

Country Report: Belgium



2019
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 are also present at the entrance of 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.

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 Immigration 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 2019, 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 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) 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 Immigration 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 Nansen vzw, JRS Belgium, 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 Immigration Office
Fedasil	Federal Agency for the Reception of Asylum Seekers
FGM	Female genital mutilation
INAD	Centre for Inadmissible Passengers
Inadmissible application	Negative decision of the CGRS declaring an application inadmissible
KCE	Federal Knowledge Centre for Health Care
LGBTI	Lesbian, gay, bisexual, transsexual and intersex
LRI	Local reception initiative initiative locale d'accueil (ILA) lokaal opvang initiatief (LOI)
NANSEN Vzw	Belgian non-profit organisation created in 2017 assisting 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 invaliditeitsverzekering

VVSG

Association of Flemish Cities and Towns | Vlaamse Vereniging voor Steden en Gemeente

Overview of relevant documents during the asylum procedure

Annex 26	<p>This document is proof of the registration of the asylum application at the Immigration Office. The applicant for international protection should present himself/herself to the local commune with this document and register for an orange card (<i>'attestation d'immatriculation'</i>). If the applicant is accommodated at a reception centre, the competent commune is the one that is closest to the reception centre.</p> <p>The handwritten dates on the Annex 26 refer to the dates on which the applicants must present themselves to the Immigration Office (e.g. for interviews). An example of the Annex 26 is available here.</p>
Annex 25	<p>If a person applies for asylum at the border while being in detention, he/she will receive an Annex 25. This document does not grant access to the Belgian territory. It only serves as a proof of the application for international protection. An example of the Annex 25 is available here.</p>
Annex 26 quinquies	<p>This document indicates that a person has registered for a second (or more) asylum application. It covers the legal stay in Belgium until the Commissioner General for refugees and stateless persons (CGRS) has taken a decision. An example of the Annex 26 quinquies is available here.</p>
Annex 26 quater	<p>This is a document issued by the Immigration Office, which states that Belgium is not responsible for the examination of the asylum claim, based on the Dublin III regulation. The reason should be clearly explained in the document. The document refers to the other member state that needs to examine the application for international protection. This decision can be appealed within 30 days.</p> <p>This decision entails an order to leave the country. The person will also receive an Annex 10bis. This is a pass (<i>'laissez-passer'</i>) that indicates when and where they will have to present themselves to the asylum authorities of the other member state. An example of the Annex 26 quinquies is available here.</p>
Orange card (<i>'attestation d'immatriculation'</i>)	<p>An orange card is a temporary residence permit that certifies that the applicant is 'in procedure'. Asylum applicants can obtain this card at the local commune as soon as they have received an Annex 26. It is valid for four months and extendable for an additional four months up to five times. After this, it can be extended only on a monthly basis.</p>
Electronic A-card	<p>The A-card is a residence permit that is, amongst others, granted to beneficiaries of international protection. If the applicant receives a refugee status, he/she will receive an electronic identity card, type A, that is valid for 5 years. If he/she is granted subsidiary protection status, he/she receives a residence permit in the form of an A-card for a period of one year. The municipality may then renew it each time for a period of two years.</p>
Electronic B-card	<p>The B-card is a residence permit that is, amongst others provided to beneficiaries of protection upon expiry of the A-card, i.e. after 5 years. The B-card is valid indefinitely.</p>

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: 2019

	Applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	27,742	13,089	5,776	943	10,476	31.4%	5.5%	63.1%
Breakdown by 10 countries of origin								
Afghanistan	3,400	976	343	331	1,417	16.4%	15.8%	67.8%
Syria	3,138	1,559	1,348	293	850	54.1%	11.7%	34.2%
Palestine	2,407	1,865	172	1	610	22%	0.1%	77.9%
Iraq	1,475	612	368	123	1,211	21.6%	7.2%	71.2%
El Salvador	1,369	805	117	3	43	71.8%	1.8%	26.4%
Eritrea	1,187	423	379	0	115	76.3%	0%	23.7%
Turkey	1,077	417	658	2	284	69.8%	0.2%	30%
Guinee	983	898	204	4	537	27.3%	0.5%	72.2%
Somalia	945	375	165	37	308	32.3%	7.2%	60.5%
Iran	776	390	294	0	100	74.6%	0%	25.4%

Source: CGRS. The figures provided in the first row on total decisions refer to *persons* (not to cases), while the total rates refer to the number of cases (not persons). These decisions were taken by the CGRS in 2019, irrespective of the year of submission of the asylum application. The figures provided in the other rows, i.e. the breakdown by 10 countries of origin, also refer to *persons* (not to cases). Rejection includes inadmissibility decisions

In terms of number of cases however the number of decisions provided by the CGRS is as follows: 4,350 refugee status, 767 subsidiary protection, and 8,748 rejections.³ The protection rate is the proportion of cases (one case can include several persons) for which the CGRS granted refugee status or subsidiary protection

¹ CGRS, *Figures*, available in French at: <https://bit.ly/36mFWOs>.

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

³ CGRS, *Figures 2019*, available in French at : <http://bit.ly/2WkgNCP>, 6.

status in relation to the total number of cases in which a final decision was taken (= the total number of decisions - interim decisions) - withdrawals & cessations. In 2019, the CGRS took 4,747 inadmissibility decisions, which concerned 3,995 files (this includes 5 subcategories: subsequent applications, international protection in another EU Member State, accompanied minor making his/her own request for international protection, first country of asylum and nationals of EU Member states). A breakdown per subcategory and per country is not available.

The higher proportion of inadmissibility decisions for subsequent applicants (mainly Afghans and Iraqis) and especially for applicants who already benefit from protection in another Member State (mainly Syrians, Palestinians, Iraqis and Afghans) are the main reason for the decrease of the protection rate. When these cases are not taken into consideration, the protection rate is at 50.5%.⁴

Gender/age breakdown of the total number of applicants: 2019

	Number	Percentage
Total number of applicants	27,742	100%
Men (incl. male children)	13,821	49.8 %
Women (incl. female children)	6,001	21.6 %
Children (incl. unaccompanied children)	6,700	24.2%
Unaccompanied children	1,220	4.4 %

Source: CGRS

Comparison between first instance and appeal decision rates: 2019

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	18,544	100%	4,867	100%
Positive decisions	6,719	36.2%	344	7.07 %
<i>Refugee status</i>	5,776	31.1%	280	5.75 %
<i>Subsidiary protection</i>	943	5.1%	64	1.31 %
Protection status revoked or ended	249	1.3%	:	:

⁴ CGRS, *Figures*, available at: <https://bit.ly/36mFWOs>.

Intermediary decisions	1,100	5.9 %	:	:
Negative decisions	10,476	56.5 %	4,007	82.33 %
Annulments	:	:	516	10.6 %

Source: CGRS, CALL. The percentage at first instance is calculated on the total number of decisions, which also includes intermediary decisions as well as cessations and revocations.

Overview of the legal framework

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

Title (EN)	Original Title (FR/NL)	Abbreviation	Web Link
<p>Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens</p> <p><i>Amended by:</i> Law of 21 November 2017 <i>Amended by:</i> Law of 17 December 2017</p>	<p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</p> <p>Loi du 21 novembre 2017 Wet van 21 november 2017 Loi du 17 décembre 2017 Wet van 17 december 2017</p>	Aliens Act	<p>http://bit.ly/1lg1MCC (FR) http://bit.ly/1GmqyU0 (NL)</p> <p>http://bit.ly/2FEqrZU (FR) http://bit.ly/1GmsxXT (FR)</p>
<p>Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens</p> <p><i>Amended by:</i> Law of 21 November 2017</p>	<p>Loi de 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers Wet van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen</p> <p>Loi du 21 novembre 2017 Wet van 21 november 2017</p>	Reception Act	<p>http://bit.ly/1MA7uD0 (FR) http://bit.ly/1MKITbo (NL)</p> <p>http://bit.ly/2FEqrZU (FR)</p>
<p>Law of 30 April 1999 concerning employment of foreign workers</p>	<p>Loi de 30 avril 1999 relative à l'occupation des travailleurs étrangers Wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers</p>	Law on Foreign Workers	<p>http://bit.ly/1MHzmTK (FR) http://bit.ly/1FQUuRV (NL)</p>

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

Title (EN)	Original Title (FR/NL)	Abbreviation	Web Link
<p>Royal Decree of 8 October 1981 regarding the entry on the territory, residence, settlement and removal of aliens</p>	<p>Arrêté royal du 8 octobre 1981 concernant l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers Koninklijk Besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en verwijdering van vreemdelingen</p>	Aliens Decree	http://bit.ly/1IkJsLv (FR)

Royal Decree of 11 July 2003 determining certain elements of the procedure to be followed by the Immigration Office charged with the examination of asylum applications on the basis of the Law of 15 December 1980	<p>Arrêté royal du 11 juillet 2003 fixant certains éléments de la procédure à suivre par le service de l'Office des étrangers chargé de l'examen des demandes d'asile sur la base de la loi du 15 décembre 1980</p> <p>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</p>	Royal Decree on Immigration Office Asylum Procedure	http://bit.ly/1KOyLBu (NL)
<p>Royal Decree of 11 July 2003 determining the procedure and functioning of the Office of the Commissioner General for Refugees and Stateless persons</p> <p><i>Amended by:</i> Royal Decree of 27 June 2018</p>	<p>Arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux Réfugiés et aux Apatrides ainsi que son fonctionnement</p> <p>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</p> <p>Arrêté royal de 27 juin 2018</p> <p>Koninklijk besluit van 27 juni 2018</p>	Royal Decree on CGRS Procedure	<p>http://bit.ly/1FYKWaB (FR)</p> <p>http://bit.ly/1Jo26lJ (NL)</p> <p>https://bit.ly/2WhfNwS (FR)</p> <p>https://bit.ly/2Ten2U4 (NL)</p>
Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation	<p>Arrêté royal du 21 décembre 2006 fixant la procédure devant le Conseil du Contentieux des Etrangers</p> <p>Koninklijk besluit van 21 december 2006 houdende de rechtspleging voor de Raad voor Vreemdelingenbetwistingen</p>	Royal Decree on CALL Procedure	<p>http://bit.ly/1VtXdcg (FR)</p> <p>http://bit.ly/1VtXhJ3 (NL)</p>
<p>Royal Decree of 9 June 1999 implementing the law of 30 April 1999 regarding the employment of foreign workers</p> <p><i>Amended by:</i> Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers</p>	<p>Arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers</p> <p>Koninklijk besluit van 9 juni 1999 houdende de uitvoering van de wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers</p> <p>Arrêté royal du 29 octobre 2015 modifiant l'article 17 de l'arrêté royal du 9 juin 1999</p>	Royal Decree on Foreign Workers	<p>http://bit.ly/1Q9rEXZ (NL)</p> <p>http://bit.ly/1MYS23l (FR)</p>
Royal Decree of 12 January 2011 on the granting of material assistance to asylum seekers receiving income from employment related activity	<p>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</p>	Royal Decree on Material Assistance to	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	Asylum Seekers	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/1TatQ0r (NL)
Royal Decree of 2 August 2002 determining the regime and regulations to be applied in the places on the Belgian territory managed by the Immigration 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/1luWwLu (FR) http://bit.ly/1cLmdvV (NL)
Royal Decree of 18 December 2003 establishing the conditions for second line legal assistance and legal aid fully or partially free of charge	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/1AO5I3i (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,	Royal Decree on Safe	https://bit.ly/2XAvXlr (FR)

	<p>l'établissement et l'éloignement des étrangers, établissant la liste des pays d'origine sûrs</p> <p>Koninklijk besluit tot uitvoering van het artikel 57/6/1, vierde lid, van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, houdende de vastlegging van de lijst van veilige landen van herkomst</p>	Countries of Origin	https://bit.ly/2XFXPob (NL)
Royal Decree of 2 September 2018 establishing the rules and regime for reception centres 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	https://bit.ly/2BZbL3F (FR) https://bit.ly/2ENzJAz (NL)

Overview of the main changes since the previous report update

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

Covid 19 related measures

Please note that this report has largely been written prior to the outbreak of COVID-19 in Belgium. Subsequently measures have been taken to limit access to the asylum procedure for newly arrived asylum seekers. These measures do not figure in this AIDA report. This box presents some of the main measures.

On 3 April 2020 the following measures were being applied:

- ❖ **Access to the procedure:** On 17 March 2020, the Belgian Immigration Office closed the arrival centre for newly arriving asylum seekers. The access to the asylum procedure is thus temporarily suspended. On 3 April 2020 the Immigration Office announced that all applicants that want to register a demand for international protection are obliged to make an appointment at the Registration Center by using an online form.⁵ An e-mail will be sent to the applicant with a confirmation of the date and the time of the appointment.
- ❖ **Reception conditions:** Following the closure of the arrival centres for newly arriving asylum seekers, the access to reception conditions was also suspended. The Immigration Office admitted that no measures have been taken to prevent a situation in which asylum-seekers with no housing arrangements would end up homeless and destitute. Since 3 April 2020 applicants can register online in order to obtain an appointment. A reception place will be assigned following the appointment. The authorities communicated that priority will be given to vulnerable persons, e.g. families with children, unaccompanied minors, and persons with medical problems.⁶
- ❖ **Examination of applications for international protection:** No personal interviews are taking place at the CGRS for the time being. Personal interviews in closed centres only take place by means of videoconference if there are sufficient guarantees that rules of social distancing will be observed in the interview room at the centre. However, the CGRS keeps working so decisions in pending cases are still being taken and civil status certificates are still being delivered.⁷
- ❖ **Dublin procedure:** a third-country national who is prevented from leaving Belgium for reasons of force majeure (quarantine, flight cancellation, border closure, etc.) may request authorization to extend his/her stay.⁸ Dublin decisions (annex 26quater) are still being issued but Dublin-transfers are *de facto* suspended.

Political context

On 26 May 2019, regional, federal and European elections took place in Belgium. As a result, the anti-immigrant party Vlaams Belang gained a significant number of votes, thus further posing risks to the

⁵ Immigration Office, Application for International protection: obligation to make an appointment at the Registration center 'Klein Kasteeltje', 3 April 2020, available at: <https://bit.ly/2xL5AB3>.

⁶ Der Standaard, *Klein Kasteeltje opens again, on appointment*, 3 April 2020, available at: <https://bit.ly/2Vpl70v>.

⁷ CGRS, *Work of the CGRS during the corona crisis*, 25 March 2020, available at: <https://bit.ly/345Wmv2>.
CGRS, FAQ Corona, 27 March 2020, available at: <https://bit.ly/3bP0pyM>.

⁸ Immigration Office, Application for International protection: obligation to make an appointment at the Registration center 'Klein Kasteeltje', 3 April 2020, available at: <https://bit.ly/2xL5AB3>.

(basic) human rights of migrants. At the regional level, new governments - who are responsible *inter alia* for housing and the integration of newcomers - have been established. However, at the Federal level negotiations were still ongoing as of March 2020. Migration remains a priority in these negotiations.

In 2019, the number of applications for international protection increased by 18.3% compared to 2018 and by 40.9% compared to 2017. The increase in the number of applications for international protection in Belgium is due to several factors. The Commissioner-General for Refugees and Stateless Persons (CGRS) has stated that this should be interpreted with caution.⁹ However, it considers that the increase of secondary movements within Europe is an important factor for this increase as well as the fact that Belgium is more “popular” than other Member States.¹⁰

In 2019, 36.9% of the final decisions were positive decisions granting international protection. Protection was mainly granted to Syrians, Afghans, Turks, Iraqis and Eritreans. The recognition rate steadily decreased since 2016 however. While it reached 57.7% in 2016, it went down to 50.7% in 2017, 49.1% in 2018 and 36.9% in 2019. This decrease is mainly due to the increase of inadmissibility decisions and the number subsequent applications (i.e. multiple applications) as well as applications from persons with protection status in another Member State. When excluding these cases, the recognition rate reaches 50.5%; thus indicating that a significant number of applicants are still in need of protection.

