

Country Report: Belgium



2018
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 provide newly arrived asylum seekers 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.

From January 2018 to October 2018 Vluchtelingenwerk Vlaanderen, in cooperation with other NGO's, also provided legal advice to migrants in transit, in the so-called 'humanitarian hub'. The HUB is a common initiative of several NGO's where migrants in transit receive medical aid, clothing and legal advice. This initiative was piloted following the lack of humanitarian assistance and information to migrants in Belgium that had not (yet) applied for asylum and transited through 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); NANSEN; Jesuit Refugee Service (JRS) Belgium, and ECRE.

The information in this report is up-to-date as of 31 December 2018, 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.



This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.



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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
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
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
inadmissible	Negative decision of the CGRS declaring an application inadmissible
LGBTI	Lesbian, gay, bisexual, transsexual and intersex
LRI	Local reception initiative initiative locale d'accueil (ILA) lokaal opvang initiatief (LOI)
Nansen Vzw	NANSEN is a Belgian non-profit organisation created in 2017 to bring together and make available multidisciplinary expertise in order to assist persons in need of international protection.
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

VVSG

invaliditeitsverzekering

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 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.²

Applications and granting of protection status at first instance: 2018

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	23,443	6,743	8,706	1,777	9,317	43,9%	8,9%	47,2%

Breakdown by main countries of origin

Syria	3,702	820	2,551	502	371	74,5%	14,6%	10,9%
Palestine	2,468	464	407	1	62	86,6%	0,2%	13,2%
Afghanistan	2,030	558	826	1,078	1,856	21,9%	28,7%	49,4%
Iraq	1,758	700	377	78	1,005	25,8%	5,3%	68,9%
Guinea	1,125	388	262	7	422	37,9%	1,1%	61%
Turkey	823	372	538	0	326	62,2%	0%	37,8%
Eritrea	788	137	566	0	43	91,5%	0%	8,5%
Georgia	695	32	18	0	138	11,5%	0%	88,5%
Albania	668	141	43	1	569	7,1%	0,1%	92,8%
Undetermined	663	480	502	2	176	73,8%	0,3%	25,9%

Source: CGRS. Rejection decisions include inadmissibility. In 2018, CGRS took 3,466 inadmissibility decisions. A country breakdown is not available.

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

² Myria, Contact group international protection, available at: <http://bit.ly/2I1LR47>.

Gender/age breakdown of the total number of applicants: 2018

	Number	Percentage
Total number of applicants	23,443	-
Men (incl. male children)	15,322	65.4%
Women (incl. female children)	8,121	34.6%
Children (incl. unaccompanied children)	7,063	30.1%
Unaccompanied children	811	3.5%

Source: CGRS

Comparison between first instance and appeal decision rates: 2018

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	21,159		5,252	100
Positive decisions	10,483	49.5%	473	9%
<i>Refugee status</i>	8,706	41.1%	415	7.9%
<i>Subsidiary protection</i>	1,777	8.4%	58	1.1%
Negative decisions	9,317	44%	4,254	81%
Annulments	-	-	525	9.9%

Source: CGRS, CALL Statistics, January 2019, available in Dutch at: <https://bit.ly/2tOx971>.

The CGRS also took 1,079 intermediary decisions (5.1%) and 280 decisions in which it revoked or ended a protection status (1.3%).

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
Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens <i>Amended by:</i> Law of 21 November 2017 <i>Amended by:</i> Law of 17 December 2017	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 Loi du 21 novembre 2017 Wet van 21 november 2017 Loi du 17 décembre 2017 Wet van 17 december 2017	Aliens Act	http://bit.ly/1lg1MCC (FR) http://bit.ly/1GmqyU0 (NL) http://bit.ly/2FEqrZU (FR) http://bit.ly/1GmsxXT (FR)
Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens <i>Amended by:</i> Law of 21 November 2017	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 Loi du 21 novembre 2017 Wet van 21 november 2017	Reception Act	http://bit.ly/1MA7uD0 (FR) http://bit.ly/1MKITbo (NL) http://bit.ly/2FEqrZU (FR)
Law of 30 April 1999 concerning employment of foreign workers	Loi de 30 avril 1999 relative à l'occupation des travailleurs étrangers Wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers	Law on Foreign Workers	http://bit.ly/1MHzmTK (FR) http://bit.ly/1FQUuRV (NL)

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
Royal Decree of 8 October 1981 regarding the entry on the territory, residence, settlement and removal of aliens	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	Aliens Decree	http://bit.ly/1IkJsLv (FR)
Royal Decree of 11 July 2003 determining certain	Arrêté royal du 11 juillet 2003 fixant certains éléments de la	Royal Decree	http://bit.ly/1KOyLBu (NL)

elements of the procedure to be followed by the Aliens Office charged with the examination of asylum applications on the basis of the Law of 15 December 1980	procédure à suivre par le service de l'Office des étrangers chargé de l'examen des demandes d'asile sur la base de la loi du 15 décembre 1980 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	on Aliens 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 <i>Amended by:</i> Royal Decree of 27 June 2018	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 Arrêté royal de 27 juin 2018 Koninklijk besluit van 27 juni 2018	Royal Decree on CGRS Procedure	http://bit.ly/1FYKWaB (FR) http://bit.ly/1Jo26lJ (NL) https://bit.ly/2WhfNwS (FR) https://bit.ly/2Ten2U4 (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/1VtXdcg (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/1MYS23I (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	Royal Decree on Material Assistance to Asylum Seekers	http://bit.ly/1IAukcQ (FR)

	Koninklijk besluit van 12 januari 2011 betreffende de toekenning van materiële hulp aan asielzoekers die beroepsinkomsten hebben uit een activiteit als werknemer		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 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	<p>Arrêté royal du 9 avril 2007 déterminant l'aide et les soins médicaux manifestement non nécessaires qui ne sont pas assurés au bénéficiaire de l'accueil et l'aide et les soins médicaux relevant de la vie quotidienne qui sont assurés au bénéficiaire de l'accueil</p> <p>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</p>	Royal Decree on Medical Assistance	http://bit.ly/1KoGIMv (FR) http://bit.ly/1Tarbni (NL)
Law of 26 May 2002 on the right to social integration	<p>Loi de 26 mai 2002 concernant le droit à l'intégration sociale</p> <p>Wet van 26 mei 2002 betreffende het recht op maatschappelijke integratie</p>	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	<p>Arrêté royal du 25 avril 2007 déterminant les modalités de l'évaluation de la situation individuelle du bénéficiaire de l'accueil</p> <p>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</p>	Royal Decree on the Assessment of Reception Needs	http://bit.ly/1MHwUMS (FR) http://bit.ly/1TatQOr (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	<p>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</p> <p>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</p>	Royal Decree on Closed Centres	http://bit.ly/1Fx8sZ0 (FR)

Amended by: Royal Decree of 7 October 2014	Arrêté royal du 7 octobre 2014 Koninklijk besluit van 7 oktober 2014		http://bit.ly/1QSveUL (FR) http://bit.ly/1YkhRPe (NL)
Amended by: Royal Decree of 22 July 2018	Arrêté royal du 22 juillet 2018 Koninklijk besluit van 22 juli 2018		https://bit.ly/2DrHA6e (FR) https://bit.ly/2R5VvCH (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 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 on OOC	http://bit.ly/1QLxABu (FR) http://bit.ly/1S40bo8 (NL)
Royal Decree of 24 June 2013 on the rules for the training on the use of coercion for security personnel	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 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	Royal Decree on the Use of Coercion for Security Personnel	http://bit.ly/1IuWwLu (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	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 Koninklijk besluit van 18 december 2003 tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand	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	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 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	Ministerial Decree on Second Line Assistance	http://bit.ly/1AO5l3i (FR) http://bit.ly/1T0jAYm (NL)
Royal Decree of 15 February 2019 establishing the list of safe countries of origin	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	Royal Decree on Safe Countries of Origin	https://bit.ly/2XAvXlr (FR)

	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		https://bit.ly/2XFXPob (NL)
Royal Decree of 2 September 2018 establishing the rules and regime for reception centre and the modalities for control of the rooms	<p>Arrêté royal déterminant le régime et les règles de fonctionnement applicables aux structures d'accueil et les modalités de contrôle des chambres</p> <p>Koninklijk Besluit tot vastlegging van het stelsel en de werkingsregels van toepassing op de opvangstructuren en de modaliteiten betreffende de kamercontroles</p>	Royal Decree	<p>https://bit.ly/2BZbL3F (FR)</p> <p>https://bit.ly/2ENzJAz (NL)</p>

Overview of the main changes since the previous report update

The report was previously updated in **March 2019**.

Political context

- ❖ **Cabinet shuffle:** In December 2018 a cabinet reshuffle took place. The Nieuw-Vlaamse Alliantie (N-VA), which is the political party that had appointed the previous Secretary of State responsible for asylum and Migration, left the ruling coalition over a dispute on the Global Compact on Migration. Following further disputes the government resigned in December 2018. The government is governing in 'current affairs' until the next regional, federal and European elections in May 2019. The newly appointed Secretary of State for Asylum and Migration, Maggie De Block, stated she had found a department 'in chaos'.

Asylum procedure

- ❖ **Introduction and suspension of asylum quota:** In November 2018 the Belgian Aliens Office introduced a quota allowing the registration of no more than 50 asylum seekers per day at the "Petit-Château" / "Klein Kasteeltje" in central Brussels, which serves as the new temporary registration centre since 3 December 2018. As a result, more than one hundred people, including families with children, were queuing outside the facility every day, many of them unsuccessfully. Civil-society organisations challenged the measure before the Council of State. On 20 December 2018, the latter concluded that the contested measure was a barrier to the effective exercise of the fundamental right to make an asylum application, as enshrined in the 1951 Geneva Convention and national law. It therefore suspended the measure introducing a cap on the number of asylum applications.

Following the judgment of the Council of State, the authorities did not manage to provide access to the asylum procedure to all applicants on their first day at the Aliens Office. During a couple of weeks, the access to the asylum procedure was therefore automatically refused almost one day per week, during the weekend, or during a holiday period. Asylum applicants, particularly single men, who were refused access were requested to come back the next day and were not accommodated for the night.

Reception conditions

- ❖ **Reception capacity:** In the beginning of 2018, the government decided to close 2,500 collective reception places and 4,000 individual places. By the summer of 2018, it became clear that - due to these closures and a growing number of asylum requests - the reception capacity had to be increased. The government therefore decided to keep 7 collective centres open. However, by the end of the year, the capacity of the reception system was still too limited, forcing the immigration office to refuse access to the asylum procedure and, subsequently, access to the reception system. In order to provide accommodation to all asylum applicants, the closure of many individual places was postponed.

Detention of asylum seekers

- ❖ **Detention policy:** In 2018 the government made it a priority to apprehend so-called migrants in transit, who were subsequently sent to the detention centre 127bis. Many of them were released after a few days, and would regularly be apprehended, detained and set free again. As regards migrants that are detained and did not express their intention to make an asylum application, the Aliens Office is entitled to apply for asylum on their behalf, if there are indications that they would be exposed to torture or ill-treatment upon their return. This is called the 'implicit asylum application',

which triggers the Dublin procedure. In case Belgium is deemed responsible for the asylum application, the Commissioner-General for Refugees and Stateless Persons (CGRS) treats it as any other application.

- ❖ **Detention of families:** In August 2018, the Belgian government resumed the detention of families with children, in specially created facilities right next to Brussels National Airport.

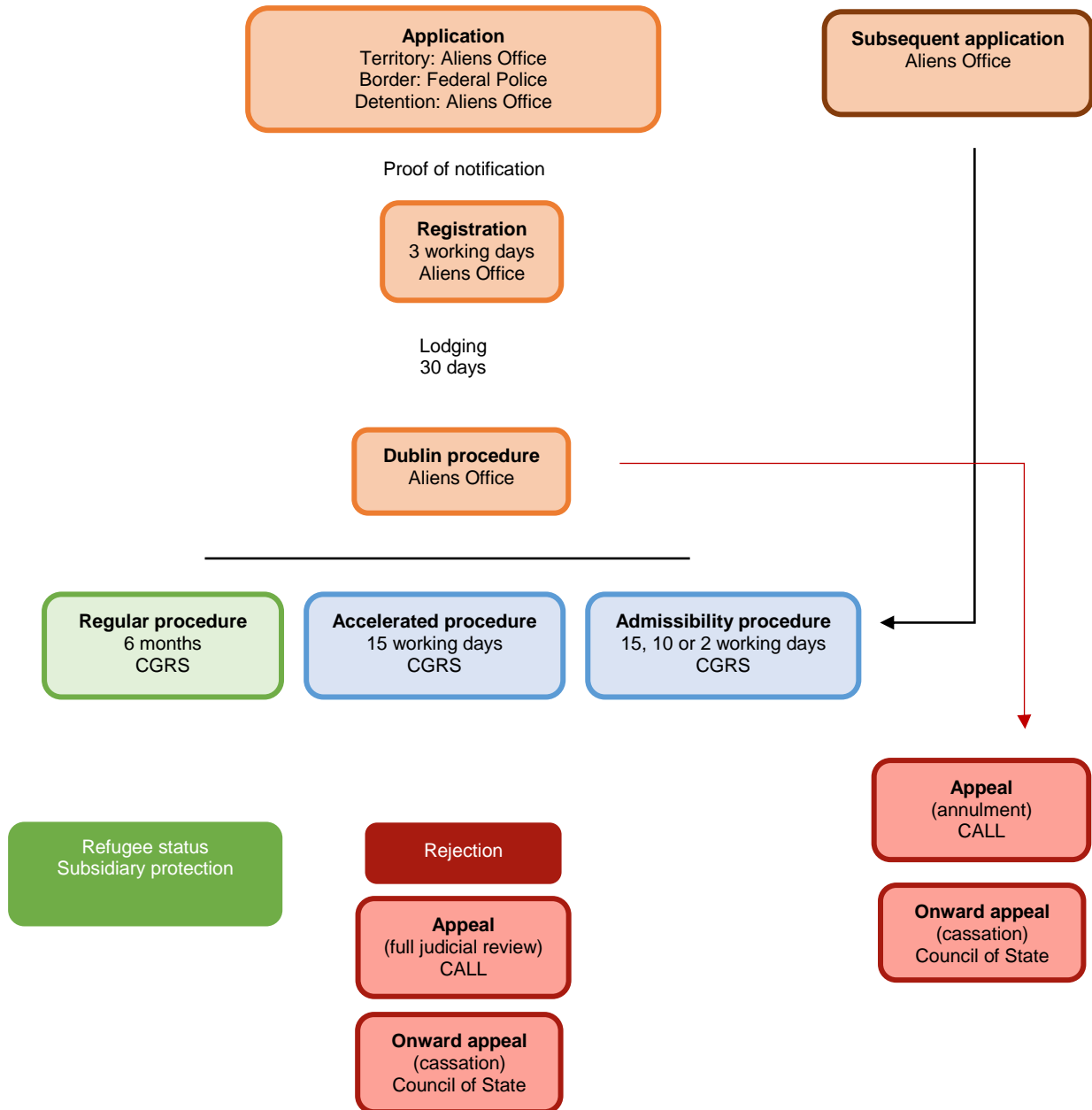
Content of international protection

- ❖ **Resettlement:** On 25 October 2018 the then Secretary of State for Asylum and Migration announced that Belgium's resettlement programme would be suspended until May 2019. As a result, 250 refugees were not able to benefit from the resettlement programme. The reasons invoked to justify the suspension of the programme was an increase in the number of asylum applicants and a lack of capacity of reception centres. At the beginning of February 2019, it was still not clear if and when the programme would be resumed.

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: ³ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ⁴ | <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: ⁵ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: Regularisation procedure ⁶ | <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

Following the 2017 reform, the new different types of procedures entered into force on 22 March 2018. In practice, most of the new procedures are being applied but not all of them. For example, until 12 December 2018, the “safe third country” concept, that falls under the admissibility procedure, has not been applied. Moreover, the accelerated procedure is rarely applied, except to a few safe country of origin cases. This is due to the current workload which does not consider these types of procedures as a priority, although the CGRS has stated that it may change over time.⁷

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	Commissariat général aux réfugiés et aux apatrides (CGRA)

³ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

⁴ Accelerating the processing of specific caseloads as part of the regular procedure.

⁵ Albeit not labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

⁶ 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.

⁷ Myria, *Contact meeting*, 18 April 2018, available in Dutch at: <https://bit.ly/2slMaXC>, para 57.

	Persons (CGRS)	Dienst Vreemdelingenzaken (DVZ) Commissariaat-generaal voor Vluchtelingen en Staatlozen (CGVS)
--	----------------	--

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)	390,1 FTE	Independent	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The number of protection officers examining applications is 201.4 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.

⁸ Article 50(1) Aliens Act, 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.

However, under certain circumstances defined by the Aliens Act, the latter can ask the CGRS to re-examine a previously obtained protection status.

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 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.

In the past the CGRS was committed to communicate the applicable appeal deadlines but, since the entry into force of the new law was, it unable to do so due to the existing workload.¹³ The decision received by the asylum seeker does not mention which specific delay is applicable to his or her case.

¹⁰ Article 57/6(2) Aliens Act.

¹¹ Article 57/6/1 Aliens Act.

¹² Article 57/6(3) Aliens Act.

¹³ Myria, *Contact meeting*, 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 12.

The decision only makes reference to the general provision (Article 39/57 of the Aliens Act). The CGRS recently announced that it will soon change its practice by mentioning again which delay is applicable and if the appeal has a suspensive effect. However, this will be applied only for decisions taken in accelerated procedures and decisions declaring a subsequent request inadmissible.¹⁴

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.

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.

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?¹⁵ 30 days

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

The law foresees a three-stage registration process:

1. The asylum seeker “makes” (*présente*) his or her application to the Aliens Office within 8 working days after arrival on the territory.¹⁶ 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,¹⁷ or with the prison director in

¹⁴ Myria, Contact meeting, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 390-405.

¹⁵ The applicant must make the application within 8 working days of arrival in Belgium.

¹⁶ Article 50(1) Aliens Act.

¹⁷ *Ibid.*

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.¹⁸

Under the 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”.¹⁹ 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. It is not clear if or to what extent these provisions are currently being applied.

Moreover, the Secretary of State for Asylum and Migration introduced on 22 November 2018 a maximum quota per day on the number of people who could make their asylum application. As a result, more than one hundred people, including families with children, were queuing outside the Aliens Office every day for over a month, especially single men. Because they did not get access to the asylum procedure, they did not receive any shelter and were left destitute.

Following the government’s reshuffle after the departure of the N-VA party from the ruling coalition (over a dispute on the Global Compact on Migration), the new competent minister stated that the Aliens Office would gradually increase the quota with the aim of protecting vulnerable persons.

