, 2596.

⁴⁴⁷ Court of Appeal Ghent, 2014/AR/1095, 24 December 2015.

⁴⁴⁸ Circular of 8 March 2013 concerning certain aspects of the law of 4 December 2012 on changes to the Code of Belgian nationality in order to render the acquisition Belgian nationality migration-neutral, 14 March 2013, 2013009118, para IV A(1)(1.2)(3)(b.2).

⁴⁴⁹ Circular of 8 March 2013, para IV A(1)(1.2).

2013 specifies that “receiving society” cannot be interpreted as meaning the society of people of the same origin as the applicant.⁴⁵⁰ The circular also specifies that participation to life in the receiving society can be proven by any means. Some indications mentioned in the circular are school attendance, vocational training and participation in associations.

Procedure

The details of the procedure are laid down in Article 15 of the Code of Belgian Nationality. For each of these possibilities a registration fee of 150 € has to be paid. Proof of payment of the registration fee is an essential condition for the treatment of a file. After completing the payment, the applicant has to make the actual declaration at the municipal services of his/her current place of residence. The civil servant will issue a document proving that the applicant has made the declaration. Within 30 days of the making of the declaration, the civil servant has to check the file for incompleteness and if so, the civil servant flags the missing documents and gives the applicant 2 months' time to complete the file. If the file is complete, the civil servant issues a certificate of receipt within 35 days of the declaration. If the file was previously incomplete, the civil servant only has 15 days to issue the certificate of receipt after the 2 months of extra time given to the applicant. In the event that the file would still be incomplete, the civil servant issues a document within 15 days stating that the application is inadmissible.

If the file is complete, the civil servant has 5 days to send the file to the prosecutor of the first instance courts, the Aliens Office and National Security. The prosecutor of the court of first instance has to notify the civil servant of receipt promptly. The prosecutor has 4 months after the issuance of the certificate of receipt to issue a binding advice on the declaration of nationality. Several situations can occur at this stage:

- ❖ **The prosecutor does not respond at all:** In the case where the court does not even issue a certificate of receipt it is expected that the file did not arrive at the court, which leads to an automatic dismissal of the declaration of nationality. The applicant can appeal this by sending a registered letter to the civil servant asking that the file be resent to the court of first instance.
- ❖ **The prosecutor issues a certificate of receipt but does not issue an opinion:** The declaration is automatically accepted. The civil servant will notify the applicant and register the applicant. The applicant is a Belgian citizen from the day of registration.
- ❖ **The prosecutor does not stand against the declaration:** If the prosecutor does not stand against the declaration the civil servant notifies and registers the applicant. The applicant is a Belgian citizen from the day of registration.
- ❖ **The prosecutor stands against the declaration:** If the prosecutor stands against the declaration it issues a registered letter to the civil servant and the applicant. The applicant can appeal this decision by sending a registered letter to the civil servant asking that the file be resent to the court of first instance.

In the two situations where the applicant can appeal to the court of first instance, the applicant has 15 days, starting from receiving the negative advice or the notification of the civil servant, to demand the civil servant to transfer the case to the court of first instance. The judge in the court of first instance will have to make a motivated decision on the negative advice and will hear the applicant. The registry of the court of first instance will notify the applicant of the decision.

A second appeal is available with the court of appeal for both the applicant and the prosecutor. The time limit is again 15 days. The procedure however is expensive and can take a long time. The court will rule after advice from the general prosecutor and the applicant will be heard. In the event of a positive decision

⁴⁵⁰ Circular of 8 March 2013, para IV A(1)(1.1)(4).

the prosecutor will send the outcome to the civil servant. The civil servant will subsequently notify and register the applicant. The applicant is a Belgian citizen from the day of registration. In the event of a negative outcome, the procedure ends there.

Both appeal possibilities come with an additional registration fee of 100 €. This used to be only 60 € but a legislative change in 2015 increased the fee.⁴⁵¹

It is estimated that 27,727 persons obtained Belgian nationality in 2016.⁴⁵²

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

The grounds for cessation of **refugee status** are laid down in Article 55/3 of the Aliens Act. The article refers to the situations in Article 1C of the 1951 Convention. If a refugee would fall under Article 1C(5) or 1C(6), the authorities have to check whether the change in circumstances in connection with which the refugee has been recognised is sufficiently significant and of a non-temporary nature. During the 5-year period of temporary residence granted to recognised refugees, the Aliens Office can ask the CGRS to cease refugee status on the basis of actions that fall under Article 1C of the Refugee Convention.⁴⁵³ The CGRS can also decide this *ex officio*. There is no time limit in this situation. The possibility of cessation of refugee status was included in the Aliens Act after a legislative amendment in 2016.⁴⁵⁴ In its decision to end the residence title following a cessation decision, the Aliens Act requires the authorities to take the level of integration in society into account.⁴⁵⁵

Cessation of beneficiary of **subsidiary protection** status is provided for in Article 55/5 of the Aliens Act and applies to situations where the circumstances on which subsidiary protection was based cease to exist or have changed in such a way that protection is no longer needed. Again the authorities have to check whether the change in circumstances in connection with which the refugee has been recognised is sufficiently significant and of a non-temporary nature. In relation to individual conduct, the CGRS has stated that, in principle, cessation is not inferred from the sole fact that a beneficiary contacts his or her embassy, especially when subsidiary protection is granted on the basis of Article 15(c) of the recast Qualification Directive.⁴⁵⁶

Cessation of status is possible during the 5 years of temporary residence as provided for in Article 49/2 of the Aliens Act.⁴⁵⁷ The Aliens Office has to request the CGRS to cease the status. This situation is not applicable when a beneficiary of subsidiary protection can put forward compelling reasons originating from previously incurred harm to refuse protection from the country of which the beneficiary used to

⁴⁵¹ Law of 28 April 2015 changing registration, mortgage and registrar fees in order to reform registrar rights, 26 May 2015, 2015003178.