The number of applications lodged by protection status holders sharply increased in 2019. These applications are generally declared as inadmissible because the persons concerned are already beneficiaries of international protection in another EU Member State. Policy measures have been put in place to address this issue. Since the second half of 2019, priority has been given to the examination of such applications. In the last three months of 2019, 660 inadmissibility decisions were taken regarding 906 beneficiaries of international protection in another EU Member State. Moreover, since 7 January 2020, Fedasil no longer provides reception for protection status holders who apply for international protection in Belgium.

Asylum procedure

- ❖ **Delay in the asylum procedure:** In 2019, there has been a significant delay in the processing of asylum applications. The period between the lodging of the asylum application until the first interview at the Immigration Office may take more than four months. Some asylum seekers are proposed a new date for an interview up to 5 to 6 times without being provided further information on why their interview is being postponed. This delay is mainly due to a lack of resources. Although extra staff has been recruited within the Immigration Office, the CGRS and the Council of Alien Law Litigation (CALL), the Immigration Office – who has received the least additional staff - stated that this number is insufficient to address the current backlog of cases.¹¹
- ❖ **Examination of applications for international protection:** Between March 2019 and January 2020, three friendly settlements on asylum applications were concluded by Belgium at the level of the European Court of Human Rights (ECtHR).¹² In all three cases (two of which concerned subsequent asylum applications), the applicants complained about the lack of a rigorous examination of the evidence and facts of their respective cases. Through the friendly settlements, the government ensured that it would examine a new application for international protection by conducting a rigorous

⁹ CGRS, Statistiques d’asile – bilan 2019, 9 January 2020, available at: <https://bit.ly/3aRnXmY>.

¹⁰ CGRS, Statistiques d’asile – bilan 2019, 9 January 2020, available at: <https://bit.ly/3aRnXmY>.

¹¹ Myria, Contact Meeting, 18 September 2019, lines 60 and further, available in French at: <https://bit.ly/36woHKL>.

¹² ECtHR (decision), App no. 15388/18, 16 January 2020, *R.L. V. Belgium*; ECtHR (decision) 7 March 2019, application No. 26763/18, *H.G.S. against Belgium*; ECtHR (decision) 26 September 2019, application No. 51705/18, *A.A. against Belgium*. Entering into friendly settlements seems to be actively applied by the Belgian government. In another case related to the detention of a third country national, the Belgian government paid 20.000 euros in order to settle the case. ECtHR (decision), App No. 47142/18, 20 June 2019, *Elizabeth Matondo t. België*

examination of all available evidence. In this way, the Belgian State avoids a (possible) negative ruling by the ECtHR and the applicants save both time and strength. The Belgian government has guaranteed that the CGRS would examine a possible new asylum application in accordance with the procedural obligations of Article 3 ECHR.

- ❖ **Palestinian applicants for international protection:** Following the increase of asylum applications of Palestinians originating from Gaza at the end of 2018-beginning of 2019 some policy changes were noted, including several dissuasion campaigns. Until the fall of 2018, 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. Following this policy change, there have been some judicial developments in 2019. In recent judgments of 18 and 19 November 2019, the united Chambers of the CALL clarified that not all Palestinians from the Gaza Strip are eligible for international protection. Country information indicates that the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is still operational in Gaza. The security situation is precarious, but a return via the Rafah border is possible and there is no systematic persecution of Palestinians nor appalling living conditions. However, the CALL also confirmed that individual circumstances may give rise to the granting of international protection in specific cases.¹³

Reception conditions

- ❖ **Lack of reception capacity:** Despite the numerous warnings of the federal reception agency for asylum seekers Fedasil as well as civil society actors, a new reception crisis emerged in 2019.¹⁴ Fedasil had to look for 750 extra places each month over the past year, due to an increasing shortage of places for asylum seekers. This is due to the government's scaling down of capacity to adapt reception systems to a drop in asylum applications in recent years, which was therefore not able to address the increase of applications for international protection in 2019.¹⁵ Moreover, as a result of the lack of staff within the determining authority, asylum procedures took longer and asylum seekers had to remain in reception centers for longer periods.¹⁶ On 18 of November 2019 for example, 65 people were not allowed to apply for asylum due to a lack of reception space and had to come back on the following day.¹⁷ The saturation of Fedasil's reception network has led to a suspension of resettlement operations of refugees since July 2019.
- ❖ **Withdrawal of reception conditions:** Although new centres opened throughout 2019, the occupancy rate was at 96 % as of 1 January 2020 - while saturation is already reached at 94 % of occupancy.¹⁸ Subsequent policy measures were thus adopted to withdraw reception conditions of certain asylum applicants. Since 7 January 2020, Fedasil no longer provides reception for two categories of applicants of international protection:
 - a) applicants for international protection who have received an Annex 26quater on the basis of the Dublin III Regulation, but for whom Belgium becomes responsible by default due to failure to transfer within the six months deadlines (Article 29(2) Dublin III Regulation).

¹³ CALL, Decisions No 28889; 228888; 228946 and 228949; 18 and 19 November 2019

¹⁴ Fedasil, 'Critical capacity in the reception network', 13 November 2019, available at: <https://bit.ly/2O8cDZA>.

¹⁵ In recent years, the government continued its policy of reducing capacity, from 26,362 places in 2016 to 21,343 at the end of 2018 and to 21,014 as of 15 January 2019. By summer 2018 it became clear that due to these closures and a growing number of asylum applications there would be a lack of reception capacity.

¹⁶ VRT, 'Lack of staff causes shortage of places in asylum reception centres', 26 October 2019, available at: <https://bit.ly/2tbi17e>.

¹⁷ Vluchtelingenwerk Vlaanderen, 'Opnieuw asielzoekers op straat: kroniek van een aangekondigde opvangcrisis', available in Dutch at: <https://bit.ly/303Pr3C>; Le Vif, 'Des demandeurs d'asile trouvent de nouveau les portes closes au Petit-Château', 18 November 2019, available in French at: <https://bit.ly/2R50xkl>; De Standaard, '65 mensen kunnen geen asiel aanvragen in Klein Kasteeltje', 19 november 2019, available in Dutch at: <https://bit.ly/2sTibJA>.

¹⁸ Fedasil, *Statistics*, 1 January 2020, available at: <http://bit.ly/fedasilstatistics>.

- b) applicants for international protection who make a first application in Belgium but who already have an international protection status (i.e. refugee or subsidiary protection status) in another EU Member State.

This measure is based on an instruction of Fedasil of 3 January 2020 which was communicated to the reception network of Fedasil on 6 January 2020.¹⁹ In January 2020 alone, more than 80 persons have subsequently been refused reception, including some single women with minor children.

This instruction has no legal basis and violates national and European law as it excludes categories of individuals from reception beyond the ones foreseen by Article 20 of the recast Reception Conditions Directive. Moreover, these decisions are standard decisions issued systematically to the persons falling within these two categories, without any individual assessment taking into account the specific situation and/or vulnerability of the concerned person.

Detention of asylum seekers

- ❖ **Increased detention capacity:** Since 2017 and including in 2019 the government continued its engagement to increase detention. In 2019 the open reception centre (**Holsbeek**) has been turned into a closed centre for women and two additional detention centres will open in Zandvliet and Jumet in 2020. While the current detention capacity is 660 places,²⁰ these plans will bring Belgium's detention capacity to 1,066 places by 2022.²¹
- ❖ **Detention of children and families:** In August 2018, the government opened five family units in the 127bis repatriation centre, as a result of which families with children were being detained again. Detention is applied where the family manifestly refuses to cooperate with the return procedure.²² However the Royal Decree of 22 July 2018 that establishes the rules for the functioning of the closed family units near Brussels International airport,²³ has been suspended by the Council of State in April 2019,²⁴ and thus no more families have been detained. The council of state still has to pronounce its decision on the annulation of this Royal Decree.

Content of international protection

- ❖ **Housing:** Access to housing remains problematic for people having obtained a protection status. This is mainly due to the current "housing crisis" and the general shortage of qualitative and affordable housing for beneficiaries of protection, including vulnerable groups.
- ❖ **Family reunification:** Beneficiaries of international protection continue to face important obstacles in the context of family reunification procedures, stemming *inter alia* from the difficulty to obtain visas and to prove family ties, the financial cost of the procedure, its strict conditions and the narrow definition of family members.

¹⁹ Fedasil, *Instruction*, 6 January 2020, available in French: <http://bit.ly/2TVXUEz>.

²⁰ Vrt.be, 'Eerste gesloten terugkeercentrum voor vrouwen geopend', 7 May 2019, available in Dutch at: <https://bit.ly/2VmZXTa>.

²¹ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>.

²² Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>, 34.

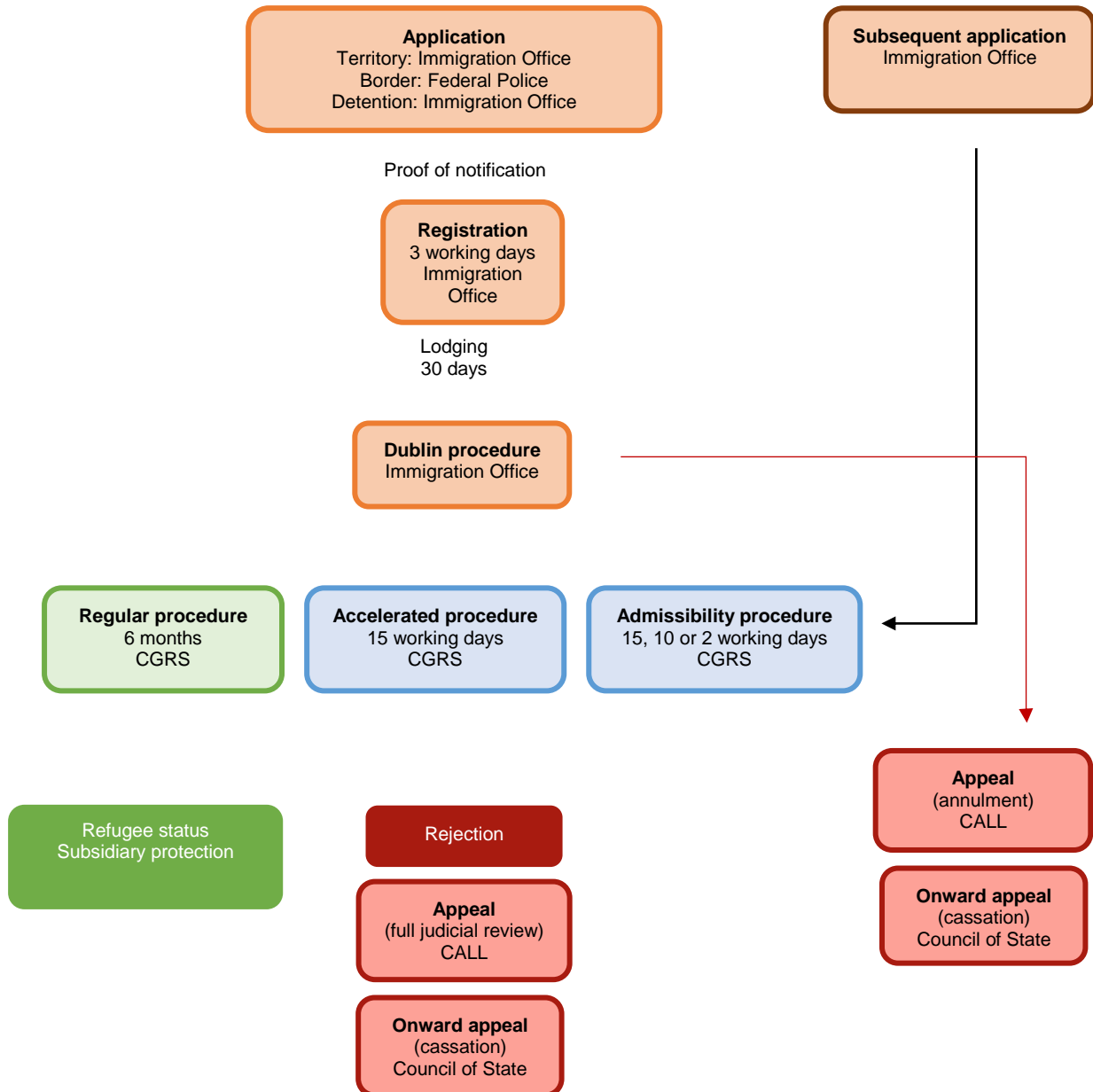
²³ Arrêté royal du 22 juillet 2018 | Koninklijk besluit van 22 juli 2018.

²⁴ Council of State, Decision no 244.190, 4 April 2019.

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: ²⁵ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ²⁶ | <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: ²⁷ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: Regularisation procedure ²⁸ | | |
| ❖ 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. The “safe third country” concept, that falls under the admissibility procedure, has not yet been applied.²⁹

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	Immigration Office	Office des étrangers (OE) Dienst Vreemdelingenzaken (DVZ)
Dublin	Immigration Office	Office des étrangers (OE) Dienst Vreemdelingenzaken (DVZ)
Refugee status determination	Commissioner General for Refugees and Stateless Persons (CGRS)	Commissariat général aux réfugiés et aux apatrides (CGRA) Commissariaat-generaal voor Vluchtelingen en Staatlozen (CGVS)
Appeal	Council of Alien Law Litigation (CALL)	Conseil du contentieux des étrangers (CCE) / Raad voor Vreemdelingenbetwistingen (RvV)
Onward appeal	Council of State	Conseil d'Etat / Raad van State
Subsequent application (admissibility)	Commissioner General for Refugees and Stateless Persons (CGRS) Immigration Office	Commissariat général aux réfugiés et aux apatrides (CGRA) Commissariaat-generaal voor Vluchtelingen en Staatlozen (CGVS) Dienst Vreemdelingenzaken (DVZ) Office des étrangers (OE)

²⁵ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

²⁶ Accelerating the processing of specific caseloads as part of the regular procedure.

²⁷ Albeit not labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

²⁸ 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.

²⁹ Myria, *Contact meeting*, 21 January 2020, available at: <http://bit.ly/2QmVv3L>.

4. Number of staff and nature of the determining 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 determining authority?
Office of the Commissioner General for Refugees and Stateless Persons (CGRS)	454,8 FTE	Independent	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The CGRS is responsible for examining applications for international protection and competent to take decisions at first instance. The institutional independence of the CGRS is explicitly laid down in law.³⁰ It thus takes individual decisions on asylum applications and does not take any instruction from the competent Minister – or State Secretary – for Asylum and Migration. However, under certain circumstances defined by the Aliens Act, the latter can be involved in the asylum procedures. The Ministry can ask the CGRS to re-examine a previously obtained protection status for example. It can also request from the determining authority to prioritise a specific case.³¹

In 2019, the CGRS had a total of 454,8 FTE staff, out of which 230 FTE were caseworkers responsible for examining applications for international protection. As regards its internal structure, the CGRS is divided into geographical departments and into units responsible for certain asylum procedures and/or certain asylum applicants. It has two vulnerability-oriented units that provide support to caseworkers dealing with specific cases, as will be discussed further below. The Dublin procedure, however, is conducted by the Immigration Office prior to transmitting the application to the CGRS.

The CGRS further has internal guidelines on the decision-making process to be applied by caseworkers on asylum claims. These guidelines cover a variety of issues such as the application of the first country of asylum criteria, the processing of subsequent applications, applications requiring special procedural needs or involving LGBTI persons, as well as the conduct of the border procedure. However, they are not made available to the public. Moreover, new reports and policy changes relevant to the decision-making process are immediately communicated through an internal online network containing available country of origin information and other relevant guidelines on certain countries.

As regards quality control and assurance, the caseworker's decision is discussed with a supervisor, reviewed by the head of the relevant geographical unit and finally approved by the Commissioner-General. The Commissioner-General thus reads and signs every decision, and can decide to further discuss any case if needed. At the Immigration Office, however, no institutional mechanisms are in place to control the quality of decisions relating to Dublin cases.

5. Short overview of the asylum procedure

Registration

An asylum application may be **made** either:

- (a) on the territory with the Immigration Office, within 8 working days after arrival;³²
- (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

³⁰ Article 57/2 Aliens Act.

³¹ Article 57/6 §2(3) Aliens Act.

³² Article 50(1) Aliens Act, Persons who 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.