On 20 December 2018, the Council of State suspended (with immediate effect) the measure following a legal action brought by several civil society organisations at the beginning of December.²⁰ The civil society organisations invoked, *inter alia*, Articles 6 and 7 of the recast Asylum Procedures Directive, to argue that the measure was unlawful. The Council concluded that such a measure constitutes a barrier to the effective exercise of the fundamental right to apply for asylum, as enshrined in the 1951 Geneva Convention and the national law. The Council further stressed the importance of Article 7(1) of the recast Asylum Procedures Directive, which obliges the Member States to make sure that every person, whether a minor or an adult, has the right to make an asylum request. In that regard, it found that the contested act was making it *prima facie* unreasonably difficult to gain effective access to the procedure.

However, in early January 2019, not all asylum seekers were able to make their application on the day they went to the Aliens Office. Problems kept on re-occurring, particularly on Mondays, as they usually are a larger amount of asylum seekers. After a few weeks, the situation stabilised and the asylum seekers were refused access anymore. During the contact meeting of January 2019 the Aliens Office declared that there is a practical limit set at around 150 asylum applicants per day. This is due to the limited accommodation capacity of the waiting rooms as well as the daily workload of the staff.²¹ As of February 2019, all asylum seekers regained access to the asylum procedure.

2. The Aliens Office registers the application within 3 working days of “notification”.²² 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 days deadline.²³
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

¹⁸ Article 50(2) Aliens Act.

¹⁹ Articles 1(11) and 1(2)(1) Aliens Act.

²⁰ Council of State, Decision No 243.306, 20 December 2018, available in Dutch at: <https://bit.ly/2WquTQK>.

²¹ Myria, Contact meeting, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 30 and 65.

²² Article 50(2) Aliens Act.

²³ *Ibid.*

been made.²⁴ This period may exceptionally be prolonged by way of Royal Decree, which has not occurred so far. 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.²⁵

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 (this occurs at the stage of the lodging phase);
- ❖ 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.²⁶ 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.

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 2018: | |
| ❖ Aliens Office | n/a |
| ❖ CGRS | 5,015 |

²⁴ Article 50(3) Aliens Act.

²⁵ *Ibid.*

²⁶ Articles 51/3-51/10 Aliens Act; Articles 10 and 15-17 Royal Decree on Aliens Office Procedure.

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.²⁷

The CGRS has the competence to:²⁸

- ❖ Grant or refuse refugee status or subsidiary protection status;
- ❖ Reject an asylum application as manifestly unfounded;²⁹
- ❖ Reject an asylum application as inadmissible;³⁰
- ❖ 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;³¹ 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.³² There is no sanction when this delay is not being respected. 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.³³

Where needed, the deadline can be prolonged by 3 more months.³⁴

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.³⁵

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.³⁶

At the end of 2018, the number of pending cases before the CGRS was 5,015 and concerned 6,743 persons.³⁷ 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 has communicated that it does its utmost to take as many decisions as possible while still seeing to the quality of each decision.

There is no information available for the average processing time in 2018.

²⁷ Article 49/3 Aliens Act.

²⁸ Article 57/6(1) Aliens Act.

²⁹ Article 57/6(1)(2) Aliens Act.

³⁰ Article 57/6(3) Aliens Act.

³¹ Article 57/6(5) Aliens Act sets out the reasons for terminating the procedure.

³² Article 57/6(1) Aliens Act.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Information provided by the CGRS, February 2019.

1.2. Prioritised examination and fast-track processing

The CGRS may prioritise the examination of an asylum application where:³⁸

- 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.

In practice the examination is prioritised for applicants in detention and for applicants coming from safe countries of origin.³⁹

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.⁴⁰ 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.⁴¹

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.⁴² The CGRS has elaborated an interview charter as a Code of Conduct for the protection officers, which is available on its website.⁴³

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.⁴⁴

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

³⁸ Article 57/6(2) Aliens Act.

³⁹ Myria, Contact meeting, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 295.

⁴⁰ Article 57/5-ter(1) Aliens Act.

⁴¹ Article 57/5-ter(2) Aliens Act.

⁴² Article 13/1 Royal Decree on CGRS Procedure.

⁴³ CGRS, *Interview Charter*, available at: <http://bit.ly/1FAxkyQ>.

⁴⁴ Article 57/6/7(2) Aliens Act.

French is not sufficient.⁴⁵ 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.⁴⁶ However, very rarely - and for practical reasons - “the language role” can be changed in the case of a subsequent application.⁴⁷

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.⁴⁸ 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,⁴⁹ 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.⁵⁰

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.⁵¹ In practice, the copy can also be requested after this delay, but the applicant is not ensured to receive it before a decision has been taken.⁵² The asylum seeker or his or her lawyer may provide comments within 8 working days after the reception of the file.⁵³ In such a case scenario, the CGRS will take them into consideration before making a decision. When the conditions are not met, the comments will only be taken into consideration if they are sent on the last working day before the CGRS makes its decision. If no comments reach the CGRS on that last working day, the asylum seeker is considered to agree with the report of the interview.⁵⁴

Since June 2016 the CGRS conducts interviews through videoconference in some of the detention centres. This is the case for the closed centre of **Merksplas** where all persons who applied for asylum 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 that the lawyer can be present in **Merksplas** 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.⁵⁵ The asylum seeker

⁴⁵ Article 51/4(2) Aliens Act.

⁴⁶ *Ibid.*

⁴⁷ Myria, *Contact meeting*, 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, para 3.

⁴⁸ CGRS, *Deontology for translations and interpretations*, available at: <http://bit.ly/1ROmcHs>.

⁴⁹ Article 57/5-quater(1) Aliens Act.

⁵⁰ Articles 16-17 and 20 Royal Decree on CGRS Procedure.

⁵¹ Article 57/5-quater(2) Aliens Act.

⁵² Myria, *Contact meeting*, 20 June 2018, available in Dutch at: <https://bit.ly/2WiFPjf>, para.35.

⁵³ Article 57/5-quater(3) Aliens Act.

⁵⁴ *Ibid.*

⁵⁵ Myria, *Contact meeting*, 21 September 2016, available at: <http://bit.ly/2kxOqOG>, para 25.

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.⁵⁶

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 2018: Not available

1.4.1. Appeal before the CALL

A judicial appeal can be introduced before the CALL against all negative decisions of the CGRS within 30 days.⁵⁷ The time limit is reduced to 10 days when the applicant is in detention.⁵⁸

The appeal has automatic suspensive effect in the regular procedure.⁵⁹

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.⁶⁰

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.⁶¹ At the hearing, the parties and their lawyer can orally explain their arguments to the extent that they were mentioned in the petition.⁶² 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.⁶³ 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 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

⁵⁶ Myria, *Contact meeting*, 16 January 2019, available at: <https://bit.ly/2Hj4pLJ>, para 7.

⁵⁷ Article 39/57(1) Aliens Act.

⁵⁸ *Ibid.*

⁵⁹ Article 39/70 Aliens Act.

⁶⁰ Article 39/2 Aliens Act.

⁶¹ Article 39/69 Aliens Act.

⁶² Article 39/60 Aliens Act.

⁶³ Article 39/76(1) Aliens Act.

concerning the applicants' nationality and protection status in a third country, which were questioned in the preceding full jurisdiction procedure.⁶⁴

The CALL must decide on the appeal within 3 months in the regular procedure.⁶⁵ There are no sanctions for not respecting the time limit. In practice, the appeal procedure often takes longer.

During 2018 the CALL decided on 5,252 full judicial review asylum appeals.⁶⁶ Decisions of the CALL are publicly available.⁶⁷

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.⁶⁸ 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 specialised lawyers in the field.

The Aliens Office will give an order to leave the territory 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).⁶⁹ This appeal is suspensive until a judgment is issued.⁷⁰ 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.⁷¹

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.⁷² The ECtHR calls the annulment appeal system as a whole – whereby 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

⁶⁴ ECtHR, *Singh and Others v. Belgium*, Application No 33210/11, Judgment of 2 October 2012.

⁶⁵ Article 39/76(3) Aliens Act.

⁶⁶ Myria, *Contact meeting*, 21 February 2018, para 27.

⁶⁷ Judgments are available on the website of the CALL at: <http://bit.ly/2waz6tu>.

⁶⁸ A recent article confirmed this statement based on a (limited) study that they had conducted. See: Alter Echos, 'Conseil du contentieux des étrangers: deux poids, deux mesures', 4 March 2019, available in French at: <https://bit.ly/2JeVzRK>.

⁶⁹ Article 39/82(4) Aliens Act; Article 39/57(1) Aliens Act.

⁷⁰ Articles 39/82 and 39/83 Aliens Act.

⁷¹ Article 39/82(4) Aliens Act.

⁷² 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 Act), but the Court's considerations are valid for all annulment procedures concerning risks of Article 3 ECHR violations.

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.⁷³

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.⁷⁴ 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, failing which the decision should be annulled.⁷⁵ 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.⁷⁶ 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.⁷⁷ 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.⁷⁸

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.

There are two types of free legal assistance: first line assistance and second line assistance.⁷⁹ The competence for the organisation of the first line assistance lies at the regional level.

⁷³ ECtHR, *S.J. v. Belgium*, Application No 70055/10, Judgment of 19 March 2015.

⁷⁴ Article 39/67 Aliens Act.

⁷⁵ Article 14(2) Acts on the Council of State.

⁷⁶ 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).

⁷⁷ Articles 39/56 and 90 Aliens Act.

⁷⁸ Article 33 Reception Act.

⁷⁹ Article 508/1-508/25 Judicial Code.

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, every asylum seeker will get a lawyer appointed to assist them in all the stages of the asylum procedure in practice.

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.⁸⁰ However, this provision is only very rarely applied in practice. Therefore, 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.⁸¹

Since September 2016 the second line assistance has changed significantly. The most important change – that has been ruled unconstitutional in 2018 - entailed the introduction of a ‘flat fee’. This meant that legal aid was no longer entirely free. In June 2018 the Constitutional Court annulled this legal provision, stating that such an obligation entailed a significant reduction of the protection of the right to legal aid, as guaranteed by article 23 of the Constitution.⁸²

The nomenclature that determines the number of points for a lawyer’s intervention, and, as such, its remuneration, has been modified by a Ministerial Decree of 19 July 2016.⁸³ In the previous version,

⁸⁰ Article 508/14 Judicial Code.

⁸¹ 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.

⁸² Constitutional Court, Decision No 77/2018, 21 June 2018, available in French at: <https://bit.ly/2RNAd1D>.

⁸³ Ministerial Decree of 19 July 2016, available at: <http://bit.ly/2jAdVzs>.

lawyers received a certain amount of points per intervention of action. Since 1 September 2016 every point equals to one hour. In 2018 the value per point was finally determined at €75.⁸⁴

Example: before the entry into force of the Ministerial Decree of 19 July 2016 a lawyer would receive 15 points for a procedure before the CGRS. 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 an admissibility decision on the new application or unless 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 Assistance⁸⁵ 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.

2. Dublin

2.1. General

Dublin statistics: 2018

Statistics on the application of the Dublin Regulation in 2018 are not available.

Application of the Dublin criteria

There is no information available on how the Aliens Office generally applies the Dublin criteria. Information can be obtained through Parliamentary questions, and questions during the monthly contact

⁸⁴ Orde van de Vlaamse Balie, ‘Begroting justitie: OVB vaakzaam positief’, 24 March 2018, available in Dutch at: <https://bit.ly/2HxAeCm>.

⁸⁵ For an overview of the full nomenclature, please consult the Ministerial Decree of 19 July 2016, available at: <http://bit.ly/2jAdVzs>.

meetings, of which the reports are published online.⁸⁶ 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.⁸⁷

The dependent persons and discretionary clauses

Settled case law indicates that the Aliens Office, as confirmed by the CALL, strictly applies the dependency clause of Article 16 of the Dublin Regulation.⁸⁸ However, this observation does not take into account the decisions in which the Aliens Office declared itself responsible for asylum applications. Exchanges with lawyers and practitioners 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 element is decisive in each case. They will often invoke other elements as well, such as detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible state, together with elements of dependency.

Moreover, case law analysis emphasises the necessity of submitting medical attestations when invoking medical problems.⁸⁹ A medical attestation concerning depression is not enough to prove dependency if it does not mention that the presence of a particular family member is necessary for the recovery.⁹⁰ Likewise, 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,⁹¹ or actually living with said family member.⁹² 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.⁹³ Lastly, the fact that a family member, in light of whom dependency should be established, applied for a living wage, proves *a fortiori* that there is no dependency vis-à-vis the applicant.⁹⁴

While the “sovereignty clause” of Article 17(1) of the Regulation is mentioned in Article 51/5(2) of the Aliens Act, 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”. Since the *C.K. and others v. Slovenia* judgment of the CJEU,⁹⁵ CALL pays particular attention to the risk of inhuman and/or degrading treatment that a transfer in itself might entail for people

⁸⁶ See for example the reports in French available at: <https://bit.ly/2T8Lcj4>.

⁸⁷ 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.

⁸⁸ Vluchtelingenwerk Vlaanderen, Contribution externe dans le rapport annuel de Myria 2018 : ‘Le droit à la vie privée et familiale dans le cadre du règlement de Dublin. Comment faire correspondre la pratique à la réalité des relations familiales?’, available in French at: <https://bit.ly/2RSPIv3>; Petra Baeyens and Eva Declerck, ‘Welk recht op een gezins- en familieleven binnen het Dublin-systeem’, Tijdschrift Vreemdelingenrecht, 2017/4, 389-400.

⁸⁹ CALL, Decision No 173575, 25 August 2016; Decision No 170466, 23 June 2016; CALL, Decision No 207272, 26 July 2018; CALL, Decision No 205854, 25 June 2018; CALL, Decision No 204600, 29 May 2018; CALL, Decision No 198726, 25 January 2018.

⁹⁰ CALL, Decision No 170466, 23 June 2016; CALL, Decision No 198635, 25 January 2018.

⁹¹ CALL, Decision No 180718, 13 January 2017; CALL, Decision No 198815, 29 January 2018; CALL, Decision No 204600, 29 May 2018.

⁹² CALL, Decision No 161217, 20 May 2016.

⁹³ CALL, Decision No 199262, 6 February 2018.

⁹⁴ CALL, Decision No 199262, 6 February 2018.

⁹⁵ CJEU, Case C-578/16, *C. K. and Others*, Judgment of 16 February 2017.

with serious mental or physical illnesses, even if the responsible member state does not demonstrate systematic flaws. This risk assessment is important in determining whether or not to apply the “sovereignty clause”. The determining element is whether the transfer would deteriorate the person's state of health in a significant and permanent manner. Analysis of case law shows that CALL uses a very strict standard concerning both the nature of the illness and the evidence thereof. For instance, suffering from epilepsy or a returning brain tumour as such do not meet the aforementioned standard.⁹⁶ Heavy reliance is placed on medical attestations, for both the state of health and the impact of a transfer thereon.⁹⁷

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.⁹⁸ In case they refuse to be fingerprinted, their claim may be processed under the *Accelerated Procedure*.⁹⁹ The CGRS says it doesn't keep statistics of these cases. However, it says to have not used this legal possibility yet in practice.¹⁰⁰ 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*,¹⁰¹ 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”).¹⁰²

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.¹⁰³

In case Belgium is deemed the responsible state, the asylum seekers' file is transferred to the CGRS, and it is further mentioned on the registration proof of the asylum application.¹⁰⁴ During the contact meeting of November 2018, the Aliens Office stated that the applications for which Belgium is deemed responsible are not a priority. It will therefore take a while before the files are transmitted to the CGRS and the latter can start the examination of the asylum claim.¹⁰⁵

⁹⁶ CALL, Decision No 205298, 13 June 2018; CALL, Decision No 194730, 9 November 2017.

⁹⁷ CALL, Decision No 206588, 5 July 2018.

⁹⁸ Article 51/3 Aliens Act.

⁹⁹ Article 57/6/1(i) Aliens Act.

¹⁰⁰ Myria, *Contact meeting*, 16 January 2019, available in French at: <https://bit.ly/2Hj4pLJ>, para 290.

¹⁰¹ CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

¹⁰² Myria, *Contact meeting*, 22 November 2017, para 10.

¹⁰³ Article 71/3 Royal Decree 1981.

¹⁰⁴ Article 51/7 Aliens Act.

¹⁰⁵ Myria, *Contact meeting*, 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, paras 25-27.

Individualised guarantees

Following the 2014 ECtHR ruling in *Tarakhel v. Switzerland*,¹⁰⁶ the Aliens Office started to systematically demand individualised guarantees in case of transfer requests to Italy of families with children. These individualised guarantees included specific accommodation, material reception conditions and family unity.¹⁰⁷ 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 the Aliens Office's 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.¹⁰⁸

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.¹⁰⁹ 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.¹¹⁰

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.¹¹¹

In a ruling of March 2018, the CALL annulled the transfer decision under the Dublin III Regulation of an asylum seeker with HIV. Although the Aliens Office has recognised the abovementioned *Tarakhel* jurisprudence and the fact that the transfer of an asylum seekers with additional vulnerabilities might entail a violation of Article 3 ECHR, it did not request individual guarantees in the present case. More specifically, the Aliens Office did not attach importance to the asylum seeker's vulnerability because of the HIV. On the contrary, the CALL decided that the decision of the Aliens Office was not sufficiently motivated in the light of article 3 ECHR as well as the principle of due care. Moreover, the Aliens Office ignored the asylum seeker's letter explaining that she has HIV, for which she is receiving treatment in Belgium.¹¹²

In a ruling of May 2018, the CALL annulled the transfer to Spain of an asylum seeker with a new-born child, as individualised guarantees concerning reception conditions had not been requested. According to the CALL, the fact that the Aliens Office referred to general information on reception conditions to determine what the specific reception conditions of new-borns in Spain are was not sufficient to meet the requirements of Article 3 ECHR.¹¹³ In a ruling that occurred on the same day and was based on the

¹⁰⁶ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

¹⁰⁷ Aliens Office, Letter to CBAR-BCHV in response to questions concerning the implementation of the *Tarakhel* judgment, 17 November 2014, unpublished.

¹⁰⁸ See e.g. CALL, Decision No 144544, 29 April 2015; No 155882, 30 October 2015; No 176192, 12 October 2016; CALL, Decision No 201167, 15 March 2018.

¹⁰⁹ CALL, Decision No 144188, 27 April 2015.

¹¹⁰ CALL, Decision No 144100, 28 April 2015.

¹¹¹ CALL, Decision No 176046, 10 October 2016.

¹¹² CALL, Decision No 201 167, 15 March 2018.