⁴⁵² Myria, *Annual report 2017*, available in Dutch at: <http://bit.ly/2Dyrut9>, 172, figure 60.

⁴⁵³ Article 49(1) Aliens Act.

⁴⁵⁴ Article 49(2) Aliens Act.

⁴⁵⁵ Article 11(3)(1) Aliens Act.

⁴⁵⁶ Myria, Contact meeting, 22 November 2017, para 23.

⁴⁵⁷ Article 49/2(3) Aliens Act.

possess the nationality. The Aliens Act requires that the authorities take the level of integration in society into account when taking the decision to end the residence title.⁴⁵⁸

The CGRS always informs the beneficiary of the reasons for re-investigating the granting of the status but will not necessarily hear the refugee or beneficiary of subsidiary protection during the procedure. The CGRS does however have the possibility to ask the person concerned to formulate his or her arguments to retain the status in writing or orally.⁴⁵⁹

A 2016 amendment changed the wording of the Aliens Act, thereby allowing the Aliens Office to end the right to residence of a person whose protection status is ceased. The Aliens Act requires that when the protection status is ceased on the grounds of Article 55/3 or 55/5 Aliens Act, the authorities take the level of integration in society into account.⁴⁶⁰ Furthermore, in the event of a cessation on the aforementioned grounds, the Aliens Office has to assess the proportionality of an expulsion measure. This requires the Aliens Office to take the duration of residence in Belgium, the existence of family, cultural and social ties with the country of origin and the nature and stability of the family into account.

So far there has not been any policy of systematically applying cessation for certain nationalities because the situation in the country of origin would have changed in a durable manner. In practice this only happens for individual reasons such as return to the country of origin or acquisition of another nationality. Usually cessation is triggered upon request of the Secretary of State or the Aliens Office.⁴⁶¹

In 2017, the CGRS took 58 cessation decisions, of which 30 for Afghanistan, 15 for Iraq, 4 for Serbia and 2 for Rwanda.⁴⁶² This confirms a trend of gradual increase in cessation decisions over recent years.

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

Revocation of **refugee status** is provided for in Article 49(2) of the Aliens Act in conjunction with Article 55/3/1 of the Aliens Act. The articles state that during the first 10 years of residence the Aliens Office can ask the CGRS to revoke refugee status when the person concerned should have been excluded from refugee status or when refugee status was obtained on a fraudulent basis.⁴⁶³ The exclusion clause refers to Articles 1 D, E and F of the 1951 Convention.⁴⁶⁴

Revocation on grounds of fraud can be based on wrongfully displayed facts, withheld facts, false declarations, fraudulent documents or personal behaviour that proves that the applicant no longer fears persecution.

Refugee status can be revoked anytime the refugee is considered a danger to society, sentenced for a very serious crime or when there are reasonable grounds to consider the refugee a threat to national

⁴⁵⁸ Article 11(3)(1) Aliens Act.

⁴⁵⁹ Article 35/2 Royal Decree on CGRS Procedure.

⁴⁶⁰ Article 11(3)(1) Aliens Act.

⁴⁶¹ Myria, Contact meeting, 20 September 2017, para 22.

⁴⁶² Information provided by CGRS, February 2018.

⁴⁶³ Article 55/3/1(2) Aliens Act.

⁴⁶⁴ Article 55/2 Aliens Act.

security.⁴⁶⁵ This ground for revocation was added in 2015 and is not limited in time.⁴⁶⁶ The CGRS has clarified that the first limb – danger to society – can only lead to revocation following a conviction judgment, whereas the “national security” ground may be satisfied without such a judgment.⁴⁶⁷

The Aliens Office sends the CGRS every element that could justify a revocation of refugee status on the basis of Article 55/3/1 Aliens Act. The CGRS will take a decision within 60 days and inform the Aliens Office of the outcome. In the event of a revocation of refugee status on the grounds of Article 55/3/1(1) or 55/3/1(2)(2) of the Aliens Act, the CGRS will also issue an opinion on the compatibility of an expulsion measure with Articles 48/3 and 48/4.