(c) from a detention centre, in case the person is already being detained for the purpose of removal.

The applicant receives a “certificate of declaration” (*attestation de déclaration*). The Immigration 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 applying simultaneously.

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 Immigration 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 Immigration Office also only registers subsequent applications and transfers them to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS).³³

First instance procedure

As mentioned above, the 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.

In addition to the regular procedure, the law 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 Immigration 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.³⁴

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.³⁵

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.³⁶

³³ Articles 57/6/2 and 51/8 Aliens Act.

³⁴ Article 57/6(2) Aliens Act.

³⁵ Article 57/6/1 Aliens Act.

³⁶ Article 57/6(3) Aliens Act.

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 to 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 committed to communicate the applicable appeal deadlines but, since the entry into force of the law in 2018, it is unable to do so due to the existing workload.³⁷ The decision received by the asylum seeker does not mention which specific delay is applicable to his or her case. The decision only makes reference to the general provision (Article 39/57 of the Aliens Act). The CGRS announced in January 2019 that it would change its practice by mentioning again which delay is applicable and if the appeal has a suspensive effect.

Since February 2019, the CGRS mentions in its negative decisions the deadlines for appeals and whether they have suspensive effect or not. Therefore, an additional paragraph was added in the conclusion of the following decisions:

- Decisions taken under an accelerated procedure when the time limit for an appeal is reduced to 10 days. The 10-day period for an appeal in the accelerated procedure is only applicable if the CGRS has taken the decision within 15 working days of receipt of the file. As this information is difficult to access, and the solution adopted so far is not sufficiently clear, it has been decided to include explicit information on appeals in decisions.
- Decisions declaring the application inadmissible, especially subsequent applications. These decisions now include a paragraph on the suspensive nature or not of the appeal, as well as a paragraph mentioning the two periods of appeal that are applicable, depending on whether or not the applicant is being detained at the time of his or her application. Indeed, both the applicant and his or her counsel know whether or not this is the case. Both time limits will be mentioned in simplified language to make this information more accessible.³⁸

In practice, lawyers have reported that the mentioning of the correct deadline remains problematic.

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.

³⁷ Myria, *Contact meeting*, 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 12.

³⁸ CGRS, ‘Addition of clause in some refusal decisions’, 21 February 2019, available at: <https://bit.ly/30uGPDd>.

Dublin decisions of the Immigration 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?³⁹ 30 days

The Immigration 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 Immigration Office within 8 working days after arrival on the territory.⁴⁰ 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,⁴¹ or with the prison director in penitentiary institutions. These authorities refer the application immediately to the Immigration Office. The asylum seeker receives a “certificate of declaration” (*attestation de déclaration*) as soon as the application is made.⁴²

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”.⁴³ 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.

³⁹ The applicant must make the application within 8 working days of arrival in Belgium.

⁴⁰ Article 50(1) Aliens Act.

⁴¹ *Ibid.*

⁴² Article 50(2) Aliens Act.

⁴³ Articles 1(11) and 1(2)(1) Aliens Act.

On 22 November 2018 a maximum quota per day on the number of people who could make their asylum application was introduced. This measure was suspended by the the Council of State on 20 December 2018.⁴⁴ 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.

While issues on the access to the asylum procedure had been reported in early 2019, this did not persist throughout the year. However, isolated incidents continue to be reported from time to time. On 18 November 2019 for example,⁶⁵ people were not allowed to apply for asylum due to a lack of reception space and had to come back the following day.⁴⁵

2. The Immigration Office registers the application within 3 working days of “notification”.⁴⁶ 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.⁴⁷
3. The asylum seeker “lodges” (*introduit*) his or her application either immediately when it is made, or as soon as possible after the “notification” but no later than 30 days after the application has been made.⁴⁸ 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 Immigration Office informs the CGRS of the lodging of the application.⁴⁹

The asylum section of the Immigration Office is responsible for:

- ❖ Receiving the asylum application;
- ❖ Registering the asylum seeker in the so-called “waiting register” (*wachtregister*), 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 Immigration Office, a short interview takes place to establish the identity, nationality and travel route of the asylum seeker. The Immigration 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.⁵⁰ The asylum section of the Immigration Office is furthermore

⁴⁴ Council of State, Decision No 243.306, 20 December 2018, available in Dutch at: <https://bit.ly/2WquTQK>.

⁴⁵ Vluchtelingenwerk Vlaanderen, ‘Opnieuw asielzoekers op straat: kroniek van een aangekondigde opvangcrisis’, <https://bit.ly/303Pr3C> ; Le Vif, ‘Des demandeurs d’asile trouvent de nouveau les portes closes au Petit-Château’, 18 November 2019, <https://bit.ly/2R50xkl>; De Standaard, ‘65 mensen kunnen geen asiel aanvragen in Klein Kasteeltje’, 19 November 2019, <https://bit.ly/2sTibjA>.

⁴⁶ Article 50(2) Aliens Act.

⁴⁷ *Ibid.*

⁴⁸ Article 50(3) Aliens Act.

⁴⁹ *Ibid.*

⁵⁰ Articles 51/3-51/10 Aliens Act; Articles 10 and 15-17 Royal Decree on Immigration Office Procedure.

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 Immigration 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 Immigration Office (Asylum section, Closed Centres section and Border Inspection section) follow the exact same procedure within the Immigration Office's general competence, each for their respective 'categories' of asylum seekers.

There have been significant delays in the asylum procedure at the stage of the Immigration Office. Even though the lodging takes place no later than 30 days after the application has been made in accordance with legal standards, the first interview might be conducted more than several months later in certain cases.⁵¹ This is the case for subsequent applications or applications for which it is assumed that no other Member State will be deemed responsible under the Dublin III-Regulation. Applications in which there is a Dublin-hit will be treated in priority in order to meet the time limits set out in the Dublin III regulation.

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 2019: ⁵² | |
| ❖ Immigration Office | 11,654 |
| ❖ CGRS | 10,362 cases |

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 the competent determining 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.⁵³

The CGRS has the competence to:⁵⁴

- ❖ Grant or refuse refugee status or subsidiary protection status;
- ❖ Reject an asylum application as manifestly unfounded;⁵⁵
- ❖ Reject an asylum application as inadmissible;⁵⁶

⁵¹ Myria, Contact meeting, 22 May 2019, available in French at <https://bit.ly/2N8TS0H>, 240-245; Myria, Contact meeting, 18 September 2019, available in French at: <https://bit.ly/2QHpw57>, 50-65.

⁵² Statistics provided by the Immigration Office, February 2020. See also an overview of statistics of the CGRS available in Dutch at: <https://bit.ly/2HWP7eR>.

⁵³ Article 49/3 Aliens Act.

⁵⁴ Article 57/6(1) Aliens Act.

⁵⁵ Article 57/6(1)(2) Aliens Act.

⁵⁶ Article 57/6(3) Aliens Act.

- ❖ 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;⁵⁷ 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 Immigration Office.⁵⁸ 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.⁵⁹

Where needed, the deadline can be prolonged by 3 more months.⁶⁰

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.⁶¹ This has not yet been applied in practice.⁶²

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.⁶³

In 2018, the CGRS had managed to process almost all backlog of cases. Due to the increase in the number of applications for international protection since the second half of 2018, however, the total work stock of the CGRS - i.e. the number of files for which the CGRS has not yet taken a decision - has steadily increased to 10,362 asylum files by the end of 2019. Out of them, 6,162 of these files can be considered as backlog cases, while 4,200 files are part of the normal work stock.⁶⁴

This results in longer waiting times for persons in the asylum procedure. While there is no information available on the average processing time of asylum claims in 2019, the CGRS was still processing a limited number of asylum claims lodged before 1 January 2018 at the beginning of December 2019. This mainly involves cases for which the CGRS had already taken a decision but that were sent back to the CGRS after being annulled by the CALL. As regards applications filed after 1 January 2018 the CGRS stated that, as a result of the significant increase in the number of applications since the second half of 2018, not all cases can be processed on the short term meaning that longer waiting periods will apply to these asylum applicants.⁶⁵

1.2. Prioritised examination and fast-track processing

The CGRS may prioritise the examination of an asylum application where:⁶⁶

- 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 Immigration Office or the Secretary of State for Asylum and Migration so requests; or

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

⁵⁸ Article 57/6(1) Aliens Act.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

⁶³ Article 57/6(1) Aliens Act.

⁶⁴ CGRS, *Statistiques d'asile – bilan 2019*, 9 January 2020, available in French at : <https://bit.ly/2Nr3H1n>.

⁶⁵ CGRS, 'Processing times for applications for international protection', 2 December 2019, <https://bit.ly/2QVZm7e>.

⁶⁶ Article 57/6(2) Aliens Act.

- 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.⁶⁷

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? ☒ Yes ☐ No
❖ If so, are interpreters available in practice, for interviews? ☒ 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.⁶⁸ 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.⁶⁹

Generally, for every asylum application the CGRS conducts an interview with the asylum seeker, although 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.⁷⁰ The CGRS has elaborated an interview charter as a Code of Conduct for the protection officers, which is available on its website.⁷¹

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.⁷² In practice every person will be invited for a personal interview; however.⁷³

Interpretation

When lodging their application at the Immigration Office, asylum seekers must indicate irrevocably and in writing whether they request the assistance of an interpreter, in case their knowledge of Dutch or French is not sufficient.⁷⁴ 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

⁶⁷ Myria, Contact meeting, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 295.

⁶⁸ Article 57/5-ter(1) Aliens Act.

⁶⁹ Article 57/5-ter(2) Aliens Act.

⁷⁰ Article 13/1 Royal Decree on CGRS Procedure.

⁷¹ CGRS, *Interview Charter*, available at: <http://bit.ly/1FAxkyQ>.

⁷² Article 57/6/7(2) Aliens Act.

⁷³ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

⁷⁴ Article 51/4(2) Aliens Act.

“role” as in the first asylum procedure is selected.⁷⁵ However, very rarely - and for practical reasons - “the language role” can be changed in the case of a subsequent application.⁷⁶

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.⁷⁷ 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.

In 2019, UNHCR identified a number of issues regarding the access and quality of interpretation. These issues seem to apply to all stages of the asylum procedure and concern the competent authorities, lawyers, social workers in reception structures as well as associations. UNHCR thus recommends to facilitate access to interpretation by clarifying the rules on interpretation and on how to find an interpreter. It also suggest to improve the current system by centralising the contact details of interpreters, standardising practices within the closed centres and providing clear information on the right to free interpretation under the Belgian legal aid system.⁷⁸

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,⁷⁹ 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.⁸⁰

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.⁸¹ 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.⁸² The asylum seeker or his or her lawyer may provide comments within 8 working days after the reception of the file.⁸³ 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.⁸⁴

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, Bruges and Vottem**. 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 to attend the interview. The CGRS evaluated this practice

⁷⁵ *Ibid.*

⁷⁶ Myria, *Contact meeting*, 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, para 3.

⁷⁷ CGRS, *Deontology for translations and interpretations*, available at: <http://bit.ly/1ROmcHs>.

⁷⁸ UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at: <https://bit.ly/35G2h9s>, 7 and 31.

⁷⁹ Article 57/5-quater(1) Aliens Act.

⁸⁰ Articles 16-17 and 20 Royal Decree on CGRS Procedure.

⁸¹ Article 57/5-quater(2) Aliens Act.

⁸² Myria, *Contact meeting*, 20 June 2018, available in Dutch at: <https://bit.ly/2WiFPjf>, para.35.

⁸³ Article 57/5-quater(3) Aliens Act.

⁸⁴ *Ibid.*

as positive. Several lawyers are less positive about this approach and argue that it impedes the creation of a safe space. The videos themselves are not kept on file, and the CGRS uses the transcript following the interview as the basis.⁸⁵ The asylum seeker and his or her lawyer can request for an interview in person when they can provide elements of vulnerability that would justify such a request.⁸⁶ In exceptional cases this can be granted. The mere fact of not being familiar with this type of technology is not sufficient, however. In one case of December 2018, the CALL annulled a decision of the CGRS in which the applicant was interviewed through videoconferencing.⁸⁷ The CALL noted that the personal interview which had been conducted by videoconference on 23 November 2018, was punctuated by numerous interruptions, thus demonstrating the poor quality of the hearing. Moreover, the applicant's psychological state required that the hearing should not take place in the form of a videoconference. It thus ordered the CCGRS to conduct a new interview in person.

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 2019: 8 months

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.⁸⁸ The time limit is reduced to 10 days when the applicant is in detention.⁸⁹

The appeal has automatic suspensive effect in the regular procedure.⁹⁰

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.⁹¹

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.⁹² At the hearing, the parties and their lawyer can orally explain their arguments to the extent that they were mentioned in the petition.⁹³ 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.⁹⁴ Depending on how the CALL assesses the prospects of such new elements leading to the recognition or granting of

⁸⁵ Myria, *Contact meeting*, 21 September 2016, available at: <http://bit.ly/2kxOqOG>, para 25.

⁸⁶ Myria, *Contact meeting*, 16 January 2019, available at: <https://bit.ly/2Hj4pLJ>, para 7.

⁸⁷ CALL, Decision No. 214344, 19 December 2018.

⁸⁸ Article 39/57(1) Aliens Act.

⁸⁹ *Ibid.*

⁹⁰ Article 39/70 Aliens Act.

⁹¹ Article 39/2 Aliens Act.

⁹² Article 39/69 Aliens Act.

⁹³ Article 39/60 Aliens Act.

⁹⁴ Article 39/76(1) Aliens Act.

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 concerning the applicants' nationality and protection status in a third country, which were questioned in the preceding full jurisdiction procedure.⁹⁵

The CALL must decide on the appeal within 3 months in the regular procedure.⁹⁶ There are no sanctions for not respecting the time limit. In practice, the appeal procedure often takes longer. In 2019, the average processing time (the total of the delays divided by the total number of files) was 243 calendar days or 8 months. The median (the delay in the middle and thus less influenced by extremely long or short delays, what makes it a more reliable indicator) of the processing time was 159 calendar days, i.e. approximately 5 months).⁹⁷

During 2019 the CALL decided on 5,946 full judicial review asylum appeals.⁹⁸ Decisions of the CALL are publicly available.⁹⁹

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 is still a big difference in jurisprudence between the more liberal Francophone and the stricter Dutch chambers of the CALL.¹⁰⁰ According to the President of the CALL, the discrepancy in the case law is not necessarily related to language but stems from the different judges as each of them is independent. It is up to the CALL to ensure that the case law is consistent, either through a judgment taken in the general assembly or in the united chamber (where 6 judges sit, namely 3 French judges and 3 Dutch judges).¹⁰¹ 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 Immigration 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 has 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

⁹⁵ ECtHR, *Singh and Others v. Belgium*, Application No 33210/11, Judgment of 2 October 2012.

⁹⁶ Article 39/76(3) Aliens Act.

⁹⁷ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

⁹⁸ Myria, *Contact meeting*, 21 February 2018, para 27.

⁹⁹ Judgments are available on the website of the CALL at: <http://bit.ly/2waz6tu>.

¹⁰⁰ 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>.

¹⁰¹ Myria, *Contact meeting*, 20 March 2019, available in French: <https://bit.ly/306X4GF>, 319-329.

return decision, invoking a potential breach of an absolute fundamental right (e.g. Article 3 ECHR).¹⁰² This appeal is suspensive until a judgment is issued.¹⁰³ 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.¹⁰⁴

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.¹⁰⁵ 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 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.¹⁰⁶

A study of UNHCR of 2019 states that several actors regret the rigidity and complexity of the asylum procedure in Belgium, which inevitably requires greater specialisation on the part of lawyers. While most of them generally agree that the time limits inherent in the asylum procedure are generally sufficient, they consider that the time limits inherent to accelerated procedures hamper the quality of legal assistance, especially in detention. In their view, the lack of transparency and the multiplication of procedures causes a significant loss of resources and time.¹⁰⁷

On 16 January 2020, the ECtHR published a decision to strike the case of *R.L. v Belgium* out of the list after the parties reached a friendly settlement. The applicant, a Colombian national, claimed to have fled from Colombia due to threats by armed groups involved in drug trafficking. He claimed that his asylum application was not subject to a rigorous and careful examination and that an excessive burden of proof was placed on him by asylum authorities and, as such, he was denied the only full remedy available to him required by Article 13 in conjunction with Article 3 ECHR.¹⁰⁸

The Government has since then ensured that it would examine a new application for international protection by conducting a rigorous examination of all available evidence in relation to both the general situation in Colombia and to the individual circumstances of the applicant. Such an assurance is made to remedy the apparent lack of effective remedy available to the applicant. The ECtHR decided that it was no longer necessary to examine the appeal and that the complaint should be struck out of the list of cases.