¹¹³ CALL, Decision No 203 865, 17 May 2018.

same reasoning, the CALL annulled the transfer of two young children who were accompanied by their parents.¹¹⁴

In a ruling of July 2018, the CALL annulled the transfer to Germany of an asylum seeker having diabetes and parkinson's disease, as the Aliens Office did not request individualised guarantees and did not proceed to a rigorous examination of the evidence indicating the existence of a real risk of treatment prohibited by Article 3 ECHR. This decision was essentially based on the lack of individualised guarantees and on the AIDA report on Germany which indicates that asylum seekers have limited access to health care in Germany or that, in some cases, necessary but expensive treatments were not administered.¹¹⁵

In January 2019, the CALL confirmed this reasoning in an appeal against a transfer decision to Italy concerning a woman who needed a medical follow-up. The decision referred to the AIDA report on Italy which indicates that it can take up to several months before an asylum seeker has access to medical care. The CALL suspended the transfer decision because no rigorous research was done by the Aliens Office on the possible consequences a transfer would have, and because it did not request individual guarantees.¹¹⁶

Transfers

Persons whose claim are considered to be Dublin cases may in certain cases be detained (see section on [Grounds for Detention](#)).

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 application of article 29 (1) Dublin III regulation, the 6 months period is suspended when a suspensive emergency appeal has been lodged. 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 informs the Aliens Office on 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 to which 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.

¹¹⁴ CALL, Decision No 203 860, 17 May 2018.

¹¹⁵ CALL, Decision No 207 355, 30 July 2018.

¹¹⁶ CALL, Decision No 215 169, 15 January 2019.

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.¹¹⁷ 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.¹¹⁸ 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.¹¹⁹ 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. The Belgian authorities are reluctant to issue a copy of the questionnaire automatically, as they think that asylum seekers are using these copies to rectify inconsistencies in their made-up' stories.¹²⁰ Practitioners have stated that it can

¹¹⁷ Article 10 Royal Decree on Aliens Office Procedure.

¹¹⁸ Article 18 Royal Decree on Aliens Office Procedure.

¹¹⁹ Article 10 Royal Decree on Aliens Office Procedure.

¹²⁰ Rapport intérimaire de la Commission chargée de l'évaluation de la politique du retour volontaire et de l'éloignement forcé d'étrangers, February 2019, available in French at: <https://bit.ly/2TKdcwP>, p. 53.

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.¹²¹

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](#)).

In a judgment of 12 February 2019, the Council of State referred a preliminary question to the CJEU regarding the right to an effective remedy. More precisely, the Council of State asked whether ignoring new elements - that arise after a decision on a Dublin transfer has been taken - is contrary to the right to an effective remedy.¹²² However, in a decision of 15 January 2019, the CALL suspended a transfer to Italy on the basis of medical attestations that were delivered after the transfer decision of the Aliens Office, as ignoring them would call into question the conformity of the transfer with Article 3 ECHR.¹²³

The CALL verifies if all substantial formalities have been respected by the Aliens Office.¹²⁴ In 2016 this has included cases where the Aliens Office ordered a Dublin transfer without indicating which responsibility criterion was applicable.¹²⁵ 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*.¹²⁶

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

¹²¹ Myria, *Contact meeting*, 21 December 2016, available at: <http://bit.ly/2jGwYmM>, para 29.

¹²² Council of State, Judgment No 243.673, 12 February 2019.

¹²³ CALL, Case No 215.169, 15 January 2019.

¹²⁴ Article 39/2(2) Aliens Act.

¹²⁵ CALL, Decision No 165134, 31 March 2016, available at: <http://bit.ly/2kZHIUV>.

¹²⁶ CJEU, Case C-63/15 *Ghezelbash* and Case C-155/15 *Karim v. Migrationsverket*, Judgments of 7 June 2016.

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.¹²⁷ 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](#)).

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.¹²⁸

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](#)).

¹²⁷ See e.g. CALL, Decision No 116 471, 3 January 2014 (suspension, Bulgaria) available in Dutch at: <http://bit.ly/1FxO9LJ>; Decision No 117 992, 30 January 2014 (annulment, Malta), available in Dutch at: <http://bit.ly/1Gon1oq>.

¹²⁸ Article 14(2) Acts on the Council of State.

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 for the concerned asylum applications. The Aliens Office emphasised in December 2016 that the suspension of transfers to Hungary is not due to the reception conditions of asylum seekers in the country as such but to the total lack of cooperation from Hungary on Dublin transfers.¹²⁹ In May 2018, the Aliens Office confirmed that there were still no transfers carried out to Hungary.¹³⁰ The Dublin procedure takes place but Belgium ends up declaring itself responsible for the asylum application.¹³¹ Nevertheless, in June 2018 the government tried to perform a (one-off) Dublin transfer to Hungary. The CALL suspended this decision as no effort had been made to look into the reception conditions and whether (legal) support was provided for Dublin returnees in Hungary. Moreover, the decision had not mentioned that three minor children were involved.¹³²

Greece: In mid-2017 the government resumed transfer requests to Greece. In 2018, 464 take charge and take back requests were made, of which 4 transfers effectively took place.¹³³ It concerned 3 single men as well as one woman who wanted to be reunited with her family in Greece. However, this number concerns only transfers that were carried out by the Aliens Office. The latter is not aware of the number of asylum seekers that returned at their own initiative.

In its decision of 8 June 2018, the CALL decided that the transfer of a Palestinian asylum seeker to Greece was not contrary to article 3 ECHR nor to Article 4 of the EU-Charter. It considered that the asylum situation in Greece does not demonstrate systemic flaws. This means that a case-by-case analysis is necessary to determine whether a transfer to Greece is possible. In the present case, the Palestinian asylum seeker did not demonstrate any additional vulnerability and the Aliens Office received individualised guarantees from Greece regarding his access to the asylum procedure and his reception conditions.¹³⁴

This jurisprudence was later confirmed by the CALL in another decision of September 2018 regarding the transfer of an Afghan asylum seeker to Greece. The reasons justifying his transfer were the fact that it concerned a single man who did not demonstrate any additional vulnerability as an asylum seeker. The Aliens Office further received individualised guarantees from Greece, notably that he would not be placed in detention nor suffer a treatment contrary to article 3 ECHR in the designated reception camp, and that there was no real risk of him falling under the EU-Turkey deal.¹³⁵

On the opposite, the CALL later suspended a transfer decision to Greece of a single woman due to her vulnerability as victim of sexual assault. Since she claimed to have been sexually assaulted twice during

¹²⁹ Myria, *Contact meeting*, 21 December 2016, available at: <http://bit.ly/2jGwYmM>.

¹³⁰ Myria, *Contact meeting*, 16 May 2018, para 21, available at <https://bit.ly/2H1jT80>.

¹³¹ Myria, *Contact meeting*, 17 January 2018, available at: <http://bit.ly/2HCWN3B>, para 10.

¹³² CALL Decision No 206591, 6 July 2018.

¹³³ Myria, *Contact meeting*, 16 January 2019, available in French at: <https://bit.ly/2Hj4pLJ>, para 165; Myria, *Contact meeting*, 19 September 2018, available in French at: <https://bit.ly/2RhDMLu>, para 28.

¹³⁴ CALL, Decision No 205104, 8 June 2018.

¹³⁵ CALL, Decision No 208991, 6 September 2018.

the time she spent in Greece, the CALL decided that the short interviews could not offer any conclusive evidence and that the sensitivity of disclosing intimate information on sexual abuses requires trust and confidence of the asylum seeker in the interviewing officer of the administration. Given the circumstances, and because of the lack of measures adapted to victims of gender-based violence in Greece, the CALL considered that the transfer was incompatible with Article 3 ECHR and Article 4 EU Charter.¹³⁶

Italy: Following the *Tarakhel v. Switzerland* ruling of the ECtHR regarding Italy, the CALL initially suspended transfers of applicants who were at risk of being left homeless upon return due to the limited capacity of reception centres in the country.¹³⁷ Except in the cases of families with minor children, this has not led the Aliens Office to generalise the practice of requesting individualised guarantees from Italy. From 2016 until early 2019, the CALL has upheld transfers to Italy for most asylum seekers,¹³⁸ although it has ruled against transfers in some specific cases.¹³⁹ The decisive criterion to rule against certain transfers is when applicants have a vulnerable profile but the government did not ask for individualised guarantees.

Bulgaria: The Aliens Office continues to consider that transfers of asylum seekers to Bulgaria do not automatically constitute a risk of inhumane treatment. The number of transfers carried out, however, is limited.¹⁴⁰ In 2016, the CALL annulled several transfer decisions to Bulgaria. The CALL rules that recent reports and information have shown deterioration in the quality of the asylum procedure and the reception conditions in Bulgaria.¹⁴¹ 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 case concerned an Afghan national who had applied for asylum in Belgium on 20 August 2015 and had received a return decision on 26 April 2016 after the acceptance of a “take back” request by Bulgaria.¹⁴²

In March 2017, the CALL ruled against the transfer of a single Afghan national to Bulgaria. The Aliens Office looked into general reports on the situation of asylum seekers in Bulgaria, but it did not specifically identify the reception conditions of Dublin returnees that have to make a new application for asylum. Moreover, since the Afghan national was a Dublin returnee and did not have a specific vulnerable profile, he most likely wouldn’t have benefited from accommodation upon his return. Therefore, the CALL found that the Aliens Office did not perform a rigorous investigation into the different possible situations in which Article 3 ECHR could be breached.¹⁴³

Another and similar example is a case in which the CALL annulled a transfer decision because the reference to general reports on the situation in Bulgaria was not sufficient to exclude violations of Article 3 ECHR. Here again, the Aliens Office had neglected to perform a thorough investigation into the

¹³⁶ CALL, Decision No 210384, 1 October 2018.

¹³⁷ CALL, Decision No 138 940, 20 February 2015; No 144 488, 27 April 2015; No 144 400, 28 April 2015.

¹³⁸ See e.g. CALL, Decision No 165 056, 31 March 2016; No 169 601, 10 June 2016; No 172 362, 26 July 2016; No 173 670, 29 August 2016; No 174 958, 26 September 2016; No 177 208, 28 October 2016; No 177 265 November 2016; No 182 116, 10 February 2017, No 183 618, 9 March 2017; No 186 352, 2 May 2017; No 192 946, 29 September 2017, No 200515, 28 February 2018; No 202 147, 9 April 2018; No 203 395, 2 May 2018; No 205 763, 22 June 2018.

¹³⁹ See e.g. CALL, Decision No 161 166, 9 February 2016; No 162 742, 25 February 2016; No 172 924, 8 August 2016; No 176 192, 12 October 2016; No 180 180, 26 December 2016; No 194 907, 13 November 2017; No 199 510, 5 February 2018; No 201 167, 15 March 2018; No 206 426, 2 July 2018.

¹⁴⁰ Myria, *Contact meeting*, 16 November 2016, para 34; *Contact meeting*, 17 January 2018, para 10.

¹⁴¹ CALL, Decision No 175 351, 26 September 2016; Nos 178 479, 178 480 and 178 481, 28 November 2016; No 184 911, 30 March 2017; No 191 107, 30 August 2017.

¹⁴² CALL, Decision No 168 891, 1 June 2016.

¹⁴³ CALL, Decision No 184 126, 21 March 2017.

current situation in Bulgaria and only referred to outdated reports.¹⁴⁴ Moreover, the lack of interpreters in Bulgaria¹⁴⁵ and the procedural bias against Afghan nationals¹⁴⁶ have led the CALL to suspend transfers.

In 2018, 122 take charge and take back requests were made. However, only 2 transfers of single men were carried out.¹⁴⁷ This number refers only to the transfers carried out by the Aliens Office itself, as the latter is not aware of the number of asylum seekers that returned at their own initiative.

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.¹⁴⁸ When this asylum seeker is then sent back to Belgium following a Dublin procedure and lodges an asylum application again, the CGRS is legally obliged to deem it admissible.¹⁴⁹ Nevertheless, depending on what stage of the asylum procedure they were at before leaving, these asylum seekers can be considered as subsequent applicants and are therefore left without shelter until the admissibility decision is officially taken.¹⁵⁰

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**).¹⁵¹

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

The admissibility procedure is set out 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;¹⁵²
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.

¹⁴⁴ CALL, Decision No 185 536, 19 April 2017.

¹⁴⁵ CALL, Decision No 193 680, 13 October 2017.

¹⁴⁶ CALL, Decision No 185 279, 11 April 2017.

¹⁴⁷ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 165.

¹⁴⁸ Article 57/6/5.

¹⁴⁹ Article 57/6/2(1) Aliens Act.

¹⁵⁰ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 175-180.

¹⁵¹ Myria, *Contact meeting*, 21 June 2016, available at: <http://bit.ly/2k3obi9>, para 9.

¹⁵² Note that this ground is not foreseen in Article 33(2) recast Asylum Procedures Directive.

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?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to identity, nationality, travel route?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> 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.¹⁵³ 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.¹⁵⁴

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.¹⁵⁵

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.¹⁵⁶ The appeal has automatic suspensive effect, with the exception of some cases concerning [Subsequent Applications](#).¹⁵⁷

The CALL shall decide on the application within 2 months,¹⁵⁸ under “full judicial review” (*plein contentieux*).

¹⁵³ Article 51/10 Aliens Act.

¹⁵⁴ Articles 10, 16 and 18 Royal Decree on Aliens Office Procedure.

¹⁵⁵ Article 57/5-ter(2) Aliens Act.

¹⁵⁶ Article 39/57(1)(3) Aliens Act.

¹⁵⁷ Article 39/70 Aliens Act.

¹⁵⁸ Article 39/76(3)(3) Aliens Act.

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?
☐ 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

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.

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.

Persons 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”).¹⁵⁹ 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.¹⁶⁰ 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.¹⁶¹

The CGRS shall examine whether the application is:¹⁶²

- Inadmissible; or
- Cannot be accelerated under the grounds set out in the [Accelerated Procedure](#).¹⁶³

¹⁵⁹ Article 72 Aliens Decree; Article 52/3(2) Aliens Act. Remarkably, in French the word “*refoulement*” is used (“*terugdrijving*” 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.

¹⁶⁰ Articles 50-ter and 50 Aliens Act.

¹⁶¹ Article 39/70 Aliens Act.

¹⁶² Article 57/6/4 Aliens Act.

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.¹⁶⁴ 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 yet.¹⁶⁵ 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.¹⁶⁶

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.¹⁶⁷ 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.¹⁶⁸ 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.¹⁶⁹ If the CGRS has not taken a decision within four weeks, the asylum seeker is admitted to the territory.¹⁷⁰ This does not automatically mean that the asylum seeker will be set free. If a ground for detention is present, he or she can be detained ‘on the territory’ under another detention title.

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

¹⁶³ Except for the ground relating to the failure of the applicant to apply for asylum as soon as possible.

¹⁶⁴ Article 74/5(1)(2) Aliens Act.

¹⁶⁵ 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.

¹⁶⁶ Article 74/9 Aliens Act.

¹⁶⁷ 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>.

¹⁶⁸ And it will be too late to appeal against it in an effective way, as also the ECtHR has ruled in *Singh v. Belgium*.

¹⁶⁹ Article 57/6(2)(1) Aliens Act.

¹⁷⁰ Articles 57/6/4 and 74/5(4)(5) Aliens Act.

country where they will be admitted entry.¹⁷¹ 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 2018, 768 asylum applications were made at the border.¹⁷²

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?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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, it is 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.¹⁷³

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?

<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

¹⁷¹ Article 74/4 Aliens Act.

¹⁷² Based on monthly calculation of information provided by the Aliens Office during Myria Contact meetings.

¹⁷³ Article 48/9(1) Aliens Act.

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.¹⁷⁴

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.

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?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

<input 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 negative decision in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> 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.¹⁷⁵

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:¹⁷⁶

- a. Only raises issues irrelevant to international protection;
- b. Comes from a [Safe Country of Origin](#);

¹⁷⁴ Article 39/57 Aliens Act.

¹⁷⁵ 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.

¹⁷⁶ Article 57/6/1(1) Aliens Act.

- 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
- 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.¹⁷⁷ When rejecting the application is treated under the accelerated procedure on the aforementioned grounds, it may pronounce the application as manifestly unfounded.¹⁷⁸ 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.¹⁷⁹ Also an interpreter is present during these interviews. The CGRS conducts interviews through videoconference in the detention centres of **Merksplas** 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?
 - ☒ Yes ☐ No
 - ❖ If yes, is it ☒ Judicial ☐ Administrative
 - ❖ If yes, is it suspensive ☒ Yes ☐ No

¹⁷⁷

Ibid.

¹⁷⁸

Article 57/6/1(2) Aliens Act.

¹⁷⁹

Article 13 Royal Decree on CGRS Procedure.

An appeal in the accelerated procedure must be lodged within 10 days, and has suspensive effect.¹⁸⁰

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

The Aliens Act defines as vulnerable persons: minors (accompanied and unaccompanied), disabled persons, pregnant women, elderly persons, single parents with minor children and persons having suffered torture, rape or other serious forms of psychological, physical or sexual violence.¹⁸¹ The Reception Act mentions more profiles, and 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.”¹⁸² However, there is no definition of what the term vulnerability contains.

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

¹⁸⁰ Article 39/57(1)(2) Aliens Act.

¹⁸¹ Article 1(12) Aliens Act

¹⁸² Article 36 Reception Act.

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.¹⁸³

Since August 2016 the Aliens Office uses a registration form in which it is indicated 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.¹⁸⁴ These categories offer a broader definition than the one provided in the Aliens Act and the Reception act. The form further offers an empty space for additional information, which is often used in practice to indicate if there are urgent needs, e.g. medical needs. For the asylum seekers concerned, the process of registration will be faster and certain (emergency) reception centres, such as emergency centres, won't be assigned to them.

Following the reform that entered into force on 22 March 2018, it is now clearly provided that asylum seekers should, at the start of the asylum procedure, fill in a questionnaire determining any specific procedural needs.¹⁸⁵ In practice, this has led the Immigration Office to ask the asylum seeker whether he or she has medical or psychological problems that might influence the interview, if she/he would like his/her partner to be present during the interview, if she/or he would prefer a male or a female interpreter, as well as asking pregnant asylum seekers about the impact of their pregnancy.¹⁸⁶

Furthermore, a doctor appointed by the Aliens Office *can* make recommendations on procedural needs, based on a medical examination. However, this is not an obligation¹⁸⁷ and the Aliens Office does not keep any statistical information on if and how many times this is actually applied. 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.¹⁸⁸ 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.¹⁸⁹

The CGRS has stated that the evaluation of the procedural needs is an ongoing process. This means that a first evaluation will take place when the file is transferred to the CGRS, a second assessment is undertaken during the interview and another evaluation is conducted at the moment of the decision. Those different evaluations can be conducted both in relatively short or long timelines.¹⁹⁰

Furthermore, according to the law, 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 the condition that the asylum seeker gives its consent.¹⁹¹ At the time of writing, it is unclear yet how this is implemented.

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

¹⁸³ 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.

¹⁸⁴ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

¹⁸⁵ Article 48/9(1) Aliens Act.