Subsidiary protection can be revoked on the grounds listed in Article 49/2 and 55/5/1 of the Aliens Act. The GCRS can revoke the subsidiary protection status during the first 10 years of residence when the beneficiary has merely left his or her country of origin in order to escape sentences related to one or multiple committed crimes that do not fall under the scope of Article 55/4(1) Aliens Act and would be punishable with a prison sentence if they would have been committed in Belgium.⁴⁶⁸ This ground for revocation was only included in 2015 and is not limited in time.⁴⁶⁹

Status can always be revoked when the beneficiary should have been excluded from protection according to Article 55/4(1) and (2). This article relates to persons having committed a crime against peace, a war crime, or a crime against humanity. Other exclusion possibilities listed are being guilty of acts contrary to the purposes and principles of the United Nations and having committed a serious crime.⁴⁷⁰ The subsidiary protection status can also be revoked anytime when the beneficiary is considered to be a threat for society or national security.⁴⁷¹ The final possibility for the CGRS to revoke subsidiary protection status is when the status was granted on a fraudulent basis. This fraudulent basis can be wrongfully displayed facts, withheld facts, false declarations, fraudulent documents or personal behaviour that proves that the applicant no longer fears persecution.⁴⁷² Revocation on the grounds of a fraudulent basis can only occur during the first 10 years of residence in Belgium.

The Aliens Office sends the CGRS every element that could justify a revocation of refugee status on the basis of Article 55/5/1 Aliens Act. This also applies when it is feared that the beneficiary is a threat for society or national security. The CGRS will take a decision within 60 days and informs the Aliens Office and the person concerned of the outcome. If subsidiary protection status is revoked on the basis of exclusion clauses or the committing of a crime punishable with a prison sentence in Belgium, the CGRS issues an advice on the compatibility of an expulsion measure with Articles 48/3 and 48/4.

The CGRS informs the person concerned of the reasons for the reinvestigation of the protection status and always calls the beneficiary for a hearing where the alien has the opportunity to refute the allegations.

A 2016 amendment changed the wording of the Aliens Act, thereby allowing the Aliens Office to end the right to residence of a person whose protection status is revoked on the grounds of Article 55/3/1(1) or 55/5/1(1) Aliens Act. A person can also be ordered to leave the territory if the protection status is revoked on the grounds of Article 55/3/1(2) or 55/5/1(2) Aliens Act. In the event of a revocation on the aforementioned grounds, the Aliens Office has to assess the proportionality of an expulsion measure.

⁴⁶⁵ Article 55/3/1(1) in conjunction with Article 49(2) Aliens Act.

⁴⁶⁶ Article 8 of the Law of 10 August 2015 changing the Aliens act to take threats to society and national security into account in applications for international protection, 24 August 2015, 2015000440.

⁴⁶⁷ Myria, Contact meeting, 20 September 2017, para 24.

⁴⁶⁸ Article 55/5/1(1) Aliens Act.

⁴⁶⁹ Article 10 Law of 10 August 2015.

⁴⁷⁰ The crimes listed in Article 55/4(1) Aliens Act are also known as the ‘exclusion clause’ 1F of the 1951 Refugee Convention.

⁴⁷¹ Article 55/4(2) Aliens Act.

⁴⁷² Article 55/5/1(2)(2) Aliens Act.

This requires the Aliens Office to take the duration of residence in Belgium, the existence of family, cultural and social ties with the country of origin and the nature and stability of the family into account.

In 2017, the CGRS withdrew protection status in 188 cases, of which 34 concerning Afghans, 32 Iraqis, 27 Russians, 15 Syrians and 7 Guineans.⁴⁷³

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary of international protection can apply for family reunification? Yes No
 - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application? To be exempt from material conditions Yes No
 - ❖ If yes, what is the time limit? 12 months
3. Does the law set a minimum income requirement? Yes No

Certain family members of beneficiaries of international protection enjoy the right to join the beneficiary in Belgium through family reunification.⁴⁷⁴ The legal basis for family reunification is Article 10 of the Aliens Act.

1.1. Eligible family members

Four categories of persons may join a beneficiary in Belgium.

- ❖ A spouse, equalled partner,⁴⁷⁵ or registered partner;
- ❖ An underage child;
- ❖ A child of age with a disability;
- ❖ A parent of an unaccompanied child with protection status.

In order to reunite with a spouse or equalled partner, certain conditions have to be fulfilled.⁴⁷⁶ Both partners have to be over the age of 21, unless the union took place before arrival in Belgium, in which case the minimum age is reduced to 18. The spouse or equalled partner must come and live with the beneficiary in Belgium. Polygamous marriages are excluded, only one of the wives can join the beneficiary.⁴⁷⁷ In practice an investigation to whether the marriage or equalled registered partnership is a marriage of convenience is often carried out. However this does not suspend the family reunification procedure. If the investigation shows there is a marriage of convenience, the Aliens Office can revoke the right to residence.⁴⁷⁸

⁴⁷³ Information provided by the CGRS, February 2018.

⁴⁷⁴ More practical information can be found in: (former) Belgian Refugee Council (CBAR-BCHV), *Family reunification with beneficiaries of international protection in Belgium*, October 2016, available at: <http://bit.ly/2mZA3D8>.

⁴⁷⁵ An equalled partner is a partnership registered in certain countries. These countries are Denmark, Germany, Finland, Iceland, Norway, the United Kingdom and Sweden. Article 12, Royal Decree of 17 May 2007 establishing the implementation modalities of the law of 15 September 2006 changing the law of 15 December 1980 on the regarding the entry, residence, settlement and removal of aliens, 31 May 2007, 2007000527, 29535.

⁴⁷⁶ Article 10(1)(4) Aliens Act.

⁴⁷⁷ Children from a polygamous marriage are not excluded if they meet the general conditions: Constitutional Court, Decision No 95/2008, 26 June 2008.