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.¹⁰⁹ 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

¹⁰² Article 39/82(4) Aliens Act; Article 39/57(1) Aliens Act.

¹⁰³ Articles 39/82 and 39/83 Aliens Act.

¹⁰⁴ Article 39/82(4) Aliens Act.

¹⁰⁵ 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.

¹⁰⁶ ECtHR, *S.J. v. Belgium*, Application No 70055/10, Judgment of 19 March 2015.

¹⁰⁷ UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at : <https://bit.ly/35G2h9s>, 7.

¹⁰⁸ EDAL, ECtHR, *R.L. V. Belgium*, Application No 15388/18, 16 January 2020, available in French at: <https://bit.ly/2SZiXWb>.

¹⁰⁹ Article 39/67 Aliens Act.

annulled.¹¹⁰ It cannot make its own assessment and decision on the facts of the case. Appeals before the Council of State are first channelled through an 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.¹¹¹ 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?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
---	--	-----------------------------

 - ❖ Does free legal assistance cover:

<input checked="" type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
---	--	-----------------------------

 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

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 Immigration Office stage.¹¹² The Reception Act also guarantees asylum seekers efficient access to legal aid during the first and the second instance procedure, as envisaged by the Judicial Code.¹¹³

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.¹¹⁴ The competence for the organisation of the first line assistance lies at the regional level.

1.5.1. First-line legal assistance

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

¹¹⁰ Article 14(2) Acts on the Council of State.

¹¹¹ 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).

¹¹² Articles 39/56 and 90 Aliens Act.

¹¹³ Article 33 Reception Act.

¹¹⁴ Article 508/1-508/25 Judicial Code.

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. 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 criteria for lawyers to register on the lists of second-line assistance in migration law varies widely. The criteria are often not demanding enough and the lawyers appointed are therefore not always sufficiently competent or specialised in the field. Nevertheless, some larger bar associations have set up a specialised section on migration law and have tightened up the criteria to be able to subscribe for it. However, other bars with few lawyers simply lack specialised lawyers and some even oblige their trainees, who are not specialised, to register on the list.¹¹⁵

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.¹¹⁶ 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.¹¹⁷

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.¹¹⁸

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 2016.¹¹⁹ In the previous version, lawyers received a certain amount of points per intervention of action. Since 1 September 2016 every

¹¹⁵ UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at : <https://bit.ly/35G2h9s>, 44.

¹¹⁶ Article 508/14 Judicial Code.

¹¹⁷ 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.

¹¹⁸ Constitutional Court, Decision No 77/2018, 21 June 2018, available in French at: <https://bit.ly/2RNAd1D>.

¹¹⁹ Ministerial Decree of 19 July 2016, available at: <http://bit.ly/2jAdVzs>.

point equals to one hour. Since 2018 the value per point was finally determined at €75.¹²⁰ This is still applied today.

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 (which represented 25 euros per point). 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 Assistance¹²¹ 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. This legal aid funding appears to have an impact on the quality of service delivery and the effectiveness of the legal aid system. Many lawyers confirm that legal aid is problematic as it is currently based on low, unpredictable, and deferred compensation.¹²²

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.

¹²⁰ Orde van de Vlaamse Balie, ‘Begroting justitie: OVB vaakzaam positief’, 24 March 2018, available in Dutch at: <https://bit.ly/2HxAeCm>.

¹²¹ For an overview of the full nomenclature, please consult the Ministerial Decree of 19 July 2016, available at: <http://bit.ly/2jAdVzs>.

¹²² UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at : <https://bit.ly/35G2h9s>, 7.

2. Dublin

2.1. General

Dublin statistics: 2019

Statistics on the application of the Dublin Regulation in 2019 were not available at the time of writing.

In 2018 the total number of outgoing take charge and take back-requests was 8,384 (2,324 take charge and 6,060 take back requests), of which one for dependency reasons,¹²³ and three for humanitarian reasons.¹²⁴ A total of 4,617 requests were accepted. There was one take charge request accepted for dependent persons and one for humanitarian reasons.

A total of 897 persons were transferred from Belgium to other Member States in 2018. Thus, only 19.4% of transfers were actually implemented in practice. Moreover, 870 of these transfers were carried out within six months, 21 within 12 months, and 6 within 18 months after the acceptance by the other Member State.

In 2018 there were a total of 3,871 incoming take charge and take back requests (541 take charge requests and 3,330 take back requests, of which 11 for dependency reasons,¹²⁵ and 46 for humanitarian reasons.¹²⁶ Out of the total of incoming requests, 2,353 were accepted, of which 4 for dependent persons and 15 for humanitarian reasons. 678 persons were effectively transferred to Belgium

According to available statistics, the Immigration Office accepted 1,206 persons under the sovereignty clause.¹²⁷ In 2018 Belgium further became responsible “by default” for 13,542 persons: 741 persons were not transferred in time,¹²⁸ 585 were not transferred due to the deficiencies in the asylum or reception system which could lead to an inhumane and degrading treatment in another Member State, and 12,216 were not transferred because no Member State responsible could be designated on the basis of the criteria listed in the Dublin III Regulation.¹²⁹

Application of the Dublin criteria

There is no information available on how the Immigration Office generally applies the Dublin criteria. Information can be obtained through Parliamentary questions, and questions during the monthly contact meetings, of which the reports are published online.¹³⁰ 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.¹³¹

The dependent persons and discretionary clauses

Settled case law indicates that the Immigration Office, as confirmed by the CALL, strictly applies the dependency clause of Article 16 of the Dublin Regulation.¹³² However, this observation does not take into

¹²³ Art. 16 Dublin III Regulation.

¹²⁴ Art. 17 Dublin III Regulation.

¹²⁵ Art. 16 Dublin III Regulation.

¹²⁶ Art. 17 Dublin III Regulation.

¹²⁷ Art. 17(1) Dublin III Regulation.

¹²⁸ Art. 29(2) Dublin III Regulation.

¹²⁹ Art. 3(2) Dublin III Regulation.

¹³⁰ See for example the reports in French available at: <https://bit.ly/2T8Lcj4>.

¹³¹ 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.

¹³² 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,

account the decisions in which the Immigration 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 Immigration 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.¹³³ 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.¹³⁴ 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,¹³⁵ or actually living with said family member.¹³⁶ 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.¹³⁷ 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.¹³⁸

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 Immigration 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,¹³⁹ CALL pays particular attention to the risk of inhuman and/or degrading treatment that a transfer in itself might entail for people with serious mental or physical illnesses, even if the responsible Member State does not demonstrate systematic flaws.¹⁴⁰ 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.¹⁴¹ Heavy reliance is placed on medical attestations, for both the state of health and the impact of a transfer thereon.¹⁴²

‘Welk recht op een gezins- en familieleven binnen het Dublin-systeem’, Tijdschrift Vreemdelingenrecht, 2017/4, 389-400.

¹³³ 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 214659, 2 January 2019; CALL Decision No 215 169, 15 January 2019; CALL, Decision No 223809, 9 July 2019

¹³⁴ CALL, Decision No 198726, 25 January 2018.

¹³⁵ CALL, Decision No 170466, 23 June 2016; CALL, Decision No 198635, 25 January 2018.

¹³⁶ CALL, Decision No 180718, 13 January 2017; CALL, Decision No 198815, 29 January 2018; CALL, Decision No 204600, 29 May 2018.

¹³⁷ CALL, Decision No 161217, 20 May 2016.

¹³⁸ CALL, Decision No 199262, 6 February 2018.

¹³⁹ CJEU, Case C-578/16, *C. K. and Others*, Judgment of 16 February 2017.

¹⁴⁰ See for example CALL, Decision No 215 169, 15 January 2019; CALL, Decision No. 223 809, 9 July 2019.

¹⁴¹ CALL, Decision No 205298, 13 June 2018; CALL, Decision No 194730, 9 November 2017.

¹⁴² CALL, Decision No 206588, 5 July 2018.

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?
☐ Yes ☒ No
2. 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 Immigration Office.¹⁴³ In case they refuse to be fingerprinted, their claim may be processed under the **Accelerated Procedure**.¹⁴⁴ The CGRS stated that it has not used this legal possibility yet in practice and it does not keep statistics of these cases.¹⁴⁵ Refusal to get fingerprinted could be interpreted as a refusal to cooperate with the authorities, which could result in detention.

Systematically, the Immigration 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 Immigration Office has clarified that, in line with the Court of Justice of the European Union (CJEU) ruling in *Mengesteab*,¹⁴⁶ the time limit for issuing a Dublin request starts running from the moment an asylum seeker makes an application at the Immigration Office, and not from the moment he or she is issued a “proof of asylum application” (“Annex 26”).¹⁴⁷

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.¹⁴⁸

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.¹⁴⁹ During the contact meeting of November 2018, the Immigration Office had announced that applications for which Belgium is deemed responsible are not a priority and would therefore take a while before they are transmitted to the CGRS and the latter can start the examination of the asylum claim.¹⁵⁰ Given the current backlog of cases, it seems that this practice is still being applied.

Individualised guarantees

Following the 2014 ECtHR ruling in *Tarakhel v. Switzerland*,¹⁵¹ the Immigration 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.¹⁵² This practice took an end in January 2019 following a letter from the Italian authorities

¹⁴³ Article 51/3 Aliens Act.

¹⁴⁴ Article 57/6/1(i) Aliens Act.

¹⁴⁵ Myria, *Contact meeting*, 16 January 2019, available in French at: <https://bit.ly/2Hj4pLJ>, para 290.

¹⁴⁶ CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

¹⁴⁷ Myria, *Contact meeting*, 22 November 2017, para 10.

¹⁴⁸ Article 71/3 Royal Decree 1981.

¹⁴⁹ Article 51/7 Aliens Act.

¹⁵⁰ Myria, *Contact meeting*, 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, paras 25-27.

¹⁵¹ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

¹⁵² Immigration Office, Letter to CBAR-BCHV in response to questions concerning the implementation of the *Tarakhel* judgment, 17 November 2014, unpublished.

stating that families with children will be accommodated in specific reception centres and the family unity will be respected. The Immigration Office considers this as sufficient guarantees.

The Immigration Office does not systematically ask individualised guarantees for vulnerable asylum applicants, although it sometimes requests guarantees when the continuity of an asylum seeker's medical treatment has to be ensured in the country of destination. The CALL has overruled the Immigration 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 Immigration 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.¹⁵³

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 Immigration 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.¹⁵⁴

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 Immigration Office at that time had recognised the abovementioned *Tarakhel* jurisprudence and the fact that the transfer of an asylum seeker with additional vulnerabilities might entail a violation of Article 3 ECHR, it did not request individual guarantees in the present case. More specifically, the Immigration 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 Immigration Office was not sufficiently motivated in the light of article 3 ECHR as well as the principle of due care. Moreover, the Immigration Office ignored the asylum seeker's letter explaining that she has HIV, for which she is receiving treatment in Belgium.¹⁵⁵

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 Immigration 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.¹⁵⁶ In a ruling that occurred on the same day and was based on the same reasoning, the CALL annulled the transfer of two young children who were accompanied by their parents.¹⁵⁷

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 Immigration 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.¹⁵⁸

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

¹⁵³ 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.

¹⁵⁴ CALL, Decision No 176046, 10 October 2016.

¹⁵⁵ CALL, Decision No 201 167, 15 March 2018.

¹⁵⁶ CALL, Decision No 203 865, 17 May 2018.

¹⁵⁷ CALL, Decision No 203 860, 17 May 2018.

¹⁵⁸ CALL, Decision No 207 355, 30 July 2018.

Immigration Office on the possible consequences a transfer would have, and because it did not request individual guarantees.¹⁵⁹

In March 2019 the CALL suspended a Dublin transfer to Austria based on a violation of Article 3 ECHR. When the transfer decision was taken, the Immigration Office was aware of the fact that the applicant attempted suicide in Belgium in December 2018 and was violent. Given the special needs and the psychological condition of the applicant, concrete and individual guarantees should have been obtained from the Austrian authorities as to the specific circumstances in which he will be received, which was not done in the present case.¹⁶⁰

In a ruling of August 2019 the CALL further annulled a Dublin transfer to Italy in which the Immigration Office had also omitted to request individual guarantees from the authorities.¹⁶¹ The CALL cited the AIDA Italy report to demonstrate that it is not excluded that the applicant, as a Dublin returnee who previously received reception, may face difficult access to reception or even exclusion from reception conditions when returning to Italy. It ruled that the Immigration Office did not carry out a rigorous examination of a possible violation of Article 3 of the ECHR.

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 provide a known address to the Immigration Office), Belgium's responsibility for examining the asylum application will be accepted when the persons concerned present themselves to the Immigration Office again.

If the asylum seeker continues to be at the disposal of the Immigration Office for the execution of the transfer, Belgium becomes responsible for his or her asylum application after 6 months in theory. 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 Immigration 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 Immigration Office on his or her address.

In two judgments issued on 8 May 2018 by the united chambers of the CALL in Belgium,¹⁶² the CALL ruled that an implicit decision by the Immigration Office in the context of the Dublin III Regulation to extend the transfer period from 6 months to 18 months is a disputable administrative legal act. Such a decision must be motivated and be written so that effective judicial review is possible. The Immigration Office lodged an appeal with the Council of State to contest this interpretation of the CALL, but the Council of State confirmed the judgement of the CALL on 17 October 2019.¹⁶³

In a judgment of 26 April 2019, the CALL ruled that the choice of domicile at the address of the lawyer is not sufficient to exclude a risk of absconding.¹⁶⁴ Making reference to the CJEU's *Jawo* judgment of 19 March 2019,¹⁶⁵ the CALL stated that if the applicant leaves the reception centre without communicating a new address, it may be presumed that he has absconded. However, it has to be considered whether he has been informed of the duty to provide his address and whether he is deliberately trying to escape from

¹⁵⁹ CALL, Decision No 215 169, 15 January 2019.

¹⁶⁰ CALL, Decision No 217 932, 6 March 2019.

¹⁶¹ CALL, Decision No 224 726, 8 August 2019.

¹⁶² CALL, Decision No 203684 and CALL, Decision No 203685, 8 May 2018.

¹⁶³ Council of State, Decision No 245 799, 17 October 2019.

¹⁶⁴ CALL, Decision No 220401, 26 April 2019.

¹⁶⁵ EDAL, CJEU, *Jawo*, Judgment in case C-163/17, 19 March 2019, available at: <https://bit.ly/3c9TxNq>.

the authorities. As in the present case the applicant for international protection did not actually reside at the lawyer's address, this choice of domicile did not allow the Immigration Office to transfer the applicant to that Member State within six months as required under the Dublin III Regulation. Thus, by choosing the lawyer's domicile, the applicant does not demonstrate that he did not intend to abscond and escape from the authorities according to the CALL.

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 Immigration Office, but can vary greatly depending on the number of pending cases at the Dublin Unit and the Member State to which the Immigration Office wants to transfer a person to.

The time limit from the acceptance of a request until the actual transfer is unknown because the Immigration 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.

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.¹⁶⁶ Lawyers are not allowed to be present at any procedure at the Immigration 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.¹⁶⁷ This is important since the CALL has repeatedly demanded from the Immigration Office that it responds to all arguments put forward and all information submitted.

During the interview the Immigration Office will ask about:

- ❖ The identity and country of the asylum seeker
- ❖ The route taken to Belgium
- ❖ Problems in the country of origin. The Immigration 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.¹⁶⁸ When a request to take back or take charge 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

¹⁶⁶ Article 10 Royal Decree on Immigration Office Procedure.