¹⁸⁶ Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available in Dutch at <https://bit.ly/2S7NtO5>, 25.

¹⁸⁷ Article 48/9(2) Aliens Act.

¹⁸⁸ Article 48/9(3) Aliens Act.

¹⁸⁹ Article 48/9(4) Aliens Act.

¹⁹⁰ Myria, *Contact meeting*, 18 April 2018, available in Dutch at: <https://bit.ly/2slMaXC>, para. 56.

¹⁹¹ Article 22(1/1) Aliens Act.

Federal Public Service of Justice has established a hotline that operates 24/7 to notify the detection of unaccompanied children, so that the necessary arrangements can be made.¹⁹²

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, 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.¹⁹³

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 Physicians,¹⁹⁴ 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.¹⁹⁵ In a recent decision, the Council of State decided that the Guardianship Service is not competent to assign a date of birth to the person who is declared minor following an age test, but for whom the margin of error of the age test results in a higher or lower age than the age declared. The Guardianship Service has declared that it will however not change its practice.¹⁹⁶

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 check 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.¹⁹⁷ In 2018 4,407 unaccompanied children were signalled, out of which 82% were boys, 16% were girls, and 2% were undefined. The top 5 nationalities (among the signalisations) were:

Signalisations of unaccompanied children : 2018	
Country	Number
Eritrea	1,285
Algeria	396
Morocco	340

¹⁹² Loi-programme (I) (art. 479), 24 Décembre 2002 - Titre XIII - Chapitre VI : Tutelle des mineurs étrangers non accompagnés.

¹⁹³ Article 7 UAM Guardianship Act.

¹⁹⁴ 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>.

¹⁹⁵ 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.

¹⁹⁶ Council of State, Decision No 242.623, 11 October 2018, available in French at: <https://bit.ly/2FQBcl0>; Decision No 241.990, 28 June 2018, available in French at: <https://bit.ly/2FZVL4g>.

¹⁹⁷ Platform Kinderen op de vlucht, *Leeftijdsschatting van NBMV in vraag: probleemstelling, analyse en aanbevelingen*, September 2017, available in Dutch at: <http://bit.ly/2GyEJsd>.

Sudan	279
Afghanistan	413
Total	2,713

Source: Guardianship Service (based on information received January 2019)

Out of a total of 1,093 age assessments conducted in 2018, 769 were declared to be over 18 years old.¹⁹⁸

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.¹⁹⁹ 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.²⁰⁰

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.²⁰¹ 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.²⁰² 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.²⁰³

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 different 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.²⁰⁴

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

¹⁹⁸ Information provided by the Guardianship Service, February 2019.

¹⁹⁹ Article 9 Royal Decree on Aliens Office Procedure.

²⁰⁰ 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.

²⁰¹ Article 27 Royal Decree on CGRS Procedure.

²⁰² Article 15 Royal Decree on CGRS Procedure.

²⁰³ 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>.

²⁰⁴ Article 57/1(3) Aliens Act.

- ❖ A “Gender Unit” of 15 officials, trained following the EASO training module on Interviewing Vulnerable Persons, assembles all gender-related asylum applications,²⁰⁵ 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;²⁰⁶
- ❖ 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 practices. Unaccompanied minors are only interviewed by specially trained protection officers, who follow the EASO training module on Interviewing Children;²⁰⁷
- ❖ 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](#)).²⁰⁸

In 2018 the CALL made a first step towards a more child-friendly justice. In a judgment of June 2018, the CALL tried to make the decision as understandable as possible by adapting the language of the judgement to the 13-year-old concerned Iraqi boy who had made his own request for international protection.²⁰⁹ The language of the judgment was adjusted to such an extent that the minor could, even without the assistance of an adult, understand the reasoning of the judgment. By doing so, the CALL acts in accordance with the Guidelines for a Child Friendly judgment of the Council of Europe. The CALL further confirmed that the Aliens Office should apply the UNCRC and respect the best interest of the child.

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.²¹⁰

Since August 2018 the government has opened family units within the closed centres in which it has detained several families. This is a practice that Belgium had suspended after it was convicted by the ECtHR in the past.²¹¹ Although unaccompanied children are not detained, they are not exempted from the accelerated procedure. However, in practice, the accelerated procedure is not applied to unaccompanied minors.²¹²

²⁰⁵ This includes 12 Gender reference persons in the six geographical sections of the CGRS, the Legal Service and the Documentation Centre (Cedoca).

²⁰⁶ Information provided by the CGRS, 24 August 2017.

²⁰⁷ Information provided by the CGRS, 24 August 2017.

²⁰⁸ Information provided by the CGRS: CBAR-BCHV, Contact meeting, 15 September 2015, available at: <http://bit.ly/1GymMYx>, para 60.

²⁰⁹ CALL, 28 June 2018, No 206213, <https://bit.ly/2sUvOvj>. In its communication on the official website, the CALL makes specific reference to the guidelines for a child friendly justice: <https://bit.ly/2CO2oDh>.

²¹⁰ Article 48/9(5) Aliens Act.

²¹¹ ECtHR, *Muskhadzhiyeva v. Belgium*, Application No 41442/07, Judgment of 19 January 2010.

²¹² Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 290.

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

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.²¹³ However, refusal to undergo a medical examination shall not prevent the CGRS from deciding on the asylum application.²¹⁴ The CGRS has stated that it has not yet made use of this possibility.²¹⁵

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.²¹⁶

The CGRS should evaluate the report together with all the other elements of the case.²¹⁷

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.²¹⁸ 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 announced in the past its intention to provide internal instructions to protection officers on how to identify different psychological problems and to publish

²¹³ Article 48/8(1) Aliens Act.

²¹⁴ Article 48/8(3) Aliens Act.

²¹⁵ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 300.

²¹⁶ Article 48/8(2) Aliens Act.

²¹⁷ Article 48/8(4) Aliens Act.

²¹⁸ CBAR-BCHV, *Trauma, geloofwaardigheid en bewijs in de asielpcedure*, August 2014, 74-80.

guidelines on what information a (psycho-)medical report should contain, but no further information is available.²¹⁹

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.²²⁰

Given that the burden of proof lies on the asylum seeker, the CGRS considers that it is his or her role to provide 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. Although an attestation of a psychological problem will never suffice for the CGRS to grant a protection status, it always has to be taken into consideration in determining the protection needs.

3.2. Medical evidence of past persecution or serious harm

Until now, medical reports demonstrating physical harm as evidence of past persecutions or inhuman treatments were mostly put aside by the CGRS, who argues that such reports cannot determine the exact cause of the harm, its perpetrator nor the reasons that lie behind it.²²¹ However, in some rare cases, the CGRS has been required by the CALL to further examine the circumstances surrounding the physical harm experienced by an asylum seeker. In presence of physical scars for example, the burden of proof is reversed and the CGRS is obliged to look further into the circumstances surrounding the causes of persecution or serious harm.²²² This was the case in a judgement of July 2018 in which the applicant was given the benefit of the doubt and recognised as a refugee because of the medical attestation he had provided to the CGRC. In fact, the medical attestation demonstrated signs of torture and severe injuries. However, the CALL limited the recognition of mistreatment only to some of the existing scars of the applicant, while other signs (e.g. on the toe nails or the pulled fingers) were not providing concluding evidence of mistreatment according to the CALL.²²³

Furthermore, there is an overall exception when it comes to risks of female genital mutilation. In such cases, it is mandatory for the asylum seeker to prove through a medical attestation that she - or her minor daughter (depending on whose circumcision is said to be feared for) - is already circumcised or not. In order to keep the protection status, a new medical attestation has to be provided to the CGRS every year.

Some NGOs deliver free medical examinations and attestations. The organisation 'Constat' main objective is to defend and promote the full application of the Istanbul Protocol into the Belgian asylum procedure, in particular regarding the examination of physical and psychological consequences of torture and other cruel, inhuman and degrading treatments or punishments over asylum seekers. Another organisation acting in this specific field is 'Exil'.

²¹⁹ 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.

²²⁰ Myria, *Contact meeting*, 18 January 2017, available at: <http://bit.ly/2kx93eZ>, para 25.

²²¹ See for example CALL, Decision No 64 786, 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 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.

²²² Article 48/7 Aliens Act.

²²³ CALL, Decision No 207 193, 25 July 2018.

In this context, it is also important to mention the so-called “medical regularisation procedure”, which is not technically part of the asylum procedure, but is closely related to it. In the case that 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 – e.g. due to a lack of access to appropriate medical treatment - an application should be lodged with the Aliens Office instead of the CGRS.²²⁴ This application of protection for medical reasons has been taken out of the asylum procedure and replaced with a completely separated procedure that entails less procedural guarantees. In the latter, a standardised medical form has to be filled in and communicated before the request is considered admissible and examined on its merits. A refusal can further only be subjected to an annulment (and suspension) appeal. The existence of this procedure is a way for the CGRS to avoid to have to take into consideration medical elements put forward during the asylum procedure, even if they could be relevant for the asylum application.

In *M'Bodj and Abdida*,²²⁵ 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. This jurisprudence was later implemented in Belgian jurisprudence.²²⁶ 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 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.

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.²²⁷

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. It is now legally possible to cumulate the specific procedures intended at finding a durable solution for unaccompanied children (family reunification, return or right to reside in Belgium) with the asylum procedure,²²⁸ while - prior to 2015 - one had to choose between the two or conduct them consecutively. In practice the Aliens Office often postpones the specific procedure while awaiting the results of the asylum procedure.

²²⁴ Article 9-ter Aliens Act.

²²⁵ 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.

²²⁶ CALL, Decision No 168 897, 1 June 2016; Constitutional Court, Decision No 13/016, 27 January 2016.

²²⁷ Article 479 Title XIII, Chapter VI of Programme Law of 24 December 2002 (UAM Guardianship Law).

²²⁸ Article 61/15 Aliens Act.

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.²²⁹ 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.²³⁰

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.²³¹

On 31 December 2018 there were 592 guardians active, who exercised 2,456 guardianships.²³²

In 2018, 1,626 new guardianships were assigned. However, given that there were 4,407 minors signalled in 2018 (out of which 769 were declared adults after age assessments), a majority of them did not have a guardian. This concerned mostly minors who disappeared after the first signalisation.²³³

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.²³⁴ It can often take some time before these files are transmitted to the CGRS. These files are not considered a priority for the Aliens Office, who prioritises Dublin files.²³⁵

²²⁹ Article 479(9)(12) UAM Guardianship Law.

²³⁰ 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>.

²³¹ Article 479(6) UAM Guardianship Law.

²³² Information provided by the Guardianship Service, February 2019.

²³³ Vluchtelingenwerk Vlaanderen, 'Report on non-accompanied minors and their voluntary tutors', 28 February 2019, available in Dutch at: <https://bit.ly/2XFFiIF>.

²³⁴ Article 51/8 Aliens Act.

²³⁵ Myria, *Contact meeting* of 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, para 26.

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.²³⁶ The claim is deemed admissible where the previous application has been terminated on the basis of implicit withdrawal.²³⁷

The CGRS should take this decision within 10 working days after receiving the application from the Aliens Office. Due to a high volume of subsequent applications, the 10 days delay is often not respected.²³⁸ If the person is in detention, this decision should be taken within 2 working days.²³⁹ 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.²⁴⁰

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*.²⁴¹

An appeal to the CALL against an inadmissibility decision should be made within 10 days, or 5 days when the applicant is in detention.²⁴² The appeal has automatic suspensive effect, except where:²⁴³

- 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.

An applicant does not have a right to remain on the territory even before the CGRS pronounces itself on admissibility in cases where:²⁴⁴

- 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*.

A total of 4,405 applicants lodged subsequent applications in 2018:

Subsequent applicants: 2018	
Country	Number
Afghanistan	987
Iraq	863
Somalia	253
Russian Federation	209
Albania	161

²³⁶ Article 51/8 Aliens Act.

²³⁷ *Ibid*, citing Article 57/6/5(1)-(5) Aliens Act.

²³⁸ Myria, *Contact meeting* 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 11.

²³⁹ Article 57/6(3) Aliens Act.

²⁴⁰ Article 57/6/1(1) Aliens Act.

²⁴¹ Article 57/6/2(2) Aliens Act.

²⁴² Article 39/57 Aliens Act.

²⁴³ Article 39/70 Aliens Act.

²⁴⁴ Article 57/6/2(3) Aliens Act.

Syria	131
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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](#).²⁴⁵

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.²⁴⁶

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.²⁴⁷ The Royal Decree of 15 February 2019 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**.²⁴⁸

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

In 2018, a total of 1,911 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	2018
Kosovo	842	737	331	320	242
Albania	732	827	817	882	668

²⁴⁵ Article 57/6/1(1)(b) Aliens Act.

²⁴⁶ Article 57/6/1(3) Aliens Act.

²⁴⁷ Article 57/6/1 Aliens Act.

²⁴⁸ Royal Decree of 17 December 2017, available at: <http://bit.ly/2pi7CR2>.

FYROM	403	335	165	251	194
India	84	79	50	52	81
Bosnia-Herzegovina	150	58	56	44	23
Montenegro	19	15	14	5	8
Georgia	-	-	-	468	695
Total	2,230	2,051	1,433	2,022	1,911

Source: CGRS

2. Safe third country

Following the reform that entered into force on 22 March 2018, the Aliens Act contains the “safe third country” concept,²⁴⁹ as a ground for inadmissibility.²⁵⁰ The CGRS has already stated that it will only apply this concept very exceptionally and that there will not be a list of safe third countries. In 2018 the concept has not been applied by the CGRS.²⁵¹

2.1. Safety criteria

A country may be considered as safe third country where the following principles apply.²⁵²

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.²⁵³ 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”.²⁵⁴

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 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

²⁴⁹ Article 57/6/6 Aliens Act.

²⁵⁰ Article 57/6(3)(2) Aliens Act.

²⁵¹ Information given by the Commissioner General for Refugees and stateless persons at the EMN annual conference, 12 December 2018.

²⁵² Article 57/6/6(1) Aliens Act.

²⁵³ Article 57/6/6(2) Aliens Act.

²⁵⁴ *Ibid.*

is therefore necessary to be able to assume that the applicant will be given access to the territory of the third country concerned.

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.

This first country of asylum concept has been mainly applied to refuse asylum applications from Tibetans having lived in India before coming to Belgium, although India is not a signatory to the Refugee Convention. In the past, 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.²⁵⁵ 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.²⁵⁶

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.

In 2018 the application of the first country of asylum led to the inadmissibility of the asylum application in 12 cases: 7 concerned Tibetans, 2 Afghans, 1 Syrian, 1 Guinean, and 1 Congolese (DRC).²⁵⁷

G. 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

²⁵⁵ See e.g. CALL, Decision No 129 911, 23 September 2014; No 123 682, 8 May 2014.

²⁵⁶ Myria, *Contact meeting*, 19 April 2016, available at: <http://bit.ly/2jGUHTW>, para 28.

²⁵⁷ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 335.

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.²⁵⁸

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 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. The Policy note for 2018 continued to emphasise the need for so-called dissuasion campaigns²⁵⁹. On Facebook for example, the Aliens Office posted images with catchphrases such as ‘In case of illegal stay, you will be detained’, ‘Your phone will be confiscated’, etc. This contested Facebook page was deleted upon resignation of the State Secretary for Asylum and Migration.²⁶⁰

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.²⁶¹ The brochures that are available on the websites have not yet been adapted to the new legislation. Asylum seekers also receive an extensive brochure on the day they made the application.

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.²⁶²

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

²⁵⁸ Articles 2-3 Royal Decree on Aliens Office Procedure.

²⁵⁹ Policy Note, Asylum and Migration, 26 October 2018, available in Dutch at: <https://bit.ly/2sJL8uz>.

²⁶⁰ BRUZZ, Omstreden facebookpagina Vreemdelingenzaken Offline, 10 December 2018, available in Dutch at: <https://bit.ly/2RdadYw>.

²⁶¹ 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>.

²⁶² The leaflets can be consulted at: <http://bit.ly/2l019Xb>.

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.²⁶³

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). We provide leaflets in the language of the asylum seeker while they are queuing to apply for asylum.

Vluchtelingenwerk has published several guidelines for lawyers both in French and Dutch, for example on Dublin,²⁶⁴ and on subsequent applications.²⁶⁵

A procedural guide by Ciré was updated in 2015, but only available in French. A revised version is expected in 2019; unlike the 2008 version that was made available in Dutch, English, Serbian-Croatian, Turkish, Albanian and Russian.²⁶⁶

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

Asylum seekers at the border will be placed in detention, which impacts their access to NGO's and UNHCR.

Asylum seekers on the territory have easy access to NGO's. 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.²⁶⁷

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.²⁶⁸ 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.

²⁶³ CGRS, *Publications*, available at: <http://bit.ly/2kvQCpP>.

²⁶⁴ Vluchtelingenwerk Vlaanderen, *Het Dublin-onderzoek: leidraad voor de advocaat*, available in French and Dutch at: <http://bit.ly/2kkX4Os>.

²⁶⁵ Vluchtelingenwerk Vlaanderen, *Nota pre-registratie en opvang bij meervoudige asielaanvragen*, available in French and Dutch at: <http://bit.ly/2jGWfNK>.

²⁶⁶ Ciré, *Guide de la procédure d'asile*, available in French at: <http://bit.ly/1XdLNdx>.

²⁶⁷ 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.

²⁶⁸ Article 33 Reception Act.

H. 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?²⁶⁹ ☒ 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. The list has been renewed by the Royal Decree of 15 February 2019.

Palestinians originating from Gaza: Until recently, the CGRS usually granted refugee status to persons originating from Gaza but, on 5 December 2018, it announced that this would no longer be the case. According to the CGRS, the evolution of the situation in the Gaza Strip justifies a revision of its policy regarding asylum applications from Palestinians from Gaza. The CGRS explained that the situation in Gaza is still precarious and problematic for many inhabitants, but not for all of them. Hence, there needs to be a case by case assessment of each asylum application.²⁷⁰

In this context, the CGRS stated that the determining element will be to assess the possibility or not to return to Gaza from Egypt, given that during the first half of 2018, the Rafah border crossing separating the two countries was closed. Although the border crossing has now opened again, the risk and the fear to return remains an important element for the assessment under article 1D of the Refugee Convention. When granting protection, the CGRS takes therefore into account the situation on the field and conducts a thorough assessment of all available evidence.

Following this policy change, there have been some judicial developments. The CALL annulled a decision of the CGRS refusing the protection status to a Palestinian applicant from Gaza.²⁷¹ The applicant had provided more recent information on the difficulties that Palestinians face at the border crossing-points. The CALL confirmed that the examination of the accessibility to the Rafah border is a crucial element in the assessment of requests for international protection of Palestinian citizens originating from Gaza. A rigorous review by the CGRS is therefore needed to assess whether the situation at the border has altered.