⁴⁷⁸ Articles 11(2) and 12-bis Aliens Act.

The conditions for a registered partner are largely similar but require proof of a “stable and lasting” relationship.⁴⁷⁹ Evidence of this can either be a common child, having lived together in Belgium or abroad for at least 1 year before applying or proof that both partners have known each other for at least 2 years and have regular contact by telephone or have met at least 3 times, amounting to a total of at least 45 days, during the 2 years preceding the application. The registered partners also have to be unmarried and not be in a lasting relationship with another person.

Underage children wishing to join their parents residing in Belgium as a beneficiary of international protection have to be unmarried and set to live under the same roof as the parents. If a child wishes to join only 1 of his parents in Belgium, the situation depends on the custody arrangement. In the event of sole custody, a copy of the judgment granting sole custody will have to be provided. If custody is shared, consent of the one parent that the child can join the other parent in Belgium is required.

Children of age with a disability or handicap have the possibility to join their parent(s) with international protection if they provide a document certifying their state of health. In order to be considered disabled, the person concerned has to be unable to provide for his/her own needs as a result of the disability. The child also has to be unmarried and come and live with the beneficiary.

If the beneficiary of international protection is an unaccompanied child, the beneficiary’s parents can enter Belgium through family reunification.⁴⁸⁰

To establish family ties, Belgian law foresees a cascade system.⁴⁸¹ Ties are preferably proven by official documents, other valid proof or an interview or supplementary analysis (i.e. a DNA test). If an applicant is unable to produce official documents, the inability has to be “real and objective”, meaning contrary to the applicant’s own will, such as Belgium not recognising the country concerned, an inability to enter into contact with the authorities or a specific situation in the country of origin such as non-functioning authorities or authorities that no longer exist. If this inability is established, the Aliens Office can take other valid proof into account.⁴⁸² In the absence of other valid proof, the Belgian authorities may conduct interviews or any other inquiry deemed necessary, such as a DNA test.⁴⁸³

1.2. Deadlines and material conditions

Beneficiaries of international protection are exempt from certain conditions such as adequate housing, health insurance and sufficient, stable and regular means of subsistence. However, if the applicant for family reunification is submitted more than 1 year after recognition of the status, these conditions will have to be fulfilled. This however does not apply to parents of unaccompanied child wishing to join them in Belgium.⁴⁸⁴

1.3. Family reunification procedure

The normal procedure requires the applicant to apply for family reunification at the Belgian embassy or consulate in the country where the applicant resides. In practice, family members of recognised refugees and subsidiary protection beneficiaries, alternatively, can submit the application form in any Belgian embassy which is authorised to apply for long-term visa applications. At the Belgian embassy they have to apply for a D visa for family reunification and provide certain documents to complete the file.

⁴⁷⁹ Article 10(1)(5) Aliens Act.

⁴⁸⁰ Article 10(1)(7) Aliens Act.

⁴⁸¹ Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, Belgian Official Gazette, 2 July 2009.

⁴⁸² Article 12-bis(5) Aliens Act.

⁴⁸³ Article 12-bis(6) Aliens Act.

⁴⁸⁴ Constitutional Court, Decision No. 95/2008 of 26 June 2008.

All applicants require a valid travel document (national passport or equivalent), a visa application form (including proof of payment of the handling fee of 180 €), a birth certificate, a copy of the beneficiary's residence permit in Belgium, a copy of the decision granting protection status, a medical certificate no more than 6 months old and an extract from the criminal record.

In addition to these standard documents, a spouse will have to provide a marriage certificate. A registered partner has to provide a certificate of registered partnership and additional proof of the lasting relationship, such as photos, emails, travel tickets, etc. For minor children applying to reunify with a parent a copy of the judgment granting sole custody will have to be provided. If custody is shared, consent of the one parent that the child can join the other parent in Belgium is required. Where the child is only of the spouse/partner a marriage certificate, divorce certificate or registered partnership contract is required.

Children over 18 with a disability have to provide a medical certificate.

All foreign documents have to be legalised by both the foreign authorities that issued them and the Belgian authorities. Documents provided in another language than German, French, Dutch or English will have to be translated by a sworn translator.

After submitting all the certified and translated documents, the file is complete and the applicant will receive proof of submission of the application (a so-called "Annex 15quinquies"). The file then gets sent to the Aliens Office for examination. When the proof of submission is delivered, a 9-month period starts during which the Aliens Office must take a decision on the visa application. This period can be prolonged with a 3 month extensions twice in the event of a complex case or when additional inquiries are necessary. If the Aliens Office decides that all conditions are fulfilled it will issue a positive decision and the family member will receive a D type visa mentioning "family reunification". This visa is valid for 1 year and allows the applicant to travel to Belgium via other Schengen countries or stay in another Schengen country for a maximum total duration of 3 months within a period of 6 months.

2. Status and rights of family members

After arrival in Belgium, the applicant has to register in the municipality where he/she stays within the first 8 days of the arrival.⁴⁸⁵ The applicant has to show the family reunification visa and will receive an Annex 15 temporarily covering stay in Belgium until a residence control. After a positive residence control, the municipality will register the applicant in the Aliens Register and issue an electronic A card valid for 1 year.