¹⁶⁷ Article 18 Royal Decree on Immigration Office Procedure.

¹⁶⁸ Article 10 Royal Decree on Immigration Office Procedure.

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 that he or she had to endure and which would explain why he or she wishes to challenge the transfer decision 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 endures 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 Immigration 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” statements.¹⁶⁹ Practitioners have stated that it can take up to a month or longer before they receive a copy of the questionnaire, which is often too late for the appeal or to prepare the interview at the CGRS.¹⁷⁰

When the Immigration 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.

Since 2018, the Immigration Office also conducts interviews with adult family members in the context of Article 8 of the Dublin III Regulation to ensure that the best interest of the minor is taken into account. Based on their advice, the Dublin Unit of the Immigration Office decides if a reunification of the child with the adult involved is indeed in his or her best interest.

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 Immigration 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](#)).

¹⁶⁹ 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>, 53.

¹⁷⁰ Myria, *Contact meeting*, 21 December 2016, available at: <http://bit.ly/2jGwYmM>, para 29.

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.¹⁷¹ In this regard, it should be noted that the CALL had suspended a transfer to Italy in a decision of 15 January 2019 on the basis that medical attestations were delivered after the transfer decision of the Immigration Office. Ignoring these medical attestations would call into question the conformity of the transfer with Article 3 ECHR.¹⁷²

The CALL verifies if all substantial formalities have been respected by the Immigration Office.¹⁷³ In 2016 this has included cases where the Immigration Office ordered a Dublin transfer without indicating which responsibility criterion was applicable.¹⁷⁴ 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*.¹⁷⁵

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 Immigration Office wants to transfer the asylum seeker to; frequently taking into account national AIDA reports. When such information on reception conditions and the asylum procedure in the country is only invoked in an annulment procedure, the CALL will only determine whether this information should have been known by the Immigration Office and included to its assessment of the sovereignty clause, in which case it will suspend the decision (regularly causing the Immigration Office to revoke the decision spontaneously itself, as such avoiding negative follow-up jurisprudence) or even annul it and send it back to the Immigration Office for additional examination.¹⁷⁶

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](#)).¹⁷⁷

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.¹⁷⁸

¹⁷¹ Council of State, Judgment No 243.673, 12 February 2019.

¹⁷² CALL, Case No 215.169, 15 January 2019.

¹⁷³ Article 39/2(2) Aliens Act.

¹⁷⁴ CALL, Decision No 165134, 31 March 2016, available at: <http://bit.ly/2kZHIUV>.

¹⁷⁵ CJEU, Case C-63/15 *Ghezelbash* and Case C-155/15 *Karim v. Migrationsverket*, Judgments of 7 June 2016.

¹⁷⁶ 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>.

¹⁷⁷ See e.g. CALL, Decision No 201 167, 15 March 2018; CALL, Decision No 203 865, 17 May 2018; CALL, Decision No 203 860, 17 May 2018; CALL, Decision No 207 355, 30 July 2018; CALL, Decision No 215 169, 15 January 2019; CALL, Decision No. 217 932, 6 March 2019; CALL, Decision No. 224 726, 8 August 2019.

¹⁷⁸ Article 14(2) Acts on the Council of State.

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 Immigration 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 Immigration Office with regard to a Dublin case.

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

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

- ❖ An informal (internal) and not explicitly motivated decision of the Immigration 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 Immigration Office stopped Dublin transfers to Hungary and Belgium started to declare itself responsible for the concerned asylum applications. The Immigration 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.¹⁷⁹ In May 2018, the Immigration Office confirmed that there were still no transfers carried out to Hungary.¹⁸⁰ The Dublin procedure takes place but Belgium ends up declaring itself responsible for the asylum application.¹⁸¹ 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.¹⁸² In February 2020, the

¹⁷⁹ Myria, *Contact meeting*, 21 December 2016, available at: <http://bit.ly/2jGwYmM>.

¹⁸⁰ Myria, *Contact meeting*, 16 May 2018, para 21, available at <https://bit.ly/2H1jT80>.

¹⁸¹ Myria, *Contact meeting*, 17 January 2018, available at: <http://bit.ly/2HCWN3B>, para 10.

¹⁸² CALL Decision No 206591, 6 July 2018.

Immigration Office confirmed that, currently, no Dublin-transfer decisions (26 quater) are taken for Hungary.¹⁸³

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.¹⁸⁴ 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 Immigration Office. The latter is not aware of the number of asylum seekers that returned at their own initiative. From January to October 2019, 821 take charge and take back request were made to Greece. 5 persons were transferred.¹⁸⁵

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 Immigration Office received individualised guarantees from Greece regarding his access to the asylum procedure and his reception conditions.¹⁸⁶

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 Immigration 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.¹⁸⁷

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 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.¹⁸⁸

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.¹⁸⁹ In the cases of families with minor children, the Immigration Office had a generalised practice of requesting individualised guarantees from Italy. This practice ended in January 2019 following a letter from the Italian authorities stating that families with children will be accommodated in specific reception centres and the unity of family will be respected. The Immigration Office considers this as sufficient guarantees.¹⁹⁰ From 2016 until early 2020, the CALL has upheld transfers to Italy for most asylum seekers,¹⁹¹ although it has ruled against transfers in some specific

¹⁸³ Myria, *Contact meeting*, 19 February 2020, available in French at: <https://bit.ly/39Gab4P>, para 135.

¹⁸⁴ 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.

¹⁸⁵ Myria, *Contact meeting*, 20 November 2019, available at: <http://bit.ly/2IZq1w9>.

¹⁸⁶ CALL, Decision No 205104, 8 June 2018.

¹⁸⁷ CALL, Decision No 208991, 6 September 2018.

¹⁸⁸ CALL, Decision No 210384, 1 October 2018.

¹⁸⁹ CALL, Decision No 138 940, 20 February 2015; No 144 488, 27 April 2015; No 144 400, 28 April 2015.

¹⁹⁰ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

¹⁹¹ 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.

cases.¹⁹² The decisive criterion to rule against certain transfers is when applicants have a vulnerable profile but the government did not ask for individualised guarantees.

In 2019, the CALL suspended several Dublin transfers to Italy. Most cases concerned a take back procedure (i.e. the applicant had already made an application for international protection in Italy) and involved vulnerable persons.¹⁹³ Regardless of the vulnerability of applicants, transfers have also been suspended by the CALL on the basis that the Immigration Office had not taken all the individual facts of the case into account and motivated the decision too generally, especially in cases where the applicant had demonstrated through different sources (e.g. AIDA reports, OSAR reports) that Dublin returnees face obstacles in (re)accessing the asylum procedure and the reception system since the Salvini Decree of October 2018.¹⁹⁴ In two other decisions, where the Immigration Office had motivated its decision more extensively, the CALL ruled that the AIDA and OSAR-reports did not demonstrate that transfers to Italy are contrary to Art. 3 ECHR and that the applicant had not sufficiently demonstrated such a risk in his individual case.¹⁹⁵

Bulgaria: The Immigration 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.¹⁹⁶ 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.¹⁹⁷ 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.¹⁹⁸

In March 2017, the CALL ruled against the transfer of a single Afghan national to Bulgaria. The Immigration 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 Immigration Office did not perform a rigorous investigation into the different possible situations in which Article 3 ECHR could be breached.¹⁹⁹

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 Immigration Office had neglected to perform a thorough investigation into the current situation in Bulgaria and only referred to outdated reports.²⁰⁰ Moreover, the lack of interpreters in Bulgaria²⁰¹ and the procedural bias against Afghan nationals²⁰² have led the CALL to suspend transfers.

¹⁹² 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.

¹⁹³ CALL, Decision No 214701, 4 January 2019; No 224 129, 19 July 2019; No. 228 640, 7 November 2019; No 229 190, 25 November 2019.

¹⁹⁴ CALL, Decision No 229 266, 26 November 2019; No 229 695, 2 December 2019.

¹⁹⁵ CALL, Decision No 229 191, 25 November 2019; No 230 811, 30 December 2019.

¹⁹⁶ Myria, *Contact meeting*, 16 November 2016, para 34; *Contact meeting*, 17 January 2018, para 10.

¹⁹⁷ 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.

¹⁹⁸ CALL, Decision No 168 891, 1 June 2016.

¹⁹⁹ CALL, Decision No 184 126, 21 March 2017.

²⁰⁰ CALL, Decision No 185 536, 19 April 2017.

²⁰¹ CALL, Decision No 193 680, 13 October 2017.

²⁰² CALL, Decision No 185 279, 11 April 2017.

In 2018, 133 take charge and take back requests were made. However, only 3 transfers of single men were carried out.²⁰³ This number refers only to the transfers carried out by the Immigration Office itself, as the latter is not aware of the number of asylum seekers that returned at their own initiative.

In 2019 only three cases were published on the website of the CALL concerning a Dublin transfer to Bulgaria. In all three cases the CALL suspended the transfer because the Immigration Office failed to conduct a thorough and individualised assessment of the situation in Bulgaria and the possible risks of a breach of Article 3 ECHR. Similarly to the judgements of the past years, the CALL judged that the Immigration Office uses outdated country information and did not take in account the issues that have been identified in Italy, e.g. the lack of interpreters and of legal assistance, the poor conditions in reception centres, and the use of violence by the authorities.²⁰⁴

2.7. The situation of Dublin returnees

The Immigration 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.²⁰⁵ 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.²⁰⁶ 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.²⁰⁷

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**).²⁰⁸

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;²⁰⁹
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. In practice, this time limit has not been respected due to shortage in staff throughout 2019, which has created a significant backlog of cases. Shorter time limits of 10 working days are foreseen for subsequent applications, or even 2 working days for subsequent applications in detention.

²⁰³ Statistics provided by the Immigration Office, February 2019

²⁰⁴ Call Decision No 230 287, 16 December 2019; 228 795, 14 November 2019; 217 304, 22 February 2019

²⁰⁵ Article 57/6/5.

²⁰⁶ Article 57/6/2(1) Aliens Act.

²⁰⁷ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 175-180.

²⁰⁸ Myria, *Contact meeting*, 21 June 2016, available at: <http://bit.ly/2k3obi9>, para 9.

²⁰⁹ 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 Immigration Office.²¹⁰ 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 Immigration Office is explicitly obliged under the Royal Decree on Immigration Office Procedure to take into consideration all elements concerning those two aspects, even if they are invoked only after the interview.²¹¹

At the CGRS the regular personal interview about the facts underlying the asylum application has to take place in the same level of 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.²¹²

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.²¹³ The appeal has automatic suspensive effect, with the exception of some cases concerning [Subsequent Applications](#).²¹⁴

The CALL shall decide on the application within 2 months,²¹⁵ under “full judicial review” (*plein contentieux*).

²¹⁰ Article 51/10 Aliens Act.

²¹¹ Articles 10, 16 and 18 Royal Decree on Immigration Office Procedure.

²¹² Article 57/5-ter(2) Aliens Act.

²¹³ Article 39/57(1)(3) Aliens Act.

²¹⁴ Article 39/70 Aliens Act.

²¹⁵ 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. Challenges identified in the provision of legal assistance during the regular procedure also apply to the admissibility procedure (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 Immigration 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 Immigration Office (“Annex 11-ter”).²¹⁶ 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 Immigration Office.²¹⁷ The “decision of *refoulement*” is suspended until the decision is taken by the CGRS. The “decision of *refoulement*” is also suspended during the time limit to appeal and the whole appeal procedure itself.²¹⁸

The CGRS shall examine whether the application is:²¹⁹

²¹⁶ Article 72 Aliens Decree; Article 52/3(2) Aliens Act. Remarkably, in French the word “*refoulement*” is used (“*terugdriving*” 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.

²¹⁷ Articles 50-ter and 50 Aliens Act.

²¹⁸ Article 39/70 Aliens Act.

²¹⁹ Article 57/6/4 Aliens Act.

- Inadmissible; or
- Cannot be accelerated under the grounds set out in the [Accelerated Procedure](#).²²⁰

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 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.²²¹ 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 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.²²² 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.²²³

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.²²⁴ 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.²²⁵ 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.²²⁶ If the CGRS has not taken a decision within four weeks, the asylum seeker is admitted to the territory.²²⁷ 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.

²²⁰ Except for the ground relating to the failure of the applicant to apply for asylum as soon as possible.

²²¹ Article 74/5(1)(2) Aliens Act.

²²² 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.

²²³ Article 74/9 Aliens Act.

²²⁴ 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>.

²²⁵ And it will be too late to appeal against it in an effective way, as also the ECtHR has ruled in *Singh v. Belgium*.

²²⁶ Article 57/6(2)(1) Aliens Act.

²²⁷ Articles 57/6/4 and 74/5(4)(5) Aliens Act.

For the removal of rejected asylum seekers at the border, the Immigration Office applies the Chicago Convention, which implies that rejected asylum seekers have to be returned by the airline company that brought them to Belgium, to the place from where their journey to Belgium commenced or to any other country where they will be admitted entry.²²⁸ 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 2019, 868 asylum applications were made at the border.²²⁹

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

☒ Same as regular procedure

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

As is the case in the regular procedure, every asylum seeker receives a personal interview by a protection officer of the CGRS, after the Immigration 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.²³⁰

²²⁸ Article 74/4 Aliens Act.

²²⁹ Information provided by the Immigration Office, February 2020.

²³⁰ Article 48/9(1) Aliens Act.

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?

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☒ Judicial

☒ Yes

☐ No

☐ Administrative

☐ No

The appeal at the border is the same as in the regular procedure, except for the much shorter time limits that need to be respected. The time period within which any appeal to the CALL must be lodged while in border detention (including for families in an open housing unit) is only 10 days, or 5 days in cases such as a second or further order to leave the territory, instead of 30 calendar days in the regular procedure.²³¹

Due to this short deadline, asylum seekers may face serious obstacles in appealing negative decisions. The Immigration 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?

❖ Does free legal assistance cover:

☐ Yes

☒ With difficulty

☐ No

☐ Representation in interview

☒ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

❖ Does free legal assistance cover

☒ Yes

☐ With difficulty

☐ No

☒ Representation in courts

☒ Legal advice

In the border procedure, asylum seekers are entitled to free legal aid. In administrative detention, staff have a key role in making access to legal assistance effective for applicants for international protection. Where occupants do not have a lawyer upon arrival in the centre, the prompt submission of an application for designation of a lawyer is essential, especially as the time limits for the various procedures are very short. In practice, it seems that in some closed centres there is a difference in treatment between applicants for international protection considered as “real” by the staff, and foreign nationals that in the course of their procedures are applying for asylum for the first time in the centre or just before repatriation, which are considered as “false”. A lawyer is automatically proposed to the former category, whereas the latter are not systematically offered one, thus rendering access to legal assistance arbitrary and dependent to the staff’s judgement. Moreover, practices concerning the request for the appointment of a lawyer for an applicant for international protection in administrative detention are very different from one detention centre to another. It also appears that no request for appointment is made during weekends, since no social service duty is provided at that time, which is an additional challenge to meet applicable deadlines and represents an obstacle to effective access to legal assistance.²³²

In principle, the same system as described under the regular procedure applies for the appointment of a “pro-Deo” lawyer. However, most bureaux 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

²³¹ Article 39/57 Aliens Act.

²³² UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, <https://bit.ly/35G2h9s>, 34.

adequate experience. The contact between asylum seekers and their assigned lawyer is usually very complicated. Lawyers are often not present at the personal interview because asylum seekers cannot get in touch with them prior to the interview, and lawyers tend to not to visit them before the interview to prepare it. When a negative first instance decision is issued 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 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.²³³

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:²³⁴

- a. Only raises issues irrelevant to international protection;
- b. Comes from a [Safe Country of Origin](#);
- c. Has misled the authorities by presenting false information or documents or by withholding relevant information or documents relating to his or her identity and/or nationality which could have a negative impact on the decision;
- d. Has likely in bad faith destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality;
- e. Has made clearly inconsistent, contradictory, clearly false or obviously improbably representations which contradict sufficiently verified country of origin information, thereby making his or her claim clearly unconvincing;
- f. Has made an admissible [Subsequent Application](#);
- g. Has made an application merely in order to delay or frustrate the enforcement of an earlier or imminent removal decision;
- h. Entered the territory irregularly or prolonged his or her stay irregularly and without good reasons has failed to present him or herself or apply as soon as possible;
- i. Refuses to comply with the obligation to have his or her fingerprints taken; or
- 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.²³⁵ When rejecting the application is treated under the accelerated procedure on the aforementioned grounds, it may pronounce the application as manifestly unfounded.²³⁶ This has effects on the order to leave the territory, which will be valid between 0-7 days instead of 30 days.