The CALL also ruled on several occasions that the civilian population of Gaza is being persecuted and faces systematic violations of fundamental human rights, which constitutes a serious breach of human dignity.²⁷² The CALL relates here to the economic consequences of the ongoing blockade and the latest war between Israel and Hamas that has had a substantial and detrimental impact on the civilian population of Gaza. In that context, the new Minister for Asylum and Migration in charge stated that she would ask the CGRS to re-examine the protection status of Palestinians of Gaza. The CGRS answered via the press that it does not perceive the re-examination of these files as a priority.

Resettlement: Up until 13 October 2018, 879 refugees arrived in Belgium under the resettlement programme: 803 Syrians coming from Lebanon, Turkey and Jordan; 34 Congolese coming from Uganda and 42 Eritreans and Somalis coming from Niger.²⁷³

²⁶⁹ Whether under the “safe country of origin” concept or otherwise.

²⁷⁰ Myria, Contact meeting, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 310.

²⁷¹ CALL, decision No. 216,474, 7 February 2019

²⁷² CALL, Decision No 206 073, 28 June 2018; No 182 381, 16 February 2017; No 150 535, 7 August 2015.

²⁷³ Fedasil, *Resettlement in 2018*, available at: <https://www.fedasil.be/en/resettlement>.

On 25 October 2018, the then Secretary of State for Asylum and Migration suspended the Belgian resettlement programme. As a result, 250 refugees that were about to be resettled did not have any prospects about the day of their resettlement. At the beginning of 2019, it was still unclear when and whether the resettlement programme would be re-activated.

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 Reception Act, every asylum seeker has the right to material reception conditions from the moment he or she has made his or her asylum application, that allow him or her to lead a life in human dignity.²⁷⁴

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.²⁷⁵ Expenses made for material aid already delivered can also be recovered in such cases.²⁷⁶ The concept and means of calculating financial resources, as well as the part to be contributed, are determined in a Royal Decree of 2011.²⁷⁷ 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](#)).

The Aliens Act provides that “registration” and “lodging” are two different steps in the asylum procedure.²⁷⁸ The Reception Act, however, now clearly provides that an asylum seeker has the right to

²⁷⁴ Article 3 Reception Act.

²⁷⁵ Article 35/2 Reception Act.

²⁷⁶ Article 35/1 Reception Act.

²⁷⁷ Royal Decree, 12 January 2011 on Material Assistance to Asylum Seekers residing in reception facilities and who are employed.

²⁷⁸ Article 50/1 Aliens Act.

shelter from the moment he or she makes the asylum application, and not only from the moment where the asylum application is registered,²⁷⁹ in line with the recast Reception Conditions Directive.

On November 2018 an “arrival centre” was established at the open reception centre “Klein Kasteeltje”, where all asylum applications have to be made and registered and where applicants should initially be accommodated. Fedasil conducts an assessment of any specific reception needs that might arise there (e.g. medical needs) and designates a reception centre for the rest of the procedure.²⁸⁰ When an asylum seeker lodges his or her application, he or she gets a “proof of application” (“Annex 26”), which officially assigns a reception centre as his or her mandatory place of registration (“Code 207”).²⁸¹ The applicant should in theory go to the assigned centre immediately. However, an asylum seeker can also choose to not accept the offered spot and decide 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 for material aid again, as long as his or her asylum procedure is pending.

In practice, the arrival centre Klein Kasteeltje had a rough start, due to a lack of capacity both in the centre and in the overall reception system. As a consequence of the shortage of places, the government decided to set a limited amount of asylum applications per day. This enabled to deny access to the reception facilities to many persons who were trying to make an asylum application but who weren’t offered a spot at Klein Kasteeltje. As a result, many of them had to sleep at the Brussels North Train Station or around Klein Kasteeltje. This was judged to be in contradiction with national and international law by the Council of State.²⁸² However, at the time of writing, all asylum seekers were able again to make their application on the same day they went to the Aliens office.

In 2017 and 2018 many migrants, mostly originating from Sudan and Eritrea, were sleeping again in the park opposite to the (former) Aliens Office building. Many of them refuse to apply for asylum and are therefore not entitled to accommodation under the Reception Act. According to NGOs, the persons refused to apply for asylum due to misleading information provided by the government and harsh and repeated police interventions.²⁸³ Moreover, some of them feared to be sent back to Italy or Greece under the Dublin Regulation and some others had already obtained a protection status in another EU-country but were willing to reach the United Kingdom. At the end of September 2017, several NGOs including Ciré, Artsen zonder Grenzen, Médecins sans frontières, Plateforme des citoyens and Vluchtelingenwerk Vlaanderen set up a humanitarian hub for these migrants, where they receive medical and psychological help, legal advice, clothes, and family tracing assistance. This hub is located in the **Northern train station** in Brussels and will continue to provide aid until the end of March 2019.

In February 2018, MSF further demonstrated in a report that the mental health of the migrants that are resident in the Maximilian Park and at the Northern train station is negatively affected by a combination of fear of Dublin transfers and police interventions, inhumane living and reception conditions, discrimination and violence, and the lack of opportunities and support.²⁸⁴

²⁷⁹ Article 6(1) Reception Act.

²⁸⁰ Chamber of Representatives, *Policy Note on asylum and migration*, October 2017, 24.

²⁸¹ Articles 9-10 Reception Act.

²⁸² CE, Decision No 243.306, 20 December 2018

²⁸³ Refugee Rights Europe, ‘Left in-between. Documenting the situation for refugees and displaced people in Brussels’, June 2018, <https://bit.ly/2x0zZr0>; Dokters van de Wereld, ‘Politiegeweld tegen vluchtelingen en migranten onderweg in België: een kwantitatief en kwalitatief onderzoek’, Oktober 2018, also available in French, <https://bit.ly/2sKBiLL>.

²⁸⁴ ECRE, ‘MSF: The Insecure and Unsafe Situation of Migrants in Europe Increases their Psychological Pain and Suffering’, 1 March 2019, available at: <https://bit.ly/2TsVwWC>.

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.²⁸⁵ This is unless Fedasil is informed that they have a pending or granted request for a prolongation of the reception.²⁸⁶ 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.

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. According to the Constitutional Court this decision is only legal in case of abuse of the asylum procedure, in particular when the person applies for asylum only to extend the right to reception.²⁸⁷

In practice however Fedasil almost systematically refuses to assign a reception place to subsequent applicants until their asylum application is declared admissible by the CGRS. Labour Courts have ordered Fedasil at multiple occasions to motivate such decisions individually taking into account all elements of the case.²⁸⁸ 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 2016.²⁸⁹ Although Fedasil motivates the decisions better - more individually – since the last months of 2017 it is clear that the policy is still to not grant reception in most cases and that vulnerability is still mostly not taken into account.²⁹⁰

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 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.²⁹¹ The Labour Courts of Brussels and Antwerp have

²⁸⁵ Article 4(1)(3) Reception Act.

²⁸⁶ 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>.

²⁸⁷ Constitutional Court, Decision No 95/2014, 30 June 2014.

²⁸⁸ 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.

²⁸⁹ Federal Mediator, *Annual Report 2016*, available at: <https://bit.ly/2udKLvX>; *Annual report 2015*, available at: <http://bit.ly/2jAm6f7>.

²⁹⁰ 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>.

²⁹¹ 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.

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.²⁹² 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.²⁹³

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 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.²⁹⁴

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.²⁹⁵ 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.²⁹⁶ This is a framework for individual counselling on return set up by Fedasil which promotes voluntary return to avoid forced returns.²⁹⁷

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:

²⁹² 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>.

²⁹³ 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.

²⁹⁴ 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>.

²⁹⁵ Article 57/6/2 Aliens Act.

²⁹⁶ Article 6/1 Reception Act.

²⁹⁷ 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.

(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.

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:²⁹⁸

- ❖ 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. Unless a third (or further) asylum application was declared inadmissible by the CGRS and the CGRS deems that there is no risk of direct or indirect *refoulement*, the order to leave the territory is delivered immediately after the

²⁹⁸ Article 6 Reception Act.

decision of the CGRS.²⁹⁹ The time limit of the order to leave the territory will vary between 0 and 30 days.³⁰⁰

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.³⁰¹ 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.³⁰²

Fedasil has adopted internal instructions about these possibilities and how to end the accommodation in the reception structures in practice.³⁰³

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.³⁰⁴

²⁹⁹ Article 52/3 Aliens Act; Article 6 Reception Act.

³⁰⁰ Article 74/14 Aliens Act.

³⁰¹ Article 6/1 Reception Act and Article 52/3 Aliens Act.

³⁰² Article 7 Reception Act.

³⁰³ Fedasil, *Instructions on the termination and the prolongation of the material reception conditions*, 15 October 2013.

³⁰⁴ 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.

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 2019 (in original currency and in €):³⁰⁵

❖ Accommodated single adult, incl. food	€180-212
❖ Accommodated single adult	€244-280

2.1. Material or financial aid?

Since the adoption of the 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.³⁰⁶ 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”).³⁰⁷

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 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.³⁰⁸

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. Currently, the possibilities to change on the request of the asylum seeker are limited to the situations enlisted by Fedasil in internal instructions (see further “2.3. Transfers”).

The 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.³⁰⁹ According to the law, after 6 months in a collective centre, all asylum seekers can apply to be transferred to an individual accommodation structure.³¹⁰ Where the person’s asylum application has already been refused at first instance procedure by the

³⁰⁵ Note that these cash amounts are given in the individual reception structures of the LRI. Collective centres provide most assistance in kind.

³⁰⁶ Article 3 Reception Act.

³⁰⁷ Article 13 Reception Act.

³⁰⁸ Article 11 Reception Act; the European Migration Network has summarised in its report ‘*The organisation of Reception Facilities in Belgium*’ of August 2013 these legal criteria, but does not make an evaluation of their application in practice. The report is available at: <http://bit.ly/1G7h2RA>.

³⁰⁹ Regeerakkoord, 9 October 2014, available at: <http://bit.ly/2k2yJfn>. See also Myria, *Contact meeting*, 21 June 2016, available at: <http://bit.ly/2k3obi9>.

³¹⁰ Article 12 Reception Act.

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.³¹¹ Ever since these transfers have not restarted.³¹² 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 80% who are still awaiting a decision of the CGRS can ask to be assigned to LRI after a 2-month stay in collective reception centres. At the time of writing nationals of following countries had a high chance of recognition³¹³:
 - El Salvador
 - Eritrea
 - Yemen
 - Libya
 - Palestine
 - Syria
 - Venezuela
 - Burundi
- ❖ 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.³¹⁴

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 in 2015 to 2017. These persons receive the same reception conditions as any other asylum seeker in Belgium.

2.3. Transfers to more adapted reception places

Within 30 days after the arrival in the assigned reception place, an evaluation should be made to see if the individual reception needs of the asylum seeker are met. After that, a regular evaluation is made – at least every six months - during the entire stay of the asylum seeker in the reception system.³¹⁵ The Reception Act allows to change an asylum seeker's reception place if the assigned place turns out to be unadapted to the individual needs.³¹⁶

In two recent instructions Fedasil enlists specific criteria which need to be met before a transfer to another more adapted place is made possible. The new assigned place can be located both in a

³¹¹ Information provided by Fedasil: CBAR-BCHV, *Contact meeting*, 15 September 2015, available at: <http://bit.ly/1GymMYx>, para 88.

³¹² Information provided by Fedasil, February 2018; Fedasil, Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg, 6 December 2018, available in Dutch at: <https://bit.ly/2S7NtO5>, p.7.

³¹³ Fedasil, *Instruction concerning transfers from collective reception to a Local reception Initiative (LRI) – designation of asylum seekers with a high rate of recognition - update*, 4 September 2018.

³¹⁴ 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.

³¹⁵ Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

³¹⁶ Article 22 Reception Act

collective reception centre or an individual place. The request to benefit from transfer can be done either by the asylum seeker or by the reception facility in agreement with the asylum seeker, but the actual sending of the request always needs to be done by the reception facility.

A transfer based on medical reasons can be requested if the place is not adapted to the medical needs of the asylum seeker. This includes when the asylum seeker:³¹⁷

- has a severe handicap which is incompatible with the assigned place
- has limited mobility and there is no possibility to adapt the infrastructure or to get help from family members
- has a severe pathology which requires having a hospital near-by
- loses his or her autonomy and has no family member that can help
- has a specific medical need for his or her own sanitary
- needs to live with a very strict diet (e.g. coeliac, no salt etc.)
- is in danger because of certain diseases present in the centre, e.g. has a weak immune system
- has an addiction and does substitute therapy which necessitates the presence of a pharmacy close-by
- has psychiatric problems which are not compatible with the everyday life of a collective reception centre
- needs to support a first-degree family member who is in the hospital
- is in need of continuous care and needs to be transferred to a care institution

A transfer based other grounds than medical reasons can be requested if it is not possible to adapt the assigned place to the individual needs of the asylum seeker and if he/she meets one of the following criteria:³¹⁸

- Language of the school of the children: his/her children went to school in a region speaking a different language for at least three months or they have gained sufficient knowledge of that other language to be able to be taught in that language
- A close family member (e.g. partner or minor children) lives in another reception centre on the Belgian territory. If the asylum seeker is categorised as vulnerable, the term “family member” can be broadened.
- Employment: the asylum seekers has been employed (at least a half-time position and not a student job) for at least one month and has paid contributions. He or she should not have been excluded from shelter
- Training or education: the asylum seeker has subscribed to higher education or to a training provided by VDAB or Forem
- The asylum seeker feels isolated because he or she is the only person in the centre belonging to a certain nationality, or he or she is the only one speaking a certain language, and this has a clear impact on his/her psychological wellbeing.

Fedasil takes into consideration the procedural situation of the asylum seeker when deciding on such requests.

2.4. 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.³¹⁹ In 2019 adults and all children from 12 years on who attend

³¹⁷ Fedasil, *Instruction on the transfer to an adapted place for medical reasons*, 7 May 2018, available in Dutch at: <https://bit.ly/2FXDRyY>.

³¹⁸ *Ibid.*

school receive 7.90€ a week, younger children and children 12 years of age or older who do not attend school receive 4.80€ a week, and unaccompanied children during the first phase of shelter (in “the observation and orientation centres”) receive 6.00€ 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 2019, 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:³²⁰

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.³²¹ 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 September 2018, a person receives following amounts per month:³²²

Monthly amounts of “social integration” for Belgian nationals	
Category	Monthly amount
Single adult	910,52€
Cohabitant	607,01€
Person with family at charge	1 254,82€

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

³¹⁹ Article 34 Reception Act.

³²⁰ Extrapolated from the weekly amount, times 4: Information provided by the VVSG.

³²¹ Article 11(4) Reception Act.

³²² Article 14 Law on Social Integration, available at: <http://bit.ly/2kopTt5>.

allowance and had to take their request to the Labour Courts. In its February 2014 judgment in *Saciri*,³²³ 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. Since several years Fedasil hasn't referred to the PCSW because of a lack of reception capacity.

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. Two long awaited degrees on this theme were published in 2018:

- A royal decree on the system and operating rules in reception centres and the modalities for checking the rooms³²⁴
- A ministerial decree on common house rules in reception centres³²⁵

The Royal decree stipulates the general rules while the ministerial decree implements them and contains a list of house rules. One part of them is obligatory for all reception facilities, the other part is variable according to the specific reception structure. These rules apply in all reception facilities, except the observation and orientation centres for minors.

The common obligatory house rules are for example:

- Respect the infrastructure
- No drugs, alcohol and no smoking
- One should signal his or her absence from the centre for the night. If one is absent from the assigned place for 3 consecutive days without prior notice or for more than 10 nights in one month (with or without prior notice), he or she may be unsubscribed from the centre (in that case one can ask for another centre at the dispatching service of Fedasil)

The possible sanctions are enumerated in the Reception Act. One example is the temporary withdrawal or reduction of the daily allowance.³²⁶ The procedures on how to apply these sanctions can be found in a Royal Decree.³²⁷

³²³ CJEU, Case C-79/13 *Federaal agentschap voor de opvang van asielzoekers (Fedasil) v Selver Saciri and OCMW Diest*, Judgment of 27 February 2014.

³²⁴ Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018

³²⁵ Ministerial Decree on house rules in reception centers, 21 September 2018

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.³²⁸ This measure was taken against 65 persons in 2018.³²⁹

The law makes it possible to withdraw reception permanently.³³⁰ 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. One applicant was permanently excluded from reception in 2018.³³¹

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 administrative council of the PCSW). An onward appeal is possible with the Labour Court.³³² 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.³³³

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.³³⁴

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.³³⁵

³²⁶ Article 45 Reception Act.

³²⁷ Royal Decree of 15 May 2014 on the procedures for disciplinary action, sanctions and complaints of residents in reception centres.

³²⁸ Article 45(8) Reception Act.

³²⁹ Information provided by Fedasil, February 2019.

³³⁰ Article 45(9) Reception Act.

³³¹ Information provided by Fedasil, February 2019.

³³² Article 47 Reception Act.

³³³ Article 45 Reception Act.

³³⁴ 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>.

³³⁵ Council of State, Opinion 59/196/4, 27 April 2016, available at: <http://bit.ly/2kVBgvT>.

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 when they communicate the decision to the asylum seeker they inform him/her about the refund of medical costs and about shelter possibilities for homeless people, but they don't use "guarantees for dignified living conditions" as a criteria while taking the decision.

In March 2018 the Brussels Labour Court has referred questions to the CJEU for a preliminary question regarding the circumstances under which material reception conditions under the Reception Conditions Directive may be reduced or withdrawn and the need to examine the consequences of such decisions, particularly with regard to unaccompanied children.³³⁶ The case concerned a non-accompanied minor who was refused the right to an accommodation during 15 days. He therefore had to live on the street and at relative's place. After 15 days, he was finally accommodated by Fedasil again. At the time of writing, there has been no ruling yet.

3.2. Other grounds

Under the 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. This applies in cases where the asylum seeker is absent for 3 consecutive days without prior notice or for more than 10 nights in one month (with or without prior notice). 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. However, by the time of writing, this was not applied in practice.
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 claim compensation if the asylum seeker has own financial resources. Such a sanction can also be imposed for not having declared such means at the time of making the application.³³⁷ 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.³³⁸ 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. Fedasil stated that this would be resolved in 2019. Most of the local PCSWs' have the resources to carry out such controls. In 2018, 34 persons had their reception rights suspended on the basis that they have obtained sufficient means through their employment, while Fedasil received contributions that amount to a total of 351.099,20€.³³⁹

³³⁶ Labour Court Brussel No 2017/AB/277, 22 March 2018, available at: <https://bit.ly/2Thk6dM>.

³³⁷ Articles 35/1 and 35/2 Reception Act.

³³⁸ 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).

³³⁹ Information provided by Fedasil, February 2019.