During the first 5 years, the A card will be renewed if the conditions for family reunification are still satisfied.⁴⁸⁶ The person will have to request a new card every year between the 45th and 30th day before the expiry date of the residence permit.

The Aliens Office can review the situation every time an electronic A card has to be renewed, but also at any moment when the Aliens Office has well-founded suspicions of fraud or a marriage of convenience. If after a review the Aliens Office concludes the conditions are not fulfilled anymore, it can end the right to residence. This is only possible in one of the following situations:

- ❖ An applicant no longer fulfils the conditions for family reunification;
- ❖ The partners do not have an actual marital life anymore;
- ❖ One of the partners has concluded a marriage or registered equalled partnership with another person;
- ❖ One of the partners commits fraud;
- ❖ There is a marriage of convenience.

⁴⁸⁵ Circular of 21 June 2207 on amendments to the rules regarding residence by foreigners after the entry into force of the Law of 15 September 2006, Belgian Official Gazette, 4 July 2007.

⁴⁸⁶ Article 13(3) Aliens Act.

The Aliens Office then issues an Annex 14ter to leave the territory. However, before ending the right to residence, the Aliens Office has to take the duration of residence in Belgium, the existence of family, cultural and social ties in the country of origin and the solidity of the family bond into account.

If an applicant no longer lives with the person on which family reunification was based due to domestic violence the Aliens Office cannot end the right to residence. Rape, deliberate assault and battery and attempts to poison all fall under this exception.⁴⁸⁷ Proof of domestic violence suffices, a conviction is not required. Psychological violence also suffices, but the Aliens Office requires more proof for this type of violence.

An applicant can lodge a suspensive annulment appeal with the CALL against the revocation of the right to residence by the Aliens Office within 30 days. The municipality will then issue an Annex 35. This is a temporary right to residence that is monthly extended for the duration of the appeal. In the absence of an appeal, the applicant's residence in Belgium is unlawful.

If the person still fulfils the conditions for family reunification after 5 years, the right to residence become unlimited in duration. The person concerned has to apply for an electronic B card at the municipality during the duration of his electronic A card. If the applicant still fulfils the conditions, he/she receives a definitive, unconditional and unlimited right to residence. The municipality will issue an electronic B card valid for 5 years.

If the applicant does not satisfy the conditions anymore, a new right to residence of limited duration will be issued if the person concerned has sufficient means of existence not to become a burden to the State, has health insurance and poses no threat to public order or security.

Exceptionally the Aliens Office can end the right to residence in the event of fraud or a marriage of convenience.

An applicant can lodge a suspensive annulment appeal with the CALL against the revocation of the right to residence by the Aliens Office within 30 days. The municipality will then issue an Annex 35. This is a temporary right to residence that is monthly extended for the duration of the appeal. In the absence of an appeal, the applicant's residence in Belgium is unlawful.

This procedure is slightly different for parents of an unaccompanied child. Article 13 of the Aliens Act contains the modalities for obtaining an unlimited right to residence after 5 years. Added to the usual condition of continuously satisfying the conditions for family reunification, the applicant will also have to prove that he/she possesses stable and sufficient resources. If after 5 years the applicant does not have stable and sufficient resources, he/she can ask that the limited duration (the electronic A card) is extended, but only for as long as the child is a minor. When the child become of age, the Aliens Office will investigate the personal situation of the applicant and may still prolong the duration of the right to residence.⁴⁸⁸

Resources are considered sufficient when they are 120% of the living wage of the category 'person with a dependent family'.⁴⁸⁹ Currently this amounts to 1428.32 € per month. The Constitutional Court ruled that as soon as the threshold is reached, the Aliens Office is not allowed to further investigate the exact amount of resources.⁴⁹⁰ The resources also have to be stable, meaning interim jobs, trial work and temporary jobs are often refused. Even if the applicant is unable to prove stable and sufficient resources, the Aliens Office

⁴⁸⁷ Articles 375, 398-400, 402, 403 and 405 Penal Code.

⁴⁸⁸ Circular of 13 December 2013 on the application of the articles of the Aliens Act. These were interpreted by the Constitutional Court in Decision No 121/2013 of 26 September 2013.

⁴⁸⁹ Article 10(5) Aliens Act.

⁴⁹⁰ Constitutional Court, Decision No 121/2013, 26 September 2013.

is not allowed to automatically refuse the unlimited right to residence, but is required to first make an analysis of the needs of the family.⁴⁹¹ On the basis of that analysis the Aliens Office can adjust the threshold.

C. Movement and mobility

1. Freedom of movement

Beneficiaries of international protection are allowed to freely move within Belgium. Their freedom of movement is not restricted in any way. In October 2016, the Reference Point Migration-Integration released statistics showing that recognised refugees or beneficiaries of international protection often move after their recognition.⁴⁹² Preferred destinations are major cities such as Antwerp, Brussels or Ghent, whereas Wallonia in general and smaller towns in Flanders are places often left behind.⁴⁹³

Due to the recent closure of several (emergency) reception centres, several asylum seekers, including unaccompanied asylum-seeking children have had to move to other centres. There has been some public outcry about this, especially as to the effect this has on young children.⁴⁹⁴

2. Travel documents

Belgium issues travel documents for both refugees and beneficiaries of subsidiary protection.⁴⁹⁵ The duration of validity of both documents is 2 years.⁴⁹⁶ However, beneficiaries of subsidiary protection have to fulfil more stringent criteria to obtain such a travel document.