²³³ 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.

²³⁴ Article 57/6/1(1) Aliens Act.

²³⁵ *Ibid.*

²³⁶ Article 57/6/1(2) Aliens Act.

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.²³⁷ 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

An appeal in the accelerated procedure must be lodged within 10 days, and has suspensive effect.²³⁸

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.

²³⁷ Article 13 Royal Decree on CGRS Procedure.

²³⁸ Article 39/57(1)(2) Aliens Act.

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.²³⁹ 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.”²⁴⁰ However, there is no definition of what the term vulnerability contains.

1.1. Screening of vulnerability

Both the Immigration Office and the CGRS have arrangements in place for the identification of vulnerable groups. In 2014 the Immigration Office started a “Vulnerability Unit” to screen all applicants upon registration on their potential vulnerability. The Vulnerability Unit consists of officials interviewing vulnerable cases, who have had specific training and are supposed to be more sensitive to the specific implications vulnerability might have on the interview.²⁴¹

Since August 2016 the Immigration 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.²⁴² 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 reception centres, such as emergency centres, won’t be assigned to them.

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.²⁴³ 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.²⁴⁴ Children, whether unaccompanied or

²³⁹ Article 1(12) Aliens Act

²⁴⁰ Article 36 Reception Act.

²⁴¹ 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.

²⁴² Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

²⁴³ Article 27 Royal Decree on CGRS Procedure.

²⁴⁴ Article 15 Royal Decree on CGRS Procedure.

accompanied, should be interviewed in appropriate circumstances and their best interests should be decisive in the examination of the asylum application.²⁴⁵

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.²⁴⁶

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

- ❖ A “Gender Unit”, trained following the EASO training module on Interviewing Vulnerable Persons, assembles all gender-related asylum applications,²⁴⁷ 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;²⁴⁸
- ❖ A “Minors Unit”, 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;²⁴⁹

In 2018, important initiatives were undertaken by Belgium regarding information provision to vulnerable applicants for international protection, as updated instructions for national practitioners in the fields of asylum and protection were issued. Specialised trainings were organised and communication leaflets were published aiming at raising awareness and providing guidance on issues related to gender-based violence, physical and sexual violence, as well as female genital mutilation and discrimination against transgender people.²⁵⁰

It should be noted that the CGRS used to have A “Psy Unit” which 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, the CGRS put an end to the Psy Unit in September 2015 as a consequence of the need to prioritise other internal projects due to the rising numbers of applicants (see section on [Use of Medical Reports](#)).²⁵¹

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

²⁴⁵ 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>.

²⁴⁶ Article 57/1(3) Aliens Act.

²⁴⁷ This includes 12 Gender reference persons in the six geographical sections of the CGRS, the Legal Service and the Documentation Centre (Cedoca).

²⁴⁸ Information provided by the CGRS, 24 August 2017.

²⁴⁹ Information provided by the CGRS, 24 August 2017.

²⁵⁰ EASO, *Annual Report on the Situation of Asylum in the European Union 2018*, available at: <https://bit.ly/2UV3yGj>.

²⁵¹ Information provided by the CGRS: CBAR-BCHV, Contact meeting, 15 September 2015, available at: <http://bit.ly/1GymMYx>, para 60.

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 Immigration 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.²⁵²

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,²⁵³ 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.²⁵⁴

The Council of State further 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.²⁵⁵

In a recent decision of 9 December 2019, the Council of State issued a decision relevant to the contested age assessment procedure.²⁵⁶ The case concerned a Guinean national who claimed to be a minor. He was subsequently taken into care by the Belgian Guardianship Service as an unaccompanied minor. The Immigration Office later expressed doubts as to the applicant's age due to his physical appearance and ordered a medical examination which concluded the age of the applicant to be 26.7 years with a deviation of 2.6 years. The applicant contested the decision arguing that the examiner had offered only a general conclusion and it was unclear how the estimated age was determined. For instance, he argued, *inter alia*, that a hand and wrist examination found he could be aged a minimum of 17.5 years and that the dental examinations were not conclusive. It was argued that the benefit of doubt should therefore have applied in this decision.

The Council of State noted that it is the overall result that is relevant in age assessment decisions. This decision must be consistent and understandable in light of the individual tests carried out that are used to formulate an overall conclusion. The Court highlighted, *inter alia*, that an age determination below 18 was not excluded from the present examinations of the applicant's hands and wrists and that it was thus unclear how the estimated age of 26.7 was determined. It therefore found the statement of reason to be inadequate and annulled the contested decision.

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 Immigration 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.²⁵⁷

²⁵² Article 7 UAM Guardianship Act.

²⁵³ 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>.

²⁵⁴ 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.

²⁵⁵ Council of State, Decision No 242.623, 11 October 2018, available in French at: <https://bit.ly/2FQBcI0>; Decision No 241.990, 28 June 2018, available in French at: <https://bit.ly/2FZVL4g>.

²⁵⁶ Council of State, Decision No 246340, 9 December 2019, available in French at: <https://bit.ly/2Rycbor>.

²⁵⁷ Platform Kinderen op de vlucht, *Leeftijdsschatting van NBMV in vraag: probleemstelling, analyse en aanbevelingen*, September 2017, available in Dutch at: <http://bit.ly/2GyEJsd>.

In 2019 4,563 unaccompanied children were signalled, out of which 85% were boys, and 15% were girls. The top 5 nationalities (among the signalisations) were:

Signalisations of unaccompanied children : 2019	
Country	Number
Afghanistan	1,037
Eritrea	904
Morocco	448
Algeria	344
Sudan	169
Total	2,902

Source: Guardianship Service

Out of a total of 1,343 age assessments conducted in 2019, 983 (73%) were declared to be over 18 years old.²⁵⁸

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

- 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

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.²⁵⁹ 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.²⁶⁰

The identification of a special procedural need is usually done through information in the administrative file or is noticed at during the first interview of the applicant to the Immigration Office. Moreover, the applicant may submit a report from a psychologist, psychiatrist or other doctor attesting his or her needs at a later stage. This usually concerns psychological problems as a result of a trauma, in which case a specialised protection officer is called in to conduct an adequate interview.

However, the medical certificate must be comprehensive and the needs must be clearly demonstrated. In one case in 2019 for example, the anxiety attacks, psychological problems and various physical injuries of an applicant were mentioned in a letter from the medical service of a pre-reception arrangement in Brussels as well as in a medical report from Fedasil, but the Immigration Office judged that these were not sufficient to demonstrate that the applicant was not fit to conduct an interview. The CGRS itself confirmed that it did not notice any particular needs during the interview and stated the medical

²⁵⁸ Information provided by the Guardianship Service, January 2020; Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

²⁵⁹ Article 48/9(1) Aliens Act.

²⁶⁰ Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available in Dutch at <https://bit.ly/2S7NtO5>, 25.

attestations were not recent enough to proof current problems. Similarly, the CALL did not take the medical attestations into account in its judgement.²⁶¹

While certain applicants sometimes mention their special procedural needs during interviews themselves, this is not systematically done by all applicants. Many of them do not know how the procedure will proceed, what questions will be asked and therefore what needs may arise. It is therefore crucial that adequate measures are adopted from the outset so as to prepare, guide and provide information to all applicants, including those who - at first sight - do not seem to have any special needs.

Furthermore, a doctor appointed by the Immigration Office *can* make recommendations on procedural needs, based on a medical examination. However, this is not mandatory,²⁶² and the Immigration Office does not keep any statistical information on if and how many times this is applied in practice.

If the procedural needs have not been signalled at the beginning of the asylum procedure, the asylum seeker can still submit a written note to the CGRS describing the elements and circumstances of his or her request.²⁶³ This does not, however, entail an obligation on the part of the CGRS to restart the examination of the asylum application. The Immigration Office and the CGRS remain free to decide if any special procedural needs apply and their decision in itself is not appealable.²⁶⁴

The CGRS indicated that the evaluation of the procedural needs is an ongoing process. This means that (i) a first evaluation will take place when the file is transferred to the CGRS, (ii) a second assessment is undertaken during the interview and (iii) another evaluation is conducted at the moment of the decision. Those different evaluations can be conducted both in relatively short or long timelines.²⁶⁵

Furthermore, according to the law, reception centres should not only evaluate if special reception needs apply, but should also proactively look for signs of special procedural needs themselves. Where such needs are identified, the centres must inform the Immigration Office and/or the CGRS accordingly, on the condition that the asylum seeker gives its consent.²⁶⁶

Specific procedural needs which have been observed in practice include the conduct of the interview in rooms at ground level in cases where the applicant has a physical disability,²⁶⁷ organising several breaks during the interview, postponing the interview after the birth of a child etc. Overall, when specific procedural needs are identified, the measures mainly consist of hearing the person concerned in an appropriate manner and providing them the opportunity to take a break at any time during the interview. The assistance of an interpreter during a personal interview has also been described in some decisions as a special procedural need. In essence, however, this is not the case since one is entitled to an interpreter during every asylum procedure as described in Article 51/4 of the Aliens Act.

The above examples demonstrate that the CGRS makes efforts to meet certain special procedural needs. However, certain limits have also been noted in practice. In a case of a minor who had reached the age of 18 during the asylum procedure, special assistance was no longer attributed to him.²⁶⁸

The law on Guardianship of unaccompanied minors contains general provisions on the protection of unaccompanied minors as well as on the role of the guardian. Based on this law, the Guardianship unit of the Federal Public Service of Justice has established a hotline that operates 24/7 to notify the detection

²⁶¹ CALL, Decision No 217.807, 28 February 2019.

²⁶² Article 48/9(2) Aliens Act.

²⁶³ Article 48/9(3) Aliens Act.

²⁶⁴ Article 48/9(4) Aliens Act.

²⁶⁵ Myria, *Contact meeting*, 18 April 2018, available in Dutch at: <https://bit.ly/2slMaXC>, para. 56.

²⁶⁶ Article 22(1/1) Aliens Act.

²⁶⁷ CALL, Decision No 214.454, 20 December 2018; CALL Decision No 215.972, 30 January 2019; CALL, Decision No 213 350, 30 November 2018.

²⁶⁸ CALL, Decision No 217807, 28 February 2019.

of unaccompanied children, so that the necessary arrangements can be made.²⁶⁹ For unaccompanied minors the specific procedural needs mainly consists of the assistance of a guardian, an interview conducted by a protection officer trained in child protection and the fact that the CGRS takes into account the age and level of maturity when evaluating the applicants declarations.²⁷⁰

In 2018 the CALL also made a 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.²⁷¹ 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 Immigration Office should apply the UNCRC and respect the best interest of the child.

In gender-related asylum claims the official of the Immigration Office must check if the asylum seeker opposes to a protection officer of the other sex.²⁷² 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.²⁷³

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.²⁷⁴

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.²⁷⁵ Although unaccompanied children are not detained, they are not exempted from the accelerated procedure in the law. However, in practice, the accelerated procedure is not applied to unaccompanied minors.²⁷⁶

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

²⁶⁹ Program Law (I) (art. 479), 24 December 2002 - Title XIII – Chapter VI : Guardianship of non-accompanied minors

²⁷⁰ CALL, Decision No 216062, 30 January 2019; CALL, Decision No 215.418, 21 January 2019; CALL, Decision No 214735, 7 January 2019; CALL, Decision No 228246, 30 October 2019.

²⁷¹ 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>.

²⁷² Article 9 Royal Decree on Immigration Office Procedure.

²⁷³ 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.

²⁷⁴ Article 48/9(5) Aliens Act.

²⁷⁵ ECtHR, *Muskhadzhieva v. Belgium*, Application No 41442/07, Judgment of 19 January 2010.

²⁷⁶ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 290.

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.²⁷⁷ However, refusal to undergo a medical examination shall not prevent the CGRS from deciding on the asylum application.²⁷⁸ The CGRS has stated that it has not yet made use of this possibility.²⁷⁹

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.²⁸⁰

The CGRS should evaluate the report together with all the other elements of the case.²⁸¹

It is not yet clear how this new provision has been 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

As already mentioned, a "Psy Unit" at the CGRS existed until 2015, 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.²⁸² The purpose of the psychologist's intervention was clearly not to confirm or contradict certain elements of the asylum application. The Unit was shut down because of a lack of resources and the necessity to focus on other priorities.

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.

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.²⁸³ In such cases the applicant will be asked - through the intermediary of his lawyer - to answer certain questions in writing so as to provide the CGRS with all the elements necessary for the processing of the asylum application. In such cases the CALL has referred to UNHCR's Handbook on Procedures and Criteria for Determining the Status of Refugees which recommends to adapt the fact-finding methodology to the seriousness of

²⁷⁷ Article 48/8(1) Aliens Act.

²⁷⁸ Article 48/8(3) Aliens Act.

²⁷⁹ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 300.

²⁸⁰ Article 48/8(2) Aliens Act.

²⁸¹ Article 48/8(4) Aliens Act.

²⁸² CBAR-BCHV, *Trauma, geloofwaardigheid en bewijs in de asielprocedure*, August 2014, 74-80.

²⁸³ Myria, *Contact meeting*, 18 January 2017, available at: <http://bit.ly/2kx93eZ>, para 25.

the applicant's medical condition; to reduce the burden of proof normally placed on the applicant and to rely on other sources to obtain information that the applicant cannot provide.²⁸⁴

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, which argues that such reports cannot determine the exact cause of the harm, its perpetrator nor the reasons that lie behind it.²⁸⁵ 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.²⁸⁶

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 CGRS. 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.²⁸⁷

In March 2019 the Council of State annulled a judgment of the CALL because it had not sufficiently taken into account the medical attestations that were provided. In that case, the medical certificates submitted by the applicant in the context of his subsequent application included findings of physical and psychological injuries which may have resulted from ill-treatment linked to the state of slavery. While the CALL had ruled that the evidence provided did not restore the credibility of the applicants account of his status as a slave, the Council of State found that the administrative judge did not carry out a detailed examination of the risk of persecution and violated the rights guaranteed by articles 3 and 4 ECHR.²⁸⁸

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 main objective of the organisation 'Constat' is to defend and promote the full implementation 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', which offers medical, psychiatric, psychological, psychotherapeutic and/or fascia-therapeutic consultations to victims of human rights violations and torture.

²⁸⁴ CALL, Decision No 222091, 28 May 2019.

²⁸⁵ 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.

²⁸⁶ Article 48/7 Aliens Act.

²⁸⁷ CALL, Decision No 207 193, 25 July 2018.

²⁸⁸ Council of State, Judgment No 244 033, 26 March 2019, available in French at: <https://bit.ly/2uWoO57>.

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 cases where 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 Immigration Office instead of the CGRS.²⁸⁹ This application for protection based on 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 out 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*,²⁹⁰ 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.²⁹¹ 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.²⁹²

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,²⁹³ while - prior to 2015 - one had to choose between the two or conduct them consecutively. In practice the Immigration Office often postpones the specific procedure while awaiting the results of the asylum procedure.

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.²⁹⁴ It should be noted, however, that a pending asylum procedure in practice could cause other procedures for finding a durable solution to be

²⁸⁹ Article 9-ter Aliens Act.

²⁹⁰ 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.

²⁹¹ CALL, Decision No 168 897, 1 June 2016; Constitutional Court, Decision No 13/016, 27 January 2016.

²⁹² Article 479 Title XIII, Chapter VI of Programme Law of 24 December 2002 (UAM Guardianship Law).

²⁹³ Article 61/15 Aliens Act.

²⁹⁴ Article 479(9)(12) UAM Guardianship Law.

temporary 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 Immigration 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.²⁹⁵

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.²⁹⁶

On 31 December 2019 there were 2,662 guardianships, of which 2,024 were new guardianships.²⁹⁷ One guardian can take on several guardianships.