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 is absent from the assigned place for 3 consecutive days without prior notice, or is absent for more than 10 nights in one month (with or without prior notice), 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.³⁴⁰

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of collective reception centres:³⁴¹ 74
2. Total number of places in the collective reception centres: 14,589
3. Total number of places in LRI: 5,614
4. Total number of places in open return places: 270
5. Type of accommodation most frequently used in a regular procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other
6. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

Accommodation may be collective i.e. a centre or individual reception facilities i.e. a house, studio or flat,³⁴² 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

³⁴⁰ Article 4 Reception Act.

³⁴¹ Information provided by Fedasil, February 2019, available at: <https://bit.ly/2Une7k6>.

³⁴² Article 16, 62 and 64 Reception Act.

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.³⁴³ 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.³⁴⁴ The partners include the Flemish and the Francophone Red Cross, Ciré, Caritas International and the communal PCSW. During 2016 and 2017 the government closed 10 000 reception places, a lot of which were created during 2015 when Belgium had a large influx of asylum seekers. In the beginning of 2018 the government decided to close an additional 2500 collective reception places and 4000 individual places. By the summer of 2018 it became clear that, due to these closures and a growing number of asylum requests in comparison to the previous year, there would not be enough places left. The government then decided – at the end of September 2018 - to keep 7 collective centres open that were initially supposed to close. At the end of 2018, the capacity of the reception system was still too limited, forcing the immigration office to refuse the applications for international protection of asylum seekers and thus their access to the reception system. In order to be able to provide more accommodations, the closure of many individual places was postponed as well.³⁴⁵

As of 31 December 2018, the 52 main collective reception centres are mainly managed and organised by:

Collective reception centres: Management and capacity		
Partner	Number of centres	Total capacity
Fedasil	18	5,390
Croix Rouge	20	5,755
Rode Kruis	15	2,607

Source: Statistics of 15 January 2019, available at: <https://www.fedasil.be/nl/statistics>.

The individual reception initiatives are mainly run by the PCSW and by NGO partners. As of 15 January 2019, the PCSW have 5,614 places in LRI, while NGO partners currently have 541.

The entire reception system had a total 21,014 places, out of which 18,833 (90%) were occupied on 15 January 2019.

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

³⁴³ Article 56 Reception Act.

³⁴⁴ Article 62 Reception Act.

³⁴⁵ Fedasil, 'Sluiting 7 centra uitgesteld', 2 October 2018, available in Dutch at <https://bit.ly/2RfAANv>; Vluchtelingenwerk Vlaanderen, 'Staatssecretaris zet limiet op asielaanvragen: vandaag al 60 mensen op straat', 23 November 2018, <https://bit.ly/2DAo7R7>; De Morgen, 'Opvangcentra zitten overvol door grotere instroom: tenten voor asielzoekers weer in beeld', 16 November 2018, available in Dutch at: <https://bit.ly/2Wzhu91>.

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? 13,5 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,³⁴⁶ 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. See section on [Forms and Levels of Material Reception Conditions](#)

In practice, a transfer to an individual place is mostly reserved to specific cases enlisted in two instructions of Fedasil, namely to beneficiaries of international protection or persons who obtain another legal stay for more than three months and nationalities with a high recognition rate (See section on [Forms and Levels of Material Reception Conditions](#)). This means that all other applicants stay in collective centres for the entire procedure, which lasted more than 6 months for many people. In 2017 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.³⁴⁷ 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.³⁴⁸

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, and according to the Court of Auditors, 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.³⁴⁹

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.³⁵⁰ Fedasil puts them into 4 categories of aid:³⁵¹

³⁴⁶ Articles 11, 22, 28 and 36 Reception Act.

³⁴⁷ Court of Auditors, *Opvang van asielzoekers*, October 2017, available in Dutch at: <http://bit.ly/2EhhMI5>, 22-23.

³⁴⁸ *Ibid*, 22-23 and 61.

³⁴⁹ *Ibid*, 61-62.

³⁵⁰ Articles 14-35 Reception Act.

³⁵¹ Fedasil, *About the Reception Centres*, available at: <http://bit.ly/1IuvC6u>.

- 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, or the legal guidance during the asylum procedure 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.³⁵²

Due to this, the quality norms for reception facilities are still not a public document, although they exist and were updated and agreed upon by all the partners of Fedasil in 2018. They contain minimum standards regarding social and legal guidance, material assistance, infrastructure, contents and safety.

In 2015 Fedasil started setting up a framework to conduct quality audits on the basis of these uniform standards. 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 was a difficult process as different partners, such as the Red Cross, have developed their own norms and standards over the years. Moreover, some partners criticised the possibility to have audits being performed by Fedasil instead of an independent authority.³⁵³

As of today, these audits are performed by Fedasil and there is still no independent and external monitoring system put in place. Fedasil conducted 10 audits in 2018, but their outcome are unknown. In 2019, 40 audits will be conducted at all levels of the reception system (both by Fedasil and partners, and both in collective and individual shelters).³⁵⁴

In October 2018, a Royal Decree was adopted to regulate the system and operating rules in reception centres as well as on the modalities for checking the rooms.³⁵⁵ This contains several general rights for the asylum seeker, such as:

- The right to a private and family life: family members should be accommodated close to each other
- The right to be treated in an equal, non-discriminatory and respectful manner
- Three meals per day provided either directly by the infrastructure or through other means
- The right to be visited by lawyers and representatives of UNHCR. These visits should take place in a separate room which allows for private conversations

In February 2017, Fedasil published the first findings of a study on the reception needs of vulnerable persons.³⁵⁶ In December 2018, the second part of the study was published (see [Special Reception Needs](#)).³⁵⁷

Due to the reduction of arrivals compared to 2015, 10,000 places have been phased out in 2016 and 2017. In 2018 the government continued to close reception centres (see Housing – Types of accommodation). In 2017, it has also decided to cut the budget of the Integration Agency (*Agentschap*

³⁵² Vluchtelingenwerk Vlaanderen, *Annual Report 2013*, available at: <http://bit.ly/1dvBxgS>, 7-8.

³⁵³ Court of Auditors, *Opvang van asielzoekers*, October 2017, 47-48.

³⁵⁴ Information provided by Fedasil, February 2019.

³⁵⁵ Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018.

³⁵⁶ Fedasil, *Syntheserapport kwetsbare personen 2016*, February 2017, available at: <http://bit.ly/2kvZyef>.

³⁵⁷ Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available in Dutch at: <https://bit.ly/2S7NtO5>.

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.³⁵⁸

The unavoidable consequence of the governmental crisis management that focuses on providing material aid – “bed, bath, bread” – and stimulating (voluntary and forced) return, is that immaterial assistance (for example 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.

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 access to the labour market of asylum seekers is regulated by the Law of 9 May 2018,³⁵⁹ and its implementing Royal Decree of 2 September 2018. Asylum seekers who have not yet received a first instance decision on their asylum case within 4 months following the lodging of their asylum application are allowed to work. By Royal Decree of 29 October 2015, the federal government reduced this period from 6 to 4 months.³⁶⁰ Until the end of 2018, asylum seekers needed a work permit C to be able to work, but since January 2019 the right to work is mentioned directly on their temporary residence permit. A separate work permit is no longer needed and asylum seekers can work in the area he or she wishes.

Moreover, asylum seekers have the right to 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. However, they are not allowed to work during the appeal procedure before the CALL if the procedure at the CGRS did not last longer than 4 months.³⁶¹ Due to the recent legal reforms, asylum seekers who do a subsequent asylum application are further not able to work until the CGRS declares the application admissible and until they receive an orange card.

³⁵⁸ 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>.

³⁵⁹ Law of 9 May 2018, Law on the occupation of foreign nationals in a particular situation of residence, available in Dutch at: <https://bit.ly/2XH2Pcb>.

³⁶⁰ 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>.

³⁶¹ Article 18, 3° and article 19, 3° Royal Decree on Foreign Workers, 2 September 2018.

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 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](#)).³⁶²

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.³⁶³

2. Access to education

Indicators: Access to Education

- | | |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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.

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 of Charleroi found that the transfer of a family to the family centre of the **Holsbeek** open

³⁶² 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).

³⁶³ Article 34 Reception Act.

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.³⁶⁴

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.³⁶⁵ 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 or stipulated in a royal decree (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?
☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
☒ Yes ☐ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
☐ Yes ☒ Limited ☐ No

The material aid an asylum seeker is entitled to includes the right to medical care necessary to live a life in human dignity.³⁶⁶ 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.³⁶⁷ In addition to the limitations foreseen in the law, Fedasil often makes other exceptions on the ground that costs are too high and/or depending on the procedural situation of the asylum seeker. For example, the latest treatment for Hepatitis C has an average cost of €90,000. It is a long treatment that loses its effects when prematurely stopped. Due to uncertainty about the decision that will be taken on the asylum application and thus if the person will be able to continue the treatment in his or her country of nationality in case of a negative decision, Fedasil often refuses to pay back these expenses even though they are on the RIZIV/INAMI list. In that case they only pay back expenses for older, cheaper treatment. This depends on the individual medical situation, the advice of the doctors, and the asylum procedure.³⁶⁸

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.

³⁶⁴ Labour Court of Charleroi, Judgment of 6 May 2014, available at: <http://bit.ly/1F5Hyqq>.

³⁶⁵ Article 35 Reception Act.

³⁶⁶ Article 23 Reception Act.

³⁶⁷ Article 24 Reception Act and Royal Decree of 9 April 2007 on Medical Assistance.

³⁶⁸ Court of Auditors, *Opvang van asielzoekers*, October 2017, 57; Myria, *Contact Meeting*, 17 October 2018, available in Dutch at: <https://bit.ly/2FNSKEW>, paras 96-101.

Collective centres and individual shelters 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 generally not allowed to visit a doctor other than the one they are referred to by the social assistant, unless they ask for an exception. A doctor, that is recruited by Fedasil, is present only in 8 centres of Fedasil. This doctor may refer asylum seekers to a specialist where necessary. Recently, Fedasil stated they will not recruit internal doctors anymore, but will favour the system of working with external doctors.³⁶⁹

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.³⁷⁰

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,³⁷¹ 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 2017.³⁷²

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.³⁷³

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.

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,. 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.³⁷⁴

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

³⁶⁹ Myria, *Contact Meeting*, 17 October 2018, available in Dutch at: <https://bit.ly/2FNSKEW>, paras 96-101.
³⁷⁰ Court of Auditors, *Opvang van asielzoekers*, October 2017, 57-58; Information provided by VVSG, February 2018.
³⁷¹ Article 45 Reception Act.
³⁷² Court of Auditors, *Opvang van asielzoekers*, October 2017, 58.
³⁷³ Articles 57 and 57ter/1 of the Organic Law of 8 July 1976 on the PCSW.
³⁷⁴ Court of Auditors, *Opvang van asielzoekers*, October 2017, 55-56.

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.³⁷⁵ This is a non-exhaustive list, but there is no other definition of vulnerability available.

1. Detection of vulnerabilities

At the Dispatching Desk of Fedasil, the specific situation of the asylum seeker (family situation, age, health, medical 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 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 (For more information see ‘D. Guarantees for vulnerable people’).

After the Dispatching Desk receives this information, they categorise the asylum seekers in order to assign the right reception place and in accordance with reception needs. To that end, they only differentiate two categories of special reception needs: medical problems - which are of importance to determine the right reception place (e.g. handicap, psychological problems, pregnancy) - and vulnerable women, for whom a collective centre is not a well-adapted place. Asylum seekers who do not fit these two categories are in general assumed to be able to be accommodated in collective centres. In practice, the categories of the Aliens Office and the Dispatching desk don’t match completely, which is why most asylum seekers are assigned to a collective centre. Only in a very few cases, mostly related to serious health problems, they will be directly assigned to individual housing provided by NGOs or LRI (see [Forms and Levels of Material Reception Conditions](#)).

In fact, the evaluation of dispatching mostly focuses on medical grounds. A medical worker of the Dispatching desk meets personally with the asylum seeker if the Aliens Office has mentioned that the person was vulnerable during the registration, if the workers of the dispatching desk notice a medical problem themselves, or if an external organisation draws attention to the specific reception needs of an asylum seeker.

In addition, Fedasil’s medical staff conducts a medical screening of every newly arrived asylum seeker in order to find an adapted reception centre.³⁷⁶ The obtained medical information is then forwarded to the assigned reception centre. As regards other vulnerabilities, they are mostly identified by social workers in the reception centres.

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.³⁷⁷ 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

³⁷⁵ Article 36(1) Reception Act.

³⁷⁶ Information provided by Fedasil, February 2018.

³⁷⁷ Article 22 Reception Act.

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, if any.³⁷⁸ 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.³⁷⁹ Since May 2018, however, Fedasil issued two instructions about transfers (see 2. Forms and levels of Material reception conditions), which is why practices may change in 2019.

In a report from February 2017, Fedasil has highlighted several barriers to identification of vulnerable persons with specific reception needs.³⁸⁰ 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).

Fedasil's end report of December 2018 concludes that there is a significant difference between the identification conducted in the very beginning of the procedure by the Aliens office and the Dispatching desk, and the one conducted once the asylum seeker is placed in an assigned reception centre. In fact, whereas the first identification is purely "categorical" (as it focuses on needs that can be detected quickly in order to assign an adapted reception place), the identification undertaken by social workers in the reception facilities is much more complex and multi-dimensional. Consequently, the second identification process diverges substantially amongst the different reception facilities, including regarding the different categories that are defined as vulnerable by the Aliens Office and the Dispatching desk.³⁸¹

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. These guidelines were created both for collective reception centres and for individual shelters.³⁸²

³⁷⁸ Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

³⁷⁹ Court of Auditors, *Opvang van asielzoekers*, October 2017, 63.

³⁸⁰ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

³⁸¹ Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available at: <https://bit.ly/2S7NtO5>, 25.

³⁸² Fedasil, *Note on the FGM trajectory in the framework of the Gamsproject, steps and tasks for implementation within federal centre*, 20 September 2017; GAMS, *Traject VGV*, available in Dutch at: <https://bit.ly/2VGZTe7>.

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;
- ❖ 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.³⁸³ Currently, there are 223 places in OCC and they are occupied at 59,52%.
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 1,089 places in collective reception centres. Due to a lack of places for adults in the second half of 2018, Fedasil started sheltering adults in the wing of the collective centres that is normally reserved to minors (up to maximum 25% of the places). Fedasil selected these adults and they usually are young adults who still go to school, or families who agreed to be sheltered in that part of the centre.³⁸⁴
3. **Individual accommodation:** Once a child - that is at least 16 years old and who is sufficiently mature - receives a positive decision, a transfer can be made to a specialised individual place.

³⁸³ Article 41 Reception Act; Royal Decree of 9 April 2007 on the centres for the orientation and observation of unaccompanied minors.

³⁸⁴ Information provided by Fedasil, February 2019.

He or she will then have 6 months to prepare for living independently and to look for his or her own place. This stay can be prolonged until the child reaches the age of 18. There are currently 318 places in individual reception facilities

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 23 of these places available by the end of 2018.

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 assistance in the collective centres in **Bovigny** (which is a residential support) and **Arendonk** (which is a project called “4myfuture” and enables unaccompanied minors to focus on their future perspectives during a one-week residency in Arendonk). These centres help them to take the right decisions for their future, e.g. regarding voluntary return and the situation in which they would be if they stay illegally.

2.2. Reception of families

There are about 70 places in 21 apartments run by Caritas in **Louvranges** (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.³⁸⁵ 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.³⁸⁶ 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

³⁸⁵ 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.

³⁸⁶ Federal Ombudsman, *Annual Report 2013*, available at: <http://bit.ly/1AZrewH>, 26-30.

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.³⁸⁷

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.³⁸⁸ 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 are now sheltered in “open return houses” organised by the Aliens Office. These houses are used as an alternative for detention for families with children as well.

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 mental issues (currently 40 places in the Croix Rouge **Carda** centre, out of which 5 are places for children). 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 about 400 “medical places” in the reception network adapted for people with specific medical needs and their family members, and for vulnerable persons such as single women with children. These includes 312 places run by Ciré, Caritas, and LRI.³⁸⁹

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](#)).³⁹⁰ The brochure “Asylum in Belgium” currently distributed is available in ten different languages³⁹¹ 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

³⁸⁷ 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>.

³⁸⁸ Council of State, Judgment No 230.947 of 23 April 2015, available in French at: <http://bit.ly/1RZgJg8>.
³⁸⁹ Information provided by Fedasil, February 2019.

³⁹⁰ Article 14 Reception Act.

³⁹¹ Dutch, French, English, Albanian, Russian, Arabic, Pashtu, Farsi, Peul and Lingala, available on the website of Fedasil and of the CGRS: <http://bit.ly/2kvQCpP>.

this should be a general document applicable in all reception facilities and regulated by Royal Decree.³⁹² In 2018 a Royal decree and a Ministerial Decree were published to this end. (See Sanctions for violating house rules).

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.³⁹³ 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

The Reception Act provides for a guaranteed access to first and second line legal assistance.³⁹⁴ 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.³⁹⁵ 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.³⁹⁶

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

³⁹² Article 19 Reception Act.

³⁹³ Article 15 Reception Act.

³⁹⁴ Article 33 Reception Act.

³⁹⁵ 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.

³⁹⁶ Article 21 Reception Act; Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018

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.³⁹⁷ 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, those asylum seekers with a nationality which has a **recognition rate above 80%** are entitled to be transferred from collective asylum centres to individual places after 2 months. (see Forms and Levels of Material Reception Conditions).

³⁹⁷ 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 2018: ³⁹⁸	n/a
2. Number of asylum seekers in detention at the end of 2018:	n/a
3. Number of detention centres:	5
4. Total capacity of detention centres:	583

A total 6,311 migrants, including asylum seekers, were detained in the course of 2016.³⁹⁹ 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%).⁴⁰⁰ This breakdown did not reflect the numbers of persons who were detained and subsequently applied for asylum. As regards 2017 and 2018, the Aliens office did not publish any statistics on the total number of detained asylum seekers. According to the Global Detention Project, 7,105 migrants were detained in 2017.⁴⁰¹

Belgium has a total of 5 detention centres, commonly referred to as “closed centres”:⁴⁰² the **127bis** repatriation centre, to which the closed family units have been attached; 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 2018, 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 by 2022.⁴⁰³

In August 2018, the government opened five family units in the **127bis** repatriation centre, as a result of which families with children are being detained again. Detention is applied where the family manifestly refuses to cooperate with the return procedure.⁴⁰⁴

While in detention, the CGRS prioritises the examination of the asylum application, although no strict time limit is foreseen.⁴⁰⁵ The appeal must be lodged within 10 days after the first instance decision.⁴⁰⁶

³⁹⁸ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

³⁹⁹ Myria, *Detentie, terugkeer en verwijdering*, November 2017, available in Dutch at: <http://bit.ly/2BUy1sq>, 21.