Refugee status

To travel abroad, a refugee needs a valid electronic card for foreign nationals and a “refugee travel document”, also known as “blue passport”.⁴⁹⁷ Every member of the family who is a recognised refugee in Belgium must carry their own “blue passport”.

This “blue passport” has to be obtained from the commune where the refugee is officially registered. Documents needed to obtain a “blue passport” include:

- Identity card;
- One identity photo;
- If there are one or more children under the age of 18, a family declaration form which can be obtained from the municipal office;
- For persons living in the Brussels-Capital Region, a certificate of family composition, which must be requested at the municipal office).

⁴⁹¹ Article 12-bis(2) Aliens Act.

⁴⁹² Reference Point Migration-Integration, *Monitoring movements*, October 2016, available in Dutch at: <http://bit.ly/2kWCldt>.

⁴⁹³ De Standaard, ‘Vluchtelingen vluchten weg uit Wallonië’, 3 November 2016, available in Dutch at: <http://bit.ly/2jx04dh>.

⁴⁹⁴ De Redactie, ‘Schooldirecteur over sluiting asielcentrum: nieuwe traumatische’ ervaring, 7 June 2016, available in Dutch at: <http://bit.ly/2jACXyF>; De Wereld Morgen, ‘Asielzoekers gedwongen verplaatst vlak voor schoolvakantie: #mensenzijneenconserven’, 8 June 2017, available in Dutch at: <http://bit.ly/2BjM9v5>.

⁴⁹⁵ Article 57(3) Consular Code.

⁴⁹⁶ Circular on travel documents for non-Belgians, 7 September 2016.

⁴⁹⁷ CGRS, ‘You are recognised as a refugee in Belgium’, January 2018, available at: <http://bit.ly/2BjIRbd>.

Subsidiary protection

Travel documents for beneficiaries of subsidiary protection are issued only if beneficiaries are unable to obtain one from their national authorities.⁴⁹⁸ The document is called “travel document for foreigners”. The travel document needs to be requested at the provincial passport service of the province of the municipality where the person is registered. A special travel document will be issued on condition that identity and nationality are established and a certificate of impossibility to obtain a national passport or travel document is submitted. This can be requested from the CGRS, the Aliens Office, the International Organisation for Migration (IOM) or UNHCR.

A certificate of impossibility is not necessary if the person belongs to one of the categories of foreign nationals who cannot obtain a national passport or travel document according to the Belgian Ministry of Foreign Affairs: Somalians, Tibetans and persons of Palestinian origin do not have to submit such a certificate.

D. Housing

Indicators: Housing

- | | |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | 2 months |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2017 | Not available |

When a person who is staying in a reception centre receives a decision granting a protection status, he or she has the option to:

- Move to a LRI for a maximum of 2 more months, where he or she will get assistance in finding a place to live, and generally in transitioning to financial assistance if needed. These 2 months can be prolonged for one month, or in exceptional cases for up to 3 months; or
- Leave the shelter, for example to stay with family or friends. In this case Fedasil will provide him or her with food cheques worth 120 € per child and 280 € per adult. This has to cover the purchase of food for one month, the time limit within which the PCSW has to decide on the granting of financial assistance.

Fedasil has adopted internal instructions for these cases.⁴⁹⁹

In case the asylum seeker receives a decision granting a protection status while he or she is already staying in an LRI or an individual place of a NGO, the 2-month deadline will be afforded in this place.

Several civil society organisations describe the current situation as a “housing crisis” since 1 out of 5 recognised refugees has to extend stay in the collective centres due to a lack of available housing.⁵⁰⁰ Fedasil and Vluchtelingenwerk Vlaanderen have created an internet platform named ‘*mijn huis, jouw thuis*’ to link refugees and beneficiaries of subsidiary protection with people who rent their house. Other organisations such as Caritas also offer support to refugees and beneficiaries of subsidiary protection in search of a place to stay.

⁴⁹⁸ CGRS, ‘You are eligible for subsidiary protection in Belgium’, November 2017, available at: <http://bit.ly/2n2fFBj>.

⁴⁹⁹ Fedasil, *Instructions on the transition from material reception to financial assistance: measures for residents of collective centres and the accompaniment in transition in the individual structures*, 20 July 2016.

⁵⁰⁰ De Standaard, ‘Deze wooncrisis kan je alleen oplossen met crisismanagement’, 22 September 2016, available at: <http://bit.ly/2jZI4EE>.

E. Employment and education

1. Access to the labour market

Recognised refugees are free to access the labour market after recognition without requiring a work permit.⁵⁰¹ They are equally exempt from a professional card.⁵⁰² These exemptions are based on the status as a refugee and are therefore not affected by the recent limitation of the duration of the residence permit and the subsequent change from an electronic B card to an electronic A card for the first five years. No labour market tests or sector limitation are applied. These rules apply to work as an employee or as an entrepreneur.

Beneficiaries of subsidiary protection require a work permit C if they want to work as an employee during their first 5 years of limited right to residence. To work as an entrepreneur, a beneficiary of subsidiary protection needs a professional card.