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 Immigration 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.²⁹⁸ It can often take some time before these files are transmitted to the CGRS. These files are not considered a priority for the Immigration Office, who prioritises Dublin files.²⁹⁹

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.³⁰⁰ The claim is deemed admissible where the previous application has been terminated on the basis of implicit withdrawal.³⁰¹

The CGRS should take this decision within 10 working days after receiving the application from the Immigration Office. Due to a high volume of subsequent applications, the 10 days delay is often not

²⁹⁵ Article 11 UAM Guardianship Law; 9 Royal Decree Immigration 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>.

²⁹⁶ Article 479(6) UAM Guardianship Law.

²⁹⁷ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

²⁹⁸ Article 51/8 Aliens Act.

²⁹⁹ Myria, *Contact meeting* of 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, para 26.

³⁰⁰ Article 51/8 Aliens Act.

³⁰¹ *Ibid*, citing Article 57/6/5(1)-(5) Aliens Act.

respected.³⁰² If the person is in detention, this decision should be taken within 2 working days.³⁰³ 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.³⁰⁴ In 2019, significant delays in these procedures were noted in practice, from several months up to more than a year.

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*.³⁰⁵

An appeal to the CALL against an inadmissibility decision should be made within 10 days, or 5 days when the applicant is in detention.³⁰⁶ The appeal has automatic suspensive effect, except where:³⁰⁷

- 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:³⁰⁸

- 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 4,363 applicants lodged subsequent applications in 2019:

Subsequent applicants by 6 main countries of origin: 2019	
Country	Number
Afghanistan	1,154
Iraq	629
Somalia	181
Syria	171
Guinee	154
Albania	142

Source: CGRS

The evaluation of new elements is strictly applied in practice according to multiple actors and lawyers. However, the Belgian State has avoided condemnations by the ECtHR through friendly settlements. On 7 March 2019 for example, a decision on a friendly settlement was issued in a case concerning an Afghan applicant who was denied international protection due to lack of credibility.³⁰⁹ His subsequent medical report had not been taken into account, leading to the rejection of his new application, as no new elements

³⁰² Myria, *Contact meeting* 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 11.

³⁰³ Article 57/6(3) Aliens Act.

³⁰⁴ Article 57/6/1(1) Aliens Act.

³⁰⁵ Article 57/6/2(2) Aliens Act.

³⁰⁶ Article 39/57 Aliens Act.

³⁰⁷ Article 39/70 Aliens Act.

³⁰⁸ Article 57/6/2(3) Aliens Act.

³⁰⁹ ECtHR *H.G.S. against Belgium*, Application No 26763/18, 7 March 2019.

were found. The applicant complained of a violation of Article 3, in its procedural aspect, as well as Article 13, as the standard of proof required was excessive. He claimed the asylum authorities had failed to take his mental disorder into account, even though the lack of credibility was later based on this disorder. He also claimed that the CALL had placed the burden of proof entirely on him, regardless of the benefit of the doubt, and that the judge failed to duly examine available evidence (i.e. the medical report). The Belgian State successfully settled this case so as to avoid a (possible) negative decision by the ECtHR. The Belgian government guaranteed that the CGRS would take all evidence into account if a new asylum application is lodged, including the mental disorders of the applicant which seem to have been at the origin of a lack of credibility.

Another friendly settlement was found in a case of September 2019 regarding the evaluation of new elements in a subsequent application.³¹⁰ This case was filed by a Pakistani asylum seeker whose application for international protection had been rejected in November 2017 by the CGRS. After having provided evidence of the risk of persecution he faced due to his religion, and because a family member was murdered for this reason, while other family members had obtained international protection in Canada, the applicant claimed before the ECtHR that the Belgian asylum authorities had not thoroughly examined his situation, as required by Article 3 and 13 ECHR. He claimed that the asylum authorities rejected his application although they did not question the authenticity of the additional documents. The Belgian government reached a friendly settlement and guaranteed that the CGRS would examine a possible new asylum application in accordance with the procedural obligations laid down in Article 3 ECHR.

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](#).³¹¹

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.³¹²

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

³¹⁰ ECtHR, *A.A. against Belgium*, Application No 51705/18, 26 September 2019.

³¹¹ Article 57/6/1(1)(b) Aliens Act.

³¹² Article 57/6/1(3) Aliens Act.

Affairs. The list must be reviewed annually and can be adjusted.³¹³ The Royal Decree of 15 December 2019 on Safe Countries of Origin reconfirmed the list of safe countries of origin that was adopted in 2017: **Albania, Bosnia-Herzegovina, Northern- Macedonia, Kosovo, Serbia, Montenegro, India and Georgia.**³¹⁴

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 2019, a total of 1,958 persons from safe countries of origin applied for asylum. The breakdown per nationality is as follows:

Country	2014	2015	2016	2017	2018	2019
Kosovo	842	737	331	320	242	194
Albania	732	827	817	882	668	680
FYROM / North Macedonia	403	335	165	251	194	190
India	84	79	50	52	81	46
Bosnia-Herzegovina	150	58	56	44	23	45
Montenegro	19	15	14	5	8	20
Serbia	502	374	203	232	198	220
Georgia	:	:	:	468	695	563
Total	2,732	2,425	1,636	2,254	2,109	1,958

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,³¹⁵ as a ground for inadmissibility.³¹⁶ 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. This concept has not yet been applied by the CGRS.³¹⁷

2.1. Safety criteria

A country may be considered as a safe third country where the following principles apply:³¹⁸

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.

³¹³ Article 57/6/1 Aliens Act.

³¹⁴ Royal Decree of 17 December 2017, available at: <http://bit.ly/2pi7CR2>.

³¹⁵ Article 57/6/6 Aliens Act.

³¹⁶ Article 57/6(3)(2) Aliens Act.

³¹⁷ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

³¹⁸ Article 57/6/6(1) Aliens Act.

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.³¹⁹ 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”.³²⁰

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 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.³²¹ 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 it was possible to return to that country, they had a residence permit there and because of their socio-economic situation.³²²

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.

³¹⁹ Article 57/6(2) Aliens Act.

³²⁰ *Ibid.*

³²¹ See e.g. CALL, Decision No 129 911, 23 September 2014; No 123 682, 8 May 2014.

³²² Myria, *Contact meeting*, 19 April 2016, available at: <http://bit.ly/2jGUHTW>, para 28.

In 2019 the application of the first country of asylum led to the inadmissibility of the asylum application of 17 applicants, all Tibetans, having India as the first country of asylum.³²³

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 Immigration Office Procedure provides for an information brochure to be handed to the asylum seeker the moment he or she introduces the asylum application. The brochure is supposed to be in a language the asylum seeker can reasonably be expected to understand and should at least contain information about the asylum procedure, the application of the Dublin III Regulation, the eligibility criteria of the Refugee Convention and of subsidiary protection status, access to legal assistance, the possibility for children to be assisted during the interview, reception accommodation, the obligation to cooperate, the existence of organisations that assist asylum seekers and migrants and the contact details of the UNHCR representative in Belgium.³²⁴

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 June 2019 and exists in three languages (Dutch, French, English,) and in a DVD version and is distributed at the dispatching desk of Fedasil, where people are designated to a reception accommodation place.³²⁵ Asylum seekers also receive an extensive brochure on the day they made the application.

In October 2019 Fedasil further launched a new website (www.fedasilinfo.be) which is available in 12 languages: Dutch, French, English, Arabic, Farsi, Pashto, Russian, Spanish, Albanian, Turkish, Somali and Tigrinya. 8 of these languages also include an audio version. There are 8 main topics addressed: asylum and procedure, accommodation, living in Belgium, return, work, unaccompanied minors, health and learn. The website is only available in Belgium.

Besides this, some specific leaflets are also published and made available. The brochure ‘Women, girls and asylum in Belgium’ 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 issues related to health, equality between men and women, intra-family violence, female genital mutilation and human trafficking. For unaccompanied and accompanied minors, the CGRS also created specific brochures explaining the asylum procedure.³²⁶ Leaflets with specific information are also available for asylum

³²³ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

³²⁴ Articles 2-3 Royal Decree on Immigration Office Procedure.

³²⁵ 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>.

³²⁶ CGRS, *Guide for non-accompanied minors who apply for asylum in Belgium* and *Guide for accompanied minors in the asylum procedure in Belgium*, available at: <http://bit.ly/2kvQCpP>.

seekers in a closed centre, at a border or in prison. 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.³²⁷

Moreover, the CGRS has published several brochures on different aspects of the asylum procedures. There is a code of conduct for interpreters and translators and a so-called charter on interview practices that serves as the CGRS protection officers' code of conduct (see [Regular Procedure: Personal Interview](#)). All these publications are freely available on the CGRS website.³²⁸

Vluchtelingenwerk has published several guidelines for lawyers both in French and Dutch, for example on Dublin,³²⁹ and on subsequent applications.³³⁰

A procedural guide by Ciré was updated in 2019, but only available in French.³³¹

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 – to name only some – as well as Myria 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.³³²

³²⁷ The leaflets can be consulted at: <http://bit.ly/2l019Xb>.

³²⁸ CGRS, *Publications*, available at: <http://bit.ly/2kvQCpP>.

³²⁹ Vluchtelingenwerk Vlaanderen, *Het Dublin-onderzoek: leidraad voor de advocaat*, available in French and Dutch at: <http://bit.ly/2kkX4Os>.

³³⁰ Vluchtelingenwerk Vlaanderen, *Nota pre-registratie en opvang bij meervoudige asielaanvragen*, available in French and Dutch at: <http://bit.ly/2jGWfNK>.

³³¹ Ciré, *Guide de la procédure d'asile*, 2019, available in French at: <https://bit.ly/2tvuPFF>.

³³² 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.

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.³³³ 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.

UNHCR's role during the asylum procedure should be highlighted, however. In Belgium, the law foresees that UNHCR may inspect all documents, including confidential documents, contained in the files relating to the application for international protection, throughout the course of the procedure with the exception of the procedure before the Council of State.³³⁴ It may further give an oral or written opinion to the Minister in so far as this opinion concerns the competence to determine the State responsible for the processing of an application for international protection, and to the CGRS, on his own initiative or at his request. If the CGRS deviates from this opinion, the decision must explicitly state the reasons for the deviation.³³⁵

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?³³⁶ ☒ 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 the fall of 2018, 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. This policy change followed an increase in the number of asylum seekers coming from Gaza, who were further targeted by several dissuasion campaigns.³³⁷

According to the CGRS, the evolution of the situation in the Gaza Strip, and especially the fact that the living conditions are no longer problematic for all inhabitants, a case by case assessment must be conducted on each asylum application.³³⁸

In this context, the CGRS stated that the determining element will be *inter alia* 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 to grant protection to a Palestinian applicant from Gaza. The applicant had provided more recent information on the difficulties that Palestinians face at the border crossing-points. The CALL

³³³ Article 33 Reception Act.

³³⁴ Article 57/23 bis Aliens Act.

³³⁵ Ibid.

³³⁶ Whether under the "safe country of origin" concept or otherwise.

³³⁷ Knack, 'De Block gaat Palestijnen ontraden om naar België te komen', 4 March 2019, available at: <https://bit.ly/368goEV>; MO, 'Zo ontmoedigt ons land Palestijnen uit Gaza om hier asiel aan te vragen', 24 September 2019, <https://bit.ly/2NAnGux>.

³³⁸ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, 310.

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 was therefore needed to assess whether the situation at the border has altered.³³⁹

The CALL had 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.³⁴⁰ The CALL related 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.

However, in four more recent judgments of 18 and 19 November 2019, the united Chambers of the CALL clarified that not all Palestinians from the Gaza Strip are eligible for international protection. Country information indicates that the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) is still operational in Gaza. The security situation is precarious, but a return via the Rafah border is possible and there is no systematic persecution of Palestinians nor appalling living conditions. However, the CALL also confirmed that individual circumstances may give rise to the granting of international protection in specific cases.³⁴¹

³³⁹ CALL, Decision No 216,474, 7 February 2019

³⁴⁰ CALL, Decision No 206 073, 28 June 2018; No 182 381, 16 February 2017; No 150 535, 7 August 2015.

³⁴¹ CALL, Decisions No 28889; 228888; 228946 and 228949; 18 and 19 November 2019.

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.³⁴²

There is no limit to this right connected to the nationality of the asylum seekers in the Reception Act. Asylum seekers from safe countries of origin will have a reception place assigned to them. EU citizens and persons who have a protection status in another EU country applying for asylum and their family members are entitled to reception as well, although in practice they are not accommodated by Fedasil (see [Differential Treatment of Specific Nationalities in Reception](#)). This means that they need to secure housing with their own means.

In theory, no material reception conditions, with the exception of medical care, are due to a person with sufficient financial resources.³⁴³ Expenses that have been provided in the context of reception can also be recovered in such cases.³⁴⁴ Nevertheless, no assessment of these financial resources or of the actual risk of destitution of the person concerned takes place 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 check the financial resources a person has. An exception applies to asylum seekers who have access to employment while being accommodated in reception centres, as they will have to contribute financially for their accommodation. A stable work contract can even lead to the withdrawal of the right to reception. The concept and means used for calculating financial resources, as well as the part to be contributed, are determined in a Royal Decree of 2011 (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.³⁴⁵ The Reception Act, however, now clearly provides that an asylum seeker has the right to shelter from the moment he or she makes the asylum application, and not only from the moment where the asylum application is registered,³⁴⁶ in line with the recast Reception Conditions Directive.

³⁴² Article 3 Reception Act.

³⁴³ Article 35/2 Reception Act.

³⁴⁴ Article 35/1 Reception Act.

³⁴⁵ Article 50/1 Aliens Act.

³⁴⁶ Article 6(1) Reception Act.

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 are initially accommodated for minimum 3 days. 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.³⁴⁷ The length of stay in the arrival centre depends on how quickly Fedasil finds an adapted place in the reception network and on how many requests for international protection are made in one day. If there are more than 130 requests, Fedasil may assign a number of asylum seeker directly to another centre.³⁴⁸ There are currently 839 places in the arrival centre.³⁴⁹

When an asylum seeker lodges his or her application, he or she gets a “proof of application” (“Annex 26”), and a document of Fedasil assigning him or her to a reception centre as a mandatory place of registration (“Code 207”).³⁵⁰ 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. His or her right to have the assistance of a pro bono lawyer may be affected as well; in case he or she lives with someone who has sufficient means and can afford a lawyer. The applicant can nonetheless always opt for material aid again, as long as his or her asylum procedure is pending.

The arrival centre Klein Kasteeltje faced significant difficulties in 2018 and 2019, mainly due to a lack of capacity both in the centre and in the overall reception system (see [Types of accommodation](#)). As a consequence of the shortage of places, the government had set a limited amount of asylum applications per day which was ruled to be in contradiction with national and international law by the Council of State.³⁵¹ After this judgement all asylum seekers were thus accommodated on the day they made their application for international protection.

However, in January 2020, the government decided again to limit the right to reception of certain categories of asylum seekers. Through its Instructions on the 'Modalities relating to the right to material assistance of applicants for international protection with an Annex 26 quater or a protection status in another Member State' of 3 January 2020, Fedasil limits the material reception to medical assistance for two categories of applicants:³⁵²

- applicants with a decision that designates another EU Member State as responsible for the asylum procedure on the basis of the Dublin III Regulation (Annex 26 quater), who have not been transferred to this competent Member State within the prescribed period, and who report back to the Immigration Office after the expiry of the transfer period in order to reopen their asylum procedure in Belgium. (see [Right to reception: Dublin procedure](#))
- applicants who have already been granted international protection (i.e. refugee or subsidiary protection status) in another EU Member State and who make a new application for international protection in Belgium. (see [Error! Reference source not found.](#)).

This new policy was adopted following important issues of overcrowding of the reception network as well as the increase of applications for international protection made by these groups. According to Fedasil, a large proportion of applicants with a 26 quater also refuse to reside in the reception network or to go to the Dublin open return place, thus avoiding transfers to the competent Member State. The instructions have been applicable since 7 January 2020.

³⁴⁷ Chamber of Representatives, *Policy Note on asylum and migration*, October 2017, 24.