⁴⁰⁰ *Ibid*, 23.

⁴⁰¹ Global Detention Project, Country profile : Belgium, available at : <https://bit.ly/2xVWQoN>.

⁴⁰² For an overview, see Getting the Voice Out, ‘What are the detention centres in Belgium?’, available at: <http://bit.ly/1GxZAJd>.

⁴⁰³ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>.

⁴⁰⁴ *Ibid*, 34.

⁴⁰⁵ Article 57/6(2) Aliens Act.

⁴⁰⁶ 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 contains 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. The law states that a “foreigner cannot be maintained for the sole reason that he has submitted an application for international protection.”⁴⁰⁷

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.

In practice we see standard motivations for the detention of asylum seekers at the border, without properly taken into account their individual situation. This confirms the concerns on arbitrary detention formulated by UNHCR.

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.⁴⁰⁸

- 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

⁴⁰⁷ Article 74/5(1) Aliens Act.

⁴⁰⁸ Article 74/6(1) Aliens Act.

a specific article in the Aliens Act attributing this power to the Minister.⁴⁰⁹ With the new law this article has been withdrawn and this possibility is translated into Article 74/6(1)(4).

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.⁴¹⁰ 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,⁴¹¹ 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.⁴¹²

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.⁴¹³ 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. In practice we have seen that the third criterion is being applied but in combination with other criteria such as the first and seventh, especially for those applicants who conceal that they have applied for asylum in another Member state. We have also seen detention titles based on a combination of the criteria in paragraphs 1, 3 and 7; or 2, 4, 8 and 10; or 2, 8 and 9, etc.

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

⁴⁰⁹ Article 74/8 Aliens Act.

⁴¹⁰ Article 51/5 Aliens Act.

⁴¹¹ CJEU, Case C-528/15 *Al Chodor*, Judgment of 15 March 2017.

⁴¹² Information provided by the Aliens Office: Myria, *Contact meeting*, 21 June 2017, available at: <http://bit.ly/2BVIncU>.

⁴¹³ 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>.

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 State, including the provisions regarding the detention of an asylum applicant who is subjected to a take charge or take back request.⁴¹⁴

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 (detention on the territory) and 51/5 (detention under Dublin) of the Aliens Act refer to the need for less coercive alternative measures to be considered before imposing detention. These alternatives were supposed to be defined by Royal Decree, which has not (yet) been adopted.

For families with (minor) children, two types of less coercive measures were set up: home accommodation in the context of an agreement under Article 74/9(3), and return homes. Despite the introduction of these measures, the government resumed the detention of certain families with children since August 2018.

For detention at the border, the 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.⁴¹⁵ 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](#)).⁴¹⁶

⁴¹⁴ Court of Cassation, Decision No 9.17.1192.F, 20 December 2017.

⁴¹⁵ 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 Octobre 2017, available in French at: <http://bit.ly/2ilDJj3>.

⁴¹⁶ See also BCHV-CBAR, *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen*, January 2012, available in Dutch at: <http://bit.ly/1wNTXfc>.

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 make an asylum application at the border are explicitly excluded from detention in a closed centre and are placed in facilities adapted to their needs.⁴¹⁷ Following the ECtHR's *Kanagaratnam*,⁴¹⁸ and *Muskhadzhiyeva* judgments,⁴¹⁹ the Secretary of State decided that from 1 October 2009 onwards families with children that are arriving at the border and that are not removable within 48 hours after arrival should be accommodated in a family unit. In 2018, an increase in the number of families applying for asylum at the border in these return houses has been noted, especially families originating from Palestine, Turkey and Venezuela.

In August 2018, Belgium has opened detention facilities for families with children. 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, and/or absconded from the return homes. The closed centre for families is located next to the **127bis** repatriation centre near the Brussels National Airport. The Royal Decree of 22 July 2018 (amending the Royal Decree of 2 August 2002) establishes the rules for the functioning of the closed family units near Brussels International airport.⁴²⁰ The maximum detention period is 14 days, which can be prolonged for an additional 14 days. Before prolonging the detention the Director general has to give the minister a written report justifying the prolongation. The state of the minor and the impact of the detention on its physical and psychological integrity has to be taken into account. This evaluation, however, does not take place before taking the initial detention decision.⁴²¹

On 14 August 2018, the first family (a single mother and her four children) was detained in this centre. They were detained during 28 days - the maximum period - until September 10, before being transferred to a return home. The authorities considered that an earlier transfer was not possible because the family would have 'abused' the existing procedures, *inter alia* would have made an asylum application for one of the minor children. After it had escaped from the return home three days later, the family was detained again. On 25 September 2018, the Committee on the Rights of the Child requested a provisional measure and requested Belgium to release the family. The authorities did not take this into account and the family was set free only on 9 October 2018, which equals to more than 50 days of detention in the family units.⁴²²

⁴¹⁷ Article 74/9 Aliens Act.

⁴¹⁸ 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.

⁴¹⁹ 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.

⁴²⁰ Arrêté royal du 22 juillet 2018 | Koninklijk besluit van 22 juli 2018

⁴²¹ Article 83/11 Royal Decree of 2 August 2002, as amended by the Royal Decree of 2 August 2002

⁴²² Myria, 'Myriadoc 8: Retour, détention et éloignement, December 2018', available in French at : <https://bit.ly/2FPAo6t>, p. 43.

A second family, composed of a single mother and her 5 children – amongst whom some were born in Belgium - were detained for a period of 14 days. The detention was not prolonged, given the psychological impact that the detention had on some of the children. The family was transferred to a return house.⁴²³

From August 2018 to January 2019, a total of 19 children have been detained in the closed family units.⁴²⁴

The detention of unaccompanied children is also explicitly prohibited by law.⁴²⁵ 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.⁴²⁶ 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.⁴²⁷ 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. Myria, the Federal Migration Centre, for example, reported the detention of a woman who was 22 weeks pregnant. She was being detained with a view to conduct a Dublin transfer to Poland - a transfer that ultimately did not take place).⁴²⁸

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? | n/a ⁴²⁹ |

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.⁴³⁰ 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.

⁴²³ Myria, 'Myriadoc 8: Return, detention and deportation', December 2018, available in French at <https://bit.ly/2FPAo6t>, p. 43.

⁴²⁴ End child detention, 'The UN Committee on the rights of the child urges Belgium to put an end to the detention of children in closed centres', available in Dutch at: <https://bit.ly/2UnQpnF>.

⁴²⁵ Article 74/19 Aliens Act.

⁴²⁶ Article 40 Reception Act.

⁴²⁷ On the technicality of this legal fiction, see *inter alia* Council of State, Decision No 102.722, 21 January 2002 and No 57.831, 25 January 1996.

⁴²⁸ Myria, 'Myriadoc 8: Retour, détention et éloignement', December 2018, available in French at: <https://bit.ly/2FPAo6t>, p. 45.

⁴²⁹ However, the average duration for all detainees in 2017 was 34, 6 days. Myria, 'Myriadoc 8: Retour, détention et éloignement', December 2018, available in French at: <https://bit.ly/2FPAo6t>, p. 10.

⁴³⁰ Articles 74/5 and 74/6 Aliens Act.

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.

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.⁴³¹ However, being admitted to the territory does not automatically mean that the asylum seeker will be set free. As shown in practice, the Aliens Office can take a new detention decision based on one of the grounds set in article 74/6(1), which regulates detention on the territory.

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)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

Asylum seekers are detained in specialised facilities and are not detained with ordinary prisoners.⁴³² The Criminal Procedures Act, as well as the Aliens Act, provide for a strict separation of persons illegally entering or residing on the territory and criminal offenders or suspects.⁴³³ 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

In 2017, the overall capacity of the closed centres was of 609 places, up from 583 in 2016 and 452 in 2015. In 2017, 7,105 persons were detained in a detention centre for the first time.

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 by 2022.⁴³⁴

1.2. Return houses

As regards families with children, the family or housing units in the return homes are individual houses or apartments that are provided for a temporary stay. When they are being transferred from the border,

⁴³¹ Article 74/5(4)(4) and (5) Aliens Act, as amended by the Law of 21 November 2017.

⁴³² Article 4 Royal Decree on Closed Centres, referring to Articles 74/5 and 74/6 Aliens Act.

⁴³³ 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.

⁴³⁴ Chamber of Representatives, *Policy Note on asylum and migration*, 19 October 2017, available in Dutch and French at: <http://bit.ly/2yfDCZp>, 33.

these persons are legally-speaking not considered to have entered the territory. However in practice, although they are detained, these families enjoy a certain liberty of movement, under the control of a so-called “return coach”.⁴³⁵ Children are able to go to school and adults can go out if they get permission to do so.⁴³⁶

In 2017, there were 27 housing units with a capacity of 169 persons spread over 5 communes. In 2017, 597 persons (240 adults and 327 children) resided in these units. There were in total 171 families, of which 88 were detained at the border, 74 on the territory and 9 Dublin cases. Of these 171 families, 29% were released, and 11 families obtained a refugee status, 2 obtained the subsidiary protection and the asylum procedure of 5 families was pending.⁴³⁷

This alternative to detention has been recognised as a good practice. Nevertheless, in 2018, the government has opened family units within the closed centres with a view to reinstating detention for families, a practice that had been suspended after Belgium was convicted by the ECtHR in the past.⁴³⁸

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.⁴³⁹ 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.⁴⁴⁰

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

⁴³⁵ 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.

⁴³⁶ Royal Decree on Closed Centres, amended in October 2014.

⁴³⁷ Myria, *Detentie, terugkeer en verwijdering*, November 2018, 11.

⁴³⁸ ECtHR, *Muskhadzhiyeva v. Belgium*, Application No 41442/07, Judgment of 19 January 2010.

⁴³⁹ 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>.

⁴⁴⁰ Information provided by the Aliens Office: Myria, *Contact meeting*, 21 June 2017.

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.⁴⁴¹ The Aliens Office organises training for the security personnel at the detention centres on the use of coercion, as provided for by law.⁴⁴² 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.

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.⁴⁴³ 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.⁴⁴⁴ The asylum seekers get the opportunity to wash themselves on a daily basis and toiletries are at their disposal free of charge.⁴⁴⁵ 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.⁴⁴⁶

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.⁴⁴⁷

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.⁴⁴⁸

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.⁴⁴⁹ 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.⁴⁵⁰ Calls can be made at the asylum seekers' own expenses during daytime to an unlimited extent.⁴⁵¹

⁴⁴¹ Articles 85-111/4 Royal Decree on Closed Centres.

⁴⁴² Article 74/8 Aliens Act and Royal Decree on the Use of Coercion for Security Personnel.

⁴⁴³ Article 83 Royal Decree on Closed Centres.

⁴⁴⁴ Articles 79-80 Royal Decree on Closed Centres.

⁴⁴⁵ Article 78 Royal Decree on Closed Centres.

⁴⁴⁶ Article 76 Royal Decree on Closed Centres.

⁴⁴⁷ Article 82 Royal Decree on Closed Centres.

⁴⁴⁸ Articles 46-50 Royal Decree on Closed Centres.

⁴⁴⁹ Articles 19, 22 and 23 Royal Decree on Closed Centres.

⁴⁵⁰ Articles 20-21/2 Royal Decree on Closed Centres.

⁴⁵¹ Article 24 Royal Decree on Closed Centres.

The social service of the centre has to organise sport, cultural and recreational activities.⁴⁵² Every centre has a library at the disposal of the inhabitants and newspapers and other publication can be purchased at their own expense.⁴⁵³

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.⁴⁵⁴ The doctor attached to the centre can decide that a person has to be transferred to a specialised medical centre.⁴⁵⁵ In practice, persons detained may have difficulties in accessing and obtaining sufficient medical care, as was made clear by 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.⁴⁵⁶ 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.⁴⁵⁷ After every failed attempt of removal, the doctor has to examine the person concerned.⁴⁵⁸ 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.⁴⁵⁹

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.

⁴⁵² Articles 69-70 Royal Decree on Closed Centres.

⁴⁵³ Articles 71-72 Royal Decree on Closed Centres.

⁴⁵⁴ Article 53 Royal Decree on Closed Centres.

⁴⁵⁵ Article 54-56 Royal Decree on Closed Centres.

⁴⁵⁶ 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.

⁴⁵⁷ Article 61 Royal Decree on Closed Centres.

⁴⁵⁸ Article 61/1 Royal Decree on Closed Centres.

⁴⁵⁹ Articles 10 and 11 Royal Decree on OOC.

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- ❖ Lawyers:
- ❖ NGOs:
- ❖ UNHCR:
- ❖ Family members:

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No

Lawyers always have access to their client in detention.⁴⁶⁰ Also, UNHCR has the right to access, as do the Children's Rights Commissioner, Myria and supranational human rights institutions.⁴⁶¹ NGOs need to get permission from the Aliens Office managing director in advance to get access to the detention centres.⁴⁶² 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 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.⁴⁶³ 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.⁴⁶⁴

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.⁴⁶⁵ 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.⁴⁶⁶ 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.⁴⁶⁷

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

⁴⁶⁰ Article 64 Royal Decree on Closed Centres.

⁴⁶¹ Article 44 Royal Decree on Closed Centres.

⁴⁶² Article 45 Royal Decree on Closed Centres.

⁴⁶³ Articles 33, 42 and 43 Royal Decree on Closed Centres.

⁴⁶⁴ Articles 37 and 40 Royal Decree on Closed Centres.

⁴⁶⁵ Article 34 Royal Decree on Closed Centres.

⁴⁶⁶ Article 36 Royal Decree on Closed Centres.

⁴⁶⁷ Articles 29-30 Royal Decree on Closed Centres.

lodge a request to be released with the Council Chamber of the Criminal Court every month.⁴⁶⁸ 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.⁴⁶⁹ 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.⁴⁷⁰

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 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*.⁴⁷¹ 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.⁴⁷² The law that entered into force on 22 March 2018 states that an asylum seeker can be detained if no other less coercive alternative measures can be applied and if it is deemed necessary based on an individual assessment. These less coercive measures have not yet been listed by way of Royal Decree. This recent reform remains to be evaluated in practice.

The procedure before the courts is determined in the Law on the Provisional Custody that applies in criminal law proceedings.⁴⁷³ 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.⁴⁷⁴

⁴⁶⁸ Article 71 Aliens Act.

⁴⁶⁹ Article 72 Aliens Act.

⁴⁷⁰ Article 74 Aliens Act.

⁴⁷¹ ECtHR, *Saadi v. United Kingdom*, Application No 13229/03, Judgment of 29 January 2008.

⁴⁷² See for examples of jurisprudence and more on this issue, BCHV-CBAR, *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen*, January 2012.

⁴⁷³ Law of 20 July 1990 concerning pre-trial detention, available in French at: <http://bit.ly/1B626nE> and Dutch at: <http://bit.ly/1KpjZzR>.

⁴⁷⁴ ECtHR, *Firoz Muneer v. Belgium*; *M.D. v. Belgium*.

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.⁴⁷⁵

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” 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.⁴⁷⁶ This concern still remains valid.

E. Differential treatment of specific nationalities in detention

In 2018, the Secretary of State for Asylum and Migration announced that finding a solution for migrants in transit was one of his top priorities. This resulted in an increase of detention for so-called ‘migrants in transit’. The Secretary of state presented a nine-point plan of action, which later became a 10-point plan of action. The main purpose was to fight migrant smuggling and to discourage migrants from passing through Belgium. This resulted in regular police actions during which migrants residing near Brussels North station were apprehended and transferred to a detention centre. Médecins du Monde published a report documenting police violence against these migrants.⁴⁷⁷ The reception capacity of the 127bis detention centre was extended to that end. Many of the concerned migrants, especially Eritreans, seemed to have protection needs, but had been fingerprinted in another Member State in which they had already applied for asylum.⁴⁷⁸

⁴⁷⁵ Articles 62 and 63 Royal Decree on Closed centres.

⁴⁷⁶ The full report can be consulted in French at: <http://bit.ly/2k3PIQD>, or in Dutch at: <http://bit.ly/2klkWRY>.

⁴⁷⁷ Médecins du Monde, ‘Violences policières envers les migrants et les réfugiés en transit en Belgique’, available in French at: <https://bit.ly/2Wm3GhR>.

⁴⁷⁸ Vluchtelingenwerk Vlaanderen, “Migranten op doortocht in België – aanbevelingen voor een meer menselijke aanpak”, January 2019, available in Dutch at: <https://bit.ly/2TjA5I7>.

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

The duration of the right to residence for recognised **refugees** is 5 years.⁴⁷⁹ 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.⁴⁸⁰ 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 (upon which the CGRS is asked for an examination), 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.⁴⁸¹ 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.⁴⁸²

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 15.⁴⁸³

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.

⁴⁷⁹ Article 49 Aliens Act.
⁴⁸⁰ Article 76 Aliens Decree.
⁴⁸¹ Article 49/2(2)(3) Aliens Act.
⁴⁸² Article 77 Aliens Decree.
⁴⁸³ 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.⁴⁸⁴

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

⁴⁸⁴ 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>.

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.

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 2018: n/a

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.⁴⁸⁵ 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 2019 the required amount was set at 843 € per month, plus 281 € per dependent person.⁴⁸⁶
- ❖ 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.⁴⁸⁷ The municipal authorities confirm this by issuing a certificate of receipt (“Annex 16-bis”).⁴⁸⁸ 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

⁴⁸⁵ 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.

⁴⁸⁶ More info available at: <http://bit.ly/2jAyqvU>.

⁴⁸⁷ Article 29(1) Aliens Decree.

⁴⁸⁸ Article 29(2) Aliens Decree.

residence permit for long-term residents.⁴⁸⁹ The duration of validity of long-term residence status is unlimited, contrary to the residence card D itself.⁴⁹⁰

In the event of a refusal, the municipal authorities will notify the applicant with a so-called Annex 17.⁴⁹¹ 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.

4. Naturalisation

Indicators: Naturalisation

- | | |
|---|-----------------------|
| 1. What is the waiting period for obtaining citizenship? | 5 years |
| 2. Number of citizenship grants to beneficiaries in 2017: | 37,468 ⁴⁹² |

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:⁴⁹³

- ❖ 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.⁴⁹⁴ Legal stay implies a right to residence of unlimited duration.⁴⁹⁵

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.⁴⁹⁶

4.2. Declaration of nationality

⁴⁸⁹ Article 30(2) Aliens Decree.

⁴⁹⁰ Article 18(1) Aliens Act.

⁴⁹¹ Article 30(1) Aliens Decree.

⁴⁹² Myria, Annual Report 2018, available in Dutch at: <https://bit.ly/2GeUyWU>, Chapter nationality, p. 150.

⁴⁹³ Article 19 Code of Belgian Nationality and Circular of 8 March 2013, published on 14 March 2013, available at: <http://bit.ly/2klqOL2>.