In order to obtain a work permit C, the employee has to apply for one at the Department of Economic Migration in the province where the applicant resides. The documents required are:⁵⁰³

- ❖ A fully completed application form with indication of the residence status (*in casu* subsidiary protection).
- ❖ A fully completed information sheet in which it is confirmed by the Mayor of the place of residence or his representative that the information listed on this information sheet corresponds with the information in the possession of the Municipality;
- ❖ A copy of the current residence permit of the person concerned;
- ❖ An extract from the Aliens' Register or Pending Applications Register with indication of the residence history of the person concerned to be obtained at the municipality.

If the Department takes a positive decision, they send the work permit C to the municipality, which will notify the applicant. In the event of a negative decision, the Department notifies the applicant of its motivated decision in a registered letter. The applicant can appeal this decision with the Regional Minister within 30 calendar days after notification of the registered letter whereby the decision to refuse was served. After a decision of the Minister, a second appeal is possible within 60 days to the Council of State. The Council of State only checks the correctness of the proceedings and does not judge on the reasons for refusal.

A work permit C is valid for 1 year after which renewal can be asked under the same conditions and in accordance with the same procedures as those which apply in the case of a first application. An applicant for renewal however has to be submitted at the latest one month before the expiration of the current work permit C.⁵⁰⁴ As soon as the beneficiary receive an unlimited right to residence, a work permit C is no longer required.

Beneficiaries of subsidiary protection need a professional card if they wish to work as an entrepreneur. Apart from possessing an electronic A card to prove the right to residence, some other conditions have to be fulfilled related to the activity the beneficiary wishes to pursue.⁵⁰⁵ The activity has to be compatible with the reason of stay in Belgium, not in a saturated sector and may not disrupt public order. The documents required are:

- ❖ Front Page giving an overview of all evidence attached to your application form;

⁵⁰¹ Article 2(5) Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 on the employment of foreign nationals, 26 June 1999, 1999012496, 24162.

⁵⁰² Article 1(4) Royal Decree on the professional card.

⁵⁰³ Article 2 Royal Decree of 2 April 2003 on the modalities of requesting and receiving a Work Permit C, 9 April 2003, 2003200475, 17774.

⁵⁰⁴ Article 5 Royal Decree on Work Permit C.

⁵⁰⁵ Article 1 Royal Decree of 2 August 1985 implementing the Law of 19 February 1965 on entrepreneurial activities of foreigners, 24 September 1985, 1985018112, 13668.

- ❖ An extract of the applicant's criminal record (no more than 6 months old);
- ❖ Proof of payment of the application fee of EUR 140;
- ❖ Copy of the residence permit.

An appeal is open with the Regional Minister within 30 calendar days after notification of the registered letter whereby the decision to refuse was served. The Minister seeks the advice of the Council for Economic Investigation regarding Foreigners who will hear the applicant and issue an advice within 4 months to both the Minister and the applicant. The Minister has 2 months to decide whether to follow the advice of the Council or not. In the absence of a Council advice, the Minister has 2 months to take an autonomous decision. In the absence of both a Council advice and a decision by the Minister, the application is considered rejected. After a decision of the Minister, a second appeal is possible within 60 days to the Council of State. The Council of State only checks the correctness of the proceedings and does not judge on the reasons for refusal. If an application is definitely refused, an applicant can only file a new application after 2 years of waiting unless the refusal was based on inadmissibility, new elements arose or the new application is for a new activity.

The professional card is valid for maximum 5 years, but usually issued for 2 years. The holder of a professional card has to ask for renewal 3 months before the expiration date of the current professional card. As soon as beneficiary of subsidiary protection receives a right to unlimited residence

Asylum seekers, recognised refugees and beneficiaries of subsidiary protection can have their diploma obtained in other countries recognised by specific authorities in Belgium: Flanders: [NARIC](#) in Flanders and [Equivalences CFWB](#) in the French community.

In both Flanders and the French community, asylum seekers, refugees and beneficiaries of subsidiary protection are exempt from the payment of administrative fees.

2. Access to education

The access to education for child beneficiaries is equal to that of child asylum-seekers. This means that children immediately have the right to go to school and are obliged to receive schooling from 6 years old until their 18th birthday. Children have to be enrolled in a school within 60 following their registration in the Aliens Register. Classes with adapted course packages and teaching methods, the so-called "bridging classes" (in the French speaking Community schools) and "reception classes" (in the Flemish Community schools), are organised for children of newly arrived migrants, a category which includes children of beneficiaries of international protection. Those children are later integrated in regular classes once they are considered ready for it.

F. Social welfare

Beneficiaries of international protection have access to social welfare under the same conditions as nationals from the moment the protection status awarded to them becomes final. In practice they have such access immediately after the issuance of the protection status. They can apply for social welfare with the attestation confirming their status, which they receive from the CGRS. The PCSW has 30 days to take a decision.

Before the beneficiaries of international protection can effectively receive the social welfare, they have to have left the reception centre or other shelter in which they have been residing. Therefore the application for social welfare can be made while still in the shelter, but it will only be granted from the moment the beneficiaries have left the shelter.

Further conditions for receiving social welfare are:

1. Habitual residence in a commune in Belgium;

2. Being an adult;
3. Being prepared to work;
4. Having insufficient means of subsistence and having no possibility to claim means of subsistence elsewhere or being able to obtain means of subsistence independently; and
5. Exhaustion of other social rights held in Belgium or abroad.

Since 2016 there are no longer any differences between refugees and subsidiary protection beneficiaries as regards social welfare.

If the beneficiary is an unaccompanied child, a different form of welfare can be awarded by the PCSW. In this case the claim for social welfare needs to be made by the guardian of the child.

The PCSW of the commune of habitual residence of the beneficiary is the authority responsible for social welfare. The term “habitual residence” refers to the place where the person’s material and personal interests are concentrated. This is a question of fact which is assessed by the PCSW.

Beneficiaries can freely move across the Belgian territory, therefore changing communes simply entails transfer of responsibilities to the PCSW of the new commune for social welfare. The new PCSW will nonetheless check again if the beneficiary meets all the conditions to obtain social welfare.

The requirement of “habitual residence” in a commune means that leaving the country for more than 7 days requires prior notification to the PCSW, otherwise the PCSW can suspend social welfare. If the beneficiary duly informs the PCSW and stays away no longer than 4 weeks in total per year, social welfare will not be suspended; it will be paid even when he or she is abroad. The PCSW can also allow an exception to this rule and even pay during the beneficiary’s stay abroad for more than 4 weeks. Examples in which this exception was granted include studies abroad to obtain a diploma or supporting a severely ill family member abroad.

In practice, the deadline of 2 months for leaving the shelter and finding a house after the grant of a protection status is overall too short (see [Housing](#)). If these 2 months have passed or if no extension has been granted, beneficiaries have to leave the shelter even if they have not found a place to stay.

G. Health care

Recognised refugees and beneficiaries of subsidiary protection can get health insurance as soon as their status is confirmed by the CGRS. The beneficiary will have to show the electronic A or B card or the Annex 15 with proof of recognition by the CGRS if the electronic card is not issued yet.

There are two ways to get health insurance in Belgium a refugee or beneficiary of subsidiary protection. A beneficiary can either sign up as an entitled person or as a dependent person. As an entitled person you can register either in the capacity as an employee or entrepreneur or on the basis of the right to residence.⁵⁰⁶ As an employee, the beneficiary needs proof of social security submission filled in by the employer, a written declaration of the employer mentioning the social security number (an employment contract for instance) and proof of payment of social security. As an entrepreneur the only document required is a certificate of enrolment with the social insurance fund for self-employed entrepreneurs.

The other way to get health insurance as an entitled person is on the basis of the right to residence. This is possible when the person concerned is allowed to stay over 3 months and registered in the Aliens

⁵⁰⁶ Article 32 Law of 14 July 1994 on insurance for medical care and benefits, 27 August 1994, 1994071451, 21524.

Register, allowed to stay for over 6 months or has an unlimited right to residence and is registered in the Aliens Register. Both an electronic A and B card are therefore valid possibilities.

Dependent persons of an entitled persons include the spouse, (grand)child, (grand)parent and cohabitant.⁵⁰⁷ To be registered as a spouse both the marriage certificate and proof of living together have to be provided.⁵⁰⁸ A dependent (grand)child has to be under the age of 25 and the applicant requires a birth certificate (or certificate of adoption) and live in Belgium, however it is not required that the child and the entitled person live together.⁵⁰⁹ Living together is not required when the relationship is that of parent-child, but it is required when the entitled person is the spouse or life-partner or when the entitled person is a foster parent for instance. The dependent can prove living together with an extract from the Civil Register. To be dependent as a cohabitant there can be no dependent spouse, no entitled spouse living with the entitled person and no other dependent cohabitant.

The PCSW might pay some of the costs of medical treatment if the person concerned is in need, but the PCSW will first conduct a social investigation. This social investigation includes enquiries about the identity, the place of residence, the means of existence, the possibilities of concluding an insurance, the reasons of stay in Belgium and the right to residence.⁵¹⁰

⁵⁰⁷ Article 123 Royal Decree of 3 July 1996 implementing the Law of 14 July 1994 on insurance for medical care and benefits, 1996022344, 20285.

⁵⁰⁸ Article 124(3) Royal Decree 1996.

⁵⁰⁹ Article 123(3) Royal Decree 1996.

⁵¹⁰ Circular Letter of 14 March 2014 on the minimum conditions for a social investigation in the light of the Law of 26 May 2002 on the right to societal integration and in the light of societal integration by PCSWs which is paid back by the State according to provisions in the Law of 2 April 1965, 4 July 2014, 2014011203, 51594.

ANNEX I – Transposition of the CEAS into national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	1 September 2013	Law of 8 May 2013 amending the Aliens Act	http://bit.ly/1GmsxXT (FR)
		3 September 2015	Law of 10 August 2015 amending the Aliens Act	
		21 November 2017	Law of 21 November 2017 amending the Aliens Act	
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	21 November 2017	Law of 21 November 2017 amending the Aliens Act	http://bit.ly/2FEqrZU (FR) http://bit.ly/1GmsxXT (FR)
		17 December 2017	Law of 17 December 2017 amending the Aliens Act	
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	21 November 2017	Law of 21 November 2017 amending the Aliens Act	http://bit.ly/1GmsxXT (FR)