³⁴⁸ Myria, *Contact Meeting*, October 2019, available in Dutch at: <https://bit.ly/2Voxi09>.

³⁴⁹ Fedasil, Statistics, available in Dutch at: <https://bit.ly/381VOXG>.

³⁵⁰ Articles 9-10 Reception Act.

³⁵¹ CE, Decision No 243306, 20 December 2018

³⁵² Vluchtelingenwerk Vlaanderen, *Legal note: Federal government refuses to grant reception to certain groups of asylum seekers*, available in Dutch at: <https://bit.ly/2w8fsUw>.

Both categories of applicants can be assigned 'a code 207 no show' by Fedasil after an evaluation by the dispatching desk of Fedasil is conducted. A "code 207 no show" is an administrative term which means that Fedasil limits the material assistance to the reimbursement of medical expenses. This means that applicants have to secure housing themselves during the entire asylum procedure and that they are not entitled to the other rights provided for in Article 2(6) of the Reception Act (i.e.. food, clothing, social assistance, the granting of a daily allowance, access to legal assistance, and interpreting services). Fedasil's decision to limit material assistance has thus a significant impact on the applicants.

The function of the dispatching service of Fedasil is based on an assessment of the situation of applicants, which will pay particular attention to the capacity and availability for asylum authorities, individual background and needs of the applicant, and their network in Belgium. If the evaluation shows that the applicant did not stay in or left the reception network "presumably to abscond from the authorities under the Dublin procedure", the dispatching desk may decide not to allocate a new reception place. Practice has shown that the refusal to grant reception conditions is categoric and of general nature, meaning that it does not take into account individual circumstances such as vulnerabilities nor whether a dignified standard of living will be ensured, in clear violation of article 4 of the Reception Act (see [Reduction or withdrawal of reception conditions](#)). Moreover, some of these decisions do not provide for a legal basis.

Since 2017, many migrants, mostly originating from Sudan and Eritrea, are sleeping in the park opposite to the (former) Immigration Office building. Many of them refuse to apply for asylum and are therefore not entitled to accommodation under the Reception Act. According to NGOs, they refuse to apply for asylum due to misleading information provided by the government and harsh and repeated police interventions.³⁵³ Moreover, some of them fear to be sent back to Italy or Greece under the Dublin III Regulation and some others have already obtained a protection status in another EU-country but wish 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 near the **Northern train station** in Brussels and continues to provide aid.

In February 2019, 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.³⁵⁴ These problems also prevent them to start an asylum procedure, or to try to obtain another legal status, according to a report written by Vluchtelingenwerk Vlaanderen, Ciré, Nansen vzw, Caritas International and Plateforme des citoyens.³⁵⁵

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.³⁵⁶ This is unless Fedasil is informed that they have a pending or granted request for a prolongation of the reception.³⁵⁷ Between the moment of the subsequent application and the admissibility

³⁵³ 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/2sKBiIL>.

³⁵⁴ 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>.

³⁵⁵ Vluchtelingenwerk Vlaanderen and others, *Migrants in transit in Belgium*, February 2019, available in French at: <https://bit.ly/2I1ivR3>.

³⁵⁶ Article 4(1)(3) Reception Act.

³⁵⁷ 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>.

decision by the CGRS, 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. Asylum seekers must then present themselves to the dispatching desk to be allocated a reception place.

When the asylum seeker has not obtained reception from Fedasil during the first stage of the procedure and the CGRS declares the subsequent asylum application inadmissible, he or she will not be entitled 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 reception should be in line with the principle of proportionality, should be individually motivated and based on the particular situation of the person concerned, especially with regard to vulnerable persons. Health care and a dignified standard of living should be ensured at all times. According to the Constitutional Court this decision is only legal in cases of abuse of the asylum procedure, e.g. when the person applies for asylum for the sole purpose of extending the right to reception.³⁵⁸

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 and to consider all elements of the case.³⁵⁹ As a result, subsequent applicants often obtain reception after challenging such decisions in front of courts. The Federal Mediator also drew attention to this problem in his annual report of 2015 and 2016.³⁶⁰ 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.³⁶¹

1.3. Right to reception: Dublin procedure

During the examination of the Dublin procedure by the Immigration Office, asylum seekers are entitled to a reception place. However, Fedasil limits the right to reception conditions until a negative Dublin decision (26 quarter) is issued and the delay on the order to leave the territory has expired. 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.³⁶² Fedasil considers this practice in line with the *Cimade and Gisti* judgement of the CJEU,³⁶³ The Labour Courts of Brussels and Antwerp have overruled these instructions in individual cases, as they rely on a strict interpretation of the *Cimade* judgment, by 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.³⁶⁴ Currently, asylum applicants subject to a Dublin transfer decision (26

³⁵⁸ Constitutional Court, Decision No 95/2014, 30 June 2014.

³⁵⁹ 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.

³⁶⁰ Federal Mediator, *Annual Report 2016*, available at: <https://bit.ly/2udKLvX>; *Annual report 2015*, available at: <http://bit.ly/2jAm6f7>.

³⁶¹ 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>.

³⁶² 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.

³⁶³ CJEU, Case C-179/11, *CIMADE, GISTI v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27 September 2012.

³⁶⁴ 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>.

quarter) are accommodated in an open return place and the return track procedure will apply, as described below.³⁶⁵

After the maximum time period allowed by the Dublin Regulation to transfer the asylum seeker to the responsible Member State has passed, Belgium is responsible for the application by default and a reception place is re-assigned when the person presents him or herself to the Immigration Office and the Immigration Office has reopened the first application (see [Dublin](#)). However, following the introduction of new instructions on 3 January 2020, Fedasil can now refuse to accommodate persons who fall under the responsibility of the Belgian state by default due to the failure to carry out the transfer in time. As explained above, the dispatching service of Fedasil must make an assessment of the situation of the applicant for the placement in reception (see [Right to shelter and assignment to a centre](#)).

In a decision of 22 January 2020, the Labour Court of Brussels condemned Fedasil for applying these new instructions to an applicant subject to a Dublin transfer (with a 26 quater). He had left the shelter after receiving the annex 26 quater and communicated his new address to the Immigration Office. When the six months deadline for the transfer expired, the applicant reported back to the Immigration Office. Fedasil's decision refers to article 4(1) of the Reception Act, which foresees that Fedasil may limit or withdraw the material assistance if an applicant refuses, does not use, or leaves the assigned mandatory place of registration without informing Fedasil or, if permission is required, without having obtained it. The Labour Court ordered Fedasil to accommodate the concerned individual given that his application for international protection was re-opened by the Immigration Office and that he is thus entitled to reception. There are no provisions in the Reception Act or in the recast Reception Directive which allow an indefinite exclusion from the material reception because an applicant left a designated reception location earlier. Fedasil's decision was not individually motivated and did not take into account the specific needs of the applicant. Given that the applicant has been living on the street since their decision, Fedasil doesn't guarantee the right to a dignified standard of living, as recently clarified by the European Court of Justice.³⁶⁶ The Labour Court ruled that the saturation of the reception network is not a reason to limit or withdraw the right to reception foreseen in article 4 of the Reception Act.³⁶⁷

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 Immigration Office transfer decision under the Dublin Regulation.³⁶⁸

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.³⁶⁹ Nonetheless, these asylum seekers often are still considered as subsequent applicants and therefore are without shelter until this decision is officially taken.

1.4. Right to reception: Applicants with a protection status in another EU Member State

³⁶⁵ 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.

³⁶⁶ CJEU, C-233/18 *Haqbin*, 12 November 2019.

³⁶⁷ Labour Court of Brussels, Decision No 2020/000899, 22 January 2020.

³⁶⁸ ECtHR, *V.M. and others v. Belgium*, Application No 60125/11, Judgment of 7 July 2015 (referred to the Grand Chamber but eventually struck out of the list), available at: <http://bit.ly/1MYGPvr>.

³⁶⁹ Article 57/6/2 Aliens Act.

Since the introduction of Fedasils' new instruction on 3 January 2020, beneficiaries of protection in another EU Member State are no longer provided accommodation in Belgium. To that end, the Immigration Office introduced a new questionnaire to be completed by each applicant for international protection on the day they make the application. In this questionnaire, the Immigration Office asks *inter alia* whether the applicant has already obtained international protection in another EU Member State. If the applicant declares that he has been granted protection, the dispatching service of Fedasil can refuse material reception and only grant medical assistance (known as a decision "code 207 no show"). Such a decision is taken only following an evaluation of the individual situation and needs of the applicant, notably by taking into account the reasons for applying for international protection in Belgium (e.g. presence of family members).

In addition to the questionnaire, the Immigration Office checks through EURODAC whether applicants have already received protection in another EU Member State. If the applicant was wrongly assigned a reception location because he or she omitted to declare that he or she was granted protection in another Member State, Fedasil will ask him or her to report back to the arrival centre. According to Fedasil's instruction it is the duty of social workers to inform the applicants of their obligation to report back to the arrival centre, where reception conditions will be withdrawn and limited to medical assistance. According to the instruction, these applicants must be informed about the possibilities for support if they want to return to the other EU Member State.

1.5. "Return track" and assignment to an open return centre

The law foresees a so-called "return track" for asylum seekers.³⁷⁰ This is a framework for individual counselling on return set up by Fedasil which promotes voluntary return to avoid forced returns.³⁷¹

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 has been issued, the asylum seeker is formally offered return assistance. When an appeal is lodged in front of the CALL, the asylum seeker is informed again about his or her options for return. The return track ends with the transfer to an open return place in a federal reception centre, when:

(1) The period to introduce an appeal in front of the CALL has expired or a negative appeal decision is taken by the CALL: Asylum seekers may 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.

³⁷⁰ Article 6/1 Reception Act.

³⁷¹ 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.

In November 2019 Fedasil published instructions specifically addressed to persons who can not be accommodated in open return centres due to medical reasons which would render the accommodation inadequate.³⁷² A specific track has thus been established for them by the “voluntary return” service of Fedasil. This service foresees the possibility to set up 3 appointments during which possibilities for voluntary return are discussed and which can take place in the reception centre of the asylum seeker, if necessary. The decision to further prolong the right to reception of the concerned person will depend on his/her medical situation as well as on his/her cooperation.

(2) The Immigration 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 Immigration 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.

Unaccompanied minors who are subject to 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.

1.6. End of the right to reception

The right to material reception ends when:³⁷³

- ❖ 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.

Appeals don't have suspensive effect when they are appeals against:

- a decision of the Immigration Office (like a Dublin decision or an order to leave the territory),
- a negative decision on the asylum application 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 Immigration 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 centre 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 [Right to reception: Dublin procedure](#)). In case of a negative decision by the CGRS, the Immigration 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 it deems that there is no risk of direct or indirect *refoulement*, the order to leave the territory is delivered immediately after the decision of the CGRS.³⁷⁴ The time limit of the order to leave the territory will vary between 0 and 30 days (see [Procedures](#)).³⁷⁵

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

³⁷² Fedasil, *Instructions on Return assistance – medical exceptions for open return places*, November 2019, available in French at: <http://bit.ly/3baE7qJ>.

³⁷³ Article 6 Reception Act.

³⁷⁴ Article 52/3 Aliens Act; Article 6 Reception Act.

³⁷⁵ Article 74/14 Aliens Act.

the territory can be prolonged only if the person collaborates on his or her return.³⁷⁶ When the period for voluntary return as determined in the order to leave the country expires and there is no willingness to return voluntarily, the right to reception ends and the Immigration Office can start the procedure to forcibly return the person, including by using administrative detention. In practice, the police may come to the open return centre and arrest a person whose right to reception has ended and who is not willing to return voluntarily.³⁷⁷

In case of a negative outcome of the asylum procedure and thus the end of the right to reception, there are some humanitarian reasons and other circumstances which may allow for prolongation of the right to reception conditions, namely:

- 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 Immigration Office; or
- whenever respect for human dignity requires it.³⁷⁸

Fedasil has adopted internal instructions about these possibilities and how to end the accommodation in the reception structures in practice.³⁷⁹

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.³⁸⁰ 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.³⁸¹ 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. This is not specified in the Reception act but Fedasil has adopted internal instructions allowing such rules to be put in place.³⁸²

³⁷⁶ Article 6/1 Reception Act and Article 52/3 Aliens Act.

³⁷⁷ Myria, *Contact Meeting*, September 2019, available in Dutch at: <https://bit.ly/32Bz939>.

³⁷⁸ Article 7 Reception Act.

³⁷⁹ Fedasil, *Instructions on the termination and the prolongation of the material reception conditions*, 15 October 2013.

³⁸⁰ 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.

³⁸¹ Ibid.

³⁸² Ibid.

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 €):³⁸³

❖ Accommodated single adult, incl. food	€180-212
❖ Accommodated single adult, without food	€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 assistance to purely material assistance. This includes 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.³⁸⁴ 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").³⁸⁵

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.

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 also decide to change the location of reception, on the basis of these criteria. Currently, the possibilities to change centre on the request of the asylum seeker are limited to the situations enlisted by Fedasil in its internal instructions (see below [Transfers to more adapted reception places](#)).

The reception model, of which the 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.³⁸⁶ According to the law, all asylum seekers can apply to be transferred to an individual accommodation structure after 6 months in a collective centre.³⁸⁷ Where the person's asylum application has already been refused at first instance procedure by the CGRS, the transfer will be refused or postponed. Nonetheless these transfers have been put on hold since 2015 due

³⁸³ Note that these cash amounts are given in the individual reception structures of the LRI. Collective centres provide most assistance in kind.

³⁸⁴ Article 3 Reception Act.

³⁸⁵ Article 13 Reception Act.

³⁸⁶ Regeerakkoord, 9 October 2014, available at: <http://bit.ly/2k2yJfn>. See also Myria, *Contact meeting*, 21 June 2016, available at: <http://bit.ly/2k3obi9>.

³⁸⁷ Article 12 Reception Act.

to the increase in the number of applications and the reception shortages throughout the years.³⁸⁸ 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 recognition:³⁸⁹
 - El Salvador
 - Eritrea
 - Libya
 - Syria
- ❖ 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.³⁹⁰

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.³⁹¹

This procedure is not the same for asylum seekers which came to Belgium through relocation between 2015 and 2017. These persons received 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.³⁹² The Reception Act allows to change an asylum seeker's reception place if the assigned place turns out to be not adapted to the individual needs.³⁹³

In two instructions Fedasil enlisted specific criteria which need to be met before a transfer to another more adapted place is made possible.³⁹⁴ The new assigned place can be located both in a collective reception centre or an individual place. The request to benefit from transfer can be done either by the asylum seeker

³⁸⁸ Information provided by Fedasil: CBAR-BCHV, *Contact meeting*, 15 September 2015, available at: <http://bit.ly/1GymMYx>, para 88 ;Fedasil, Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg, 6 December 2018, available in Dutch at: <https://bit.ly/2S7NtO5>, 7.

³⁸⁹ 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.

³⁹⁰ 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.

³⁹¹ 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.

³⁹² Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

³⁹³ Article 22 Reception Act

³⁹⁴ Fedasil, *Instruction on the transfer to an adapted place for medical reasons*, 7 May 2018, available in Dutch at: <https://bit.ly/2FXDRyY>.

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:

- 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:³⁹⁵

- 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.

Decisions refusing a transfer can be challenged in front of the Labour Court within 3 months. In July 2019 Fedasil was ordered by the labour tribunal to transfer an asylum seeker to an individual reception place. The asylum seeker had stayed in collective centres for more than 3 years. His transfer requests were regularly refused by Fedasil for no reason and without adequate motivation..³⁹⁶

³⁹⁵ *Ibid.*

³⁹⁶ Labour court, Decision No 2019/859, 12 July 2019.

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.³⁹⁷ In 2020 adults and all children from 12 years on who attend 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:³⁹⁸

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.³⁹⁹ 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:⁴⁰⁰

Monthly amounts of “social integration” for Belgian nationals	
Category	Monthly amount
Single adult	940,11

³⁹⁷ Article 34 Reception Act.

³⁹⁸ Extrapolated from the weekly amount, times 4: Information provided by the VVSG, January 2020.

³⁹⁹