⁴⁹⁴ 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.

⁴⁹⁵ Article 7-bis(2)(1) Code of Belgian Nationality.

⁴⁹⁶ Article 19(2) Code of Belgian 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;⁴⁹⁷
- ❖ 10 years of legal stay.⁴⁹⁸

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.⁴⁹⁹

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 2013.⁵⁰⁰ 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.⁵⁰¹ *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 2013.⁵⁰² Specific details on the documents available to prove social integration, knowledge of languages and economic participation are provided for in the March 2013 Circular.⁵⁰³

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

⁴⁹⁷ Article 12-bis(1)(2) Code of Belgian Nationality.

⁴⁹⁸ Article 12-bis(2)(5) Code of Belgian Nationality.

⁴⁹⁹ Article 7-bis(2)(1) Code of Belgian Nationality.

⁵⁰⁰ 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.

⁵⁰¹ Court of Appeal Ghent, 2014/AR/1095, 24 December 2015.

⁵⁰² 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).

⁵⁰³ Circular of 8 March 2013, para IV A(1)(1.2).

Circular of 2013 specifies that “receiving society” cannot be interpreted as meaning the society of people of the same origin as the applicant.⁵⁰⁴ 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

⁵⁰⁴ Circular of 8 March 2013, para IV A(1)(1.1)(4).

after advice from the general prosecutor and the applicant will be heard. In the event of a positive decision 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.⁵⁰⁵

5. Cessation and review of protection status⁵⁰⁶

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 falls 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.⁵⁰⁷ The CGRS can also decide this *ex officio*. There is no time limit in this situation. The possibility of cessation of the refugee status was included in the Aliens Act after a legislative amendment in 2016.⁵⁰⁸ 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.⁵⁰⁹

Travelling back to the country of origin can lead to the cessation of the refugee status. The government strongly focuses on the control of refugees who travel to their country of origin. For this purpose, it has, among other things, created a procedure to detect such travellers together with the Federal Police at the airport. Belgium has also concluded agreements with a number of neighbouring countries, such as the Netherlands and Germany, in order to exchange information about the travel behaviours of refugees to their country of origin.⁵¹⁰

Regarding the **cessation of the subsidiary protection**, it is regulated 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. As ruled by the CALL, the

⁵⁰⁵ Law of 28 April 2015 changing registration, mortgage and registrar fees in order to reform registrar rights, 26 May 2015, 2015003178.

⁵⁰⁶ For a detailed overview, see P. Baeyens en M. Claes 'Uitsluiting, weigering, opheffing en intrekking van de internationale beschermingsstatus, met focus op gevaar voor de samenleving en de nationale veiligheid', Tijdschrift Vreemdelingenrecht, 2018, Nr. 2.

⁵⁰⁷ Article 49(1) Aliens Act.

⁵⁰⁸ Article 49(2) Aliens Act.

⁵⁰⁹ Article 11(3)(1) Aliens Act.

⁵¹⁰ Commissie voor de Binnenlandse Zaken, de Algemene Zaken en het Openbaar Ambt, Integraal verslag, 5 December 2017, 13, CRIV 54 COM 774.

authorities have to check whether the change in circumstances is “sufficiently significant” and of a “non-temporary” nature – otherwise the decision of the CGRS will be declared void.⁵¹¹

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, when subsidiary protection is granted on the basis of Article 15(c) of the recast Qualification Directive.⁵¹² However, in the case of subsidiary protection, travelling or even returning to the country of origin may also lead to the cessation of the protection status, as it could imply that the circumstances and the overall situation have evolved positively there. A return to the country of origin can also indicate that there are flight alternatives and therefore lead to the removal of the subsidiary protection status. In fact, the CALL confirmed the cessation of the subsidiary protection of an Afghan national who turned back to Kabul for two months right after having received its status. The fact that he turned back demonstrated that there were flight opportunities that were safe and that the overall circumstances, on which the protection was granted, changed.⁵¹³

Cessation of status is possible during the 5 years of temporary residence as provided for in Article 49/2 of the Aliens Act.⁵¹⁴ 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 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.⁵¹⁵ The CGRS can also decide this *ex officio* and there is no time limit in such a situation.

The CGRS always informs the beneficiary of the reasons for reinvestigating 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.⁵¹⁶

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.⁵¹⁷ 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.⁵¹⁸ However, there have been some discussions about the status of Palestinians originating from Gaza. The new appointed Minister for Asylum and Migration stated that she would ask the CGRS to reconsider their status, to which the CGRS stated (in the press) that it was not a priority.

⁵¹¹ CALL, 24 February 2017, No 182.917; CALL, 13 September 2017, No 191.961; CALL 13 September 2017, No 191.956.

⁵¹² Myria, *Contact meeting*, 22 November 2017, para 23.

⁵¹³ CALL, 27 October 2017, No 194.465.

⁵¹⁴ Article 49/2(3) Aliens Act.

⁵¹⁵ Article 11(3)(1) Aliens Act.

⁵¹⁶ Article 35/2 Royal Decree on CGRS Procedure.

⁵¹⁷ Article 11(3)(1) Aliens Act.

⁵¹⁸ Myria, *Contact meeting*, 20 September 2017, para 22.

In 2018, the CGRS took 58 cessation decisions.⁵¹⁹ In 22 cases it concerned the cessation of the refugee status: Turkey (5), Afghanistan (3), DRC (2), Russian Federation (2), Rwanda (2), other (8). In 36 cases, it concerned the cessation of subsidiary protection: Afghanistan (21), Iraq (15).

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.⁵²⁰ The exclusion clause refers to Articles 1 D, E and F of the 1951 Convention.⁵²¹

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. In case of withdrawal based on fraud, the CALL confirmed that the facts that have been misrepresented or withheld or false must be strictly interpreted - meaning that they must have been decisive for the granting of refugee status. In other words, it is only if the protection would not have been granted without the fraud that it can be withdrawn.⁵²²

There is an active exchange of information between the various government agencies. For example, the exchange of information about an application for family reunification of family members in the country of origin may lead to a withdrawal of the refugee status of an LGBTI person, if after a re-examination it is established that it is no longer possible to add credibility to the sexual orientation.

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 security.⁵²³ This ground for revocation was added in 2015 and is not limited in time.⁵²⁴ 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.⁵²⁵

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 CGRS can revoke the subsidiary protection status during the first 10 years of residence when

⁵¹⁹ Information provided by the CGRS, February 2019.

⁵²⁰ Article 55/3/1(2) Aliens Act.

⁵²¹ Article 55/2 Aliens Act.

⁵²² CALL, 11 March 2016, No 163.942.

⁵²³ Article 55/3/1(1) in conjunction with Article 49(2) Aliens Act.

⁵²⁴ 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.

⁵²⁵ Myria, *Contact meeting*, 20 September 2017, para 24.

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.⁵²⁶ This ground for revocation was only included in 2015 and is not limited in time.⁵²⁷

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.⁵²⁸ The subsidiary protection status can also be revoked anytime when the beneficiary is considered to be a threat for society or national security.⁵²⁹ 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.⁵³⁰ 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.

The jurisprudence shows that the most cases in which the protection status was withdrawn were initiated by the Secretary of State for Asylum and Migration.⁵³¹

The CALL has considered crimes ranging from supporting terrorist activities, piracy, murder, attempted manslaughter, rape, to theft with violence or threat as a particularly serious crime. Even crimes that were committed years ago can prove a danger to society according to the CALL. In the context of demonstrating if the danger is still present, the steps taken to rehabilitation and reintegration often do not detract from the observation that the fact that a person was convicted of a particularly serious crime is sufficient to demonstrate the danger to society. The risk of recidivism plays a role in the assessment of the CALL in certain cases, but it does not seem to be a necessary element.

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

⁵²⁶ Article 55/5/1(1) Aliens Act.

⁵²⁷ Article 10 Law of 10 August 2015.

⁵²⁸ The crimes listed in Article 55/4(1) Aliens Act are also known as the 'exclusion clause' 1F of the 1951 Refugee Convention.

⁵²⁹ Article 55/4(2) Aliens Act.

⁵³⁰ Article 55/5/1(2)(2) Aliens Act.

⁵³¹ RvV, 13 September 2017, No 191.962; RvV 27 April 2017, No 186.175; RvV, 27 February 2017, No 183.042; RvV, 13 January 2017, No 180.745; RvV, 12 January 2017, No 180.693; RvV, 16 November 2016, No 177.764; RvV, 27 October 2016, No 177.066; RvV, 20 October 2016, No 176.596; RvV, 20 October 2016, No 176.586; RvV, 1 September 2016, No 173.955; RvV, 1 September 2016, No 173.954; RvV, 17 May 2016, No 167.716; RvV, 1 September 2016, No 173.904; RvV, 2 September 2016, No 174.006; RvV, 27 October 2016, No 177.066; RvV, 13 January 2017, No 180.745.

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.

In 2018, the CGRS withdrew protection status in 207 cases.⁵³² For 133 cases the refugee status was being revoked: Iraq (32), Afghanistan (17), Russian Federation (12), DRC (10), Guinee (10), other (52). For 74 cases the status of subsidiary protection was being revoked: Iraq (34), Afghanistan (31), Syria (4), Somalia (2), other (3).

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.⁵³³ The legal basis for family reunification is Article 10 of the Aliens Act.

In 2018, UNHCR and the Federal Migration Centre (Myria) published a report stating the main obstacles that beneficiaries of international protection currently face in the context of family reunification.⁵³⁴

1.1. Eligible family members

Four categories of persons may join a beneficiary in Belgium.

- ❖ A spouse, equalled partner,⁵³⁵ or registered partner;
- ❖ An underage and unmarried 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.⁵³⁶ 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

⁵³² Information provided by the CGRS, February 2019.

⁵³³ 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>.

⁵³⁴ UNHCR and Myria, 'Le regroupement familial des bénéficiaires d'une protection internationale en Belgique', June 2018, available in French at: <https://bit.ly/2GdKJIF>.

⁵³⁵ 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.

⁵³⁶ Article 10(1)(4) Aliens Act.

beneficiary in Belgium. Polygamous marriages are excluded, only one of the wives can join the beneficiary.⁵³⁷ 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.⁵³⁸

The conditions for a registered partner are largely similar but require proof of a “stable and lasting” relationship.⁵³⁹ 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 the family reunification mechanism.⁵⁴⁰ Until April 2018, family reunification with an unaccompanied minor was only possible when he or she was recognised as a refugee or was granted the subsidiary protection.⁵⁴¹ Moreover, the family reunification with the parents (and/or the minor siblings) had to intervene before the unaccompanied minor turned 18.

However, since the CJEU ruled in Case C-550/16 (*A and S v Staatssecretaris van Veiligheid en Justitie*)⁵⁴² that the date of introduction of the asylum application of the unaccompanied minor is decisive for the right to family reunification, the Aliens Office has adapted its practice and allows the benefit of family reunification even if the unaccompanied minors turned 18 during the asylum procedure. The parents must however apply for family reunification within 3 months after having obtained the protection status. The Aliens Office extended this practice to beneficiaries of subsidiary protection.⁵⁴³

To establish family ties, Belgian law foresees a cascade system.⁵⁴⁴ 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 applicants 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 not functioning authorities or authorities that no longer exist. If this inability is established, the Aliens Office can take

⁵³⁷ Children from a polygamous marriage are not excluded if they meet the general conditions: Constitutional Court, Decision No 95/2008, 26 June 2008.

⁵³⁸ Articles 11(2) and 12-bis Aliens Act.

⁵³⁹ Article 10(1)(5) Aliens Act.

⁵⁴⁰ Article 10(1)(7) Aliens Act.

⁵⁴¹ Art. 10 of the Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens.

⁵⁴² CJEU, Case C-550/16, *A and S v Staatssecretaris van Veiligheid en Justitie*, 12 April 2018

⁵⁴³ Myria, *Contact meeting*, 16 May 2018, , available at: www.myria.be, para. 6-9.

⁵⁴⁴ Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, Belgian Official Gazette, 2 July 2009.

other valid proof into account.⁵⁴⁵ In the absence of other valid proof, the Belgian authorities may conduct interviews or any other inquiry deemed necessary, such as a DNA test.⁵⁴⁶ In practice the Aliens Office makes little use of this cascade system and will often require the expensive DNA-testing.⁵⁴⁷

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.⁵⁴⁸

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.

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 addition 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

⁵⁴⁵ Article 12-bis(5) Aliens Act.

⁵⁴⁶ Article 12-bis(6) Aliens Act.

⁵⁴⁷ UNHCR and Myria, 'Gezinshereniging van begunstigden van internationale bescherming in België: vaststellingen en aanbevelingen', June 2018, available in Dutch at: www.myria.be, p.19.

⁵⁴⁸ Constitutional Court, Decision No 95/2008 of 26 June 2008.

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.⁵⁴⁹ 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.⁵⁵⁰ 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.

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.⁵⁵¹ 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.

⁵⁴⁹ 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.

⁵⁵⁰ Article 13(3) Aliens Act.

⁵⁵¹ Articles 375, 398-400, 402, 403 and 405 Penal Code.

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 becomes of age, the Aliens Office will investigate the personal situation of the applicant and may still prolong the duration of the right to residence.⁵⁵²

Resources are considered sufficient when they are 120% of the living wage of the category 'person with a dependent family'.⁵⁵³ Currently this amounts to 1505.78 € 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.⁵⁵⁴ 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 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.⁵⁵⁵ 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.⁵⁵⁶ 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.⁵⁵⁷

⁵⁵² 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.

⁵⁵³ Article 10(5) Aliens Act.

⁵⁵⁴ Constitutional Court, Decision No 121/2013, 26 September 2013.

⁵⁵⁵ Article 12-bis(2) Aliens Act.

⁵⁵⁶ Reference Point Migration-Integration, *Monitoring movements*, October 2016, available in Dutch at: <http://bit.ly/2kWCldt>.

⁵⁵⁷ De Standaard, 'Vluchtelingen vluchten weg uit Wallonië', 3 November 2016, available in Dutch at: <http://bit.ly/2jx04dh>.

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.⁵⁵⁸

2. Travel documents

Belgium issues travel documents for both refugees and beneficiaries of subsidiary protection.⁵⁵⁹ The duration of validity of both documents is 2 years.⁵⁶⁰ 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”.⁵⁶¹ 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).

Subsidiary protection

The overall principle has always been that the beneficiary of subsidiary protection could not automatically obtain travel documents from the CGRS. Instead, they should contact the relevant national authorities. As regards the risks of putting their protection status into question because they contacted their national authorities, the CGRS confirmed that they had obtained the protection under article 15 (c) of the Qualification Directive and were therefore allowed to contact their national authorities to obtain travel documents.⁵⁶²

Travel documents for beneficiaries of subsidiary protection are issued only if beneficiaries are unable to obtain one from their national authorities.⁵⁶³ 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.

⁵⁵⁸ 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>.

⁵⁵⁹ Article 57(3) Consular Code.

⁵⁶⁰ Circular on travel documents for non-Belgians, 7 September 2016.

⁵⁶¹ CGRS, ‘You are recognised as a refugee in Belgium’, January 2018, available at: <http://bit.ly/2BjIRbd>.

⁵⁶² Myria, *Contact Meeting*, 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 15-16.

⁵⁶³ CGRS, ‘You are eligible for subsidiary protection in Belgium’, November 2017, available at: <http://bit.ly/2n2fFBj>.

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: Tibetans and persons of Palestinian origin do not have to submit such a certificate.⁵⁶⁴

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 2018 | 4,9% ⁵⁶⁵ |

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.⁵⁶⁶

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', as 1 out of 5 recognised refugees has to extend his or her stay in the collective centres due to a lack of available housing.⁵⁶⁷ There is not only a shortage in social housing, but there is also a general shortage of qualitative and affordable housing for vulnerable groups. Discrimination also plays an important role in the difficulties that beneficiaries of international protection experience in finding affordable housing.⁵⁶⁸

Several civil society organisations and many volunteering groups offer support to refugees and beneficiaries of subsidiary protection in search of a place to stay.

⁵⁶⁴ For more information: Foreign Affairs Office, 'Titre de voyage pour réfugié, apatride ou étranger', available in French at : <https://bit.ly/2UzuQQW>.

⁵⁶⁵ Myria, *Contact meeting*, 16 January 2019, available at: <https://bit.ly/2HeyRXu>.

⁵⁶⁶ 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.

⁵⁶⁷ De Standaard, 'Deze wooncrisis kan je alleen oplossen met crisismanagement', 22 September 2016, available at: <http://bit.ly/2jZI4EE>.

⁵⁶⁸ To find more information on the housing issue (and recommendations) please consult: 'Vluchtelingenwerk Vlaanderen, 'Mensen voorop: de weg naar een echt asielbeleid. Voorstellen voor de verkiezingen 2019: Vlaams-Federaal-Europees, November 2018, available in Dutch at: <https://bit.ly/2MNTL0o>, p 30.

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.⁵⁶⁹ They are equally exempt from a professional card.⁵⁷⁰ 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.

Up until recently beneficiaries of subsidiary protection were required a work permit C if they wanted to work as an employee during their first 5 years of limited right to residence. However, since 3 January 2019 - and following a (late) transposition of the Single Permit Directive - the procedure for obtaining working permits has changed and the work permit C has been abolished. Those who were previously eligible for a work permit C have *de iure* a right to work, based on their temporary residence permit. As a transitional provision, work permit C's that have been delivered remain valid until their expiration date.

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.⁵⁷¹ 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;
- ❖ 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 is 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.

⁵⁶⁹ 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.

⁵⁷⁰ Article 1(4) Royal Decree on the professional card.

⁵⁷¹ 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.

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.⁵⁷² 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 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.⁵⁷³ To be registered as a spouse both the marriage certificate and proof of living together have to be provided.⁵⁷⁴ 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.⁵⁷⁵ 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.⁵⁷⁶

⁵⁷² Article 32 Law of 14 July 1994 on insurance for medical care and benefits, 27 August 1994, 1994071451, 21524.

⁵⁷³ Article 123 Royal Decree of 3 July 1996 implementing the Law of 14 July 1994 on insurance for medical care and benefits, 1996022344, 20285.

⁵⁷⁴ Article 124(3) Royal Decree 1996.

⁵⁷⁵ Article 123(3) Royal Decree 1996.

⁵⁷⁶ 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 3 September 2015 21 November 2017	Law of 8 May 2013 amending the Aliens Act Law of 10 August 2015 amending the Aliens Act Law of 21 November 2017 amending the Aliens Act	http://bit.ly/1GmsxXT (FR)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	21 November 2017 17 December 2017	Law of 21 November 2017 amending the Aliens Act Law of 17 December 2017 amending the Aliens Act	http://bit.ly/2FEqrZU (FR) http://bit.ly/1GmsxXT (FR)
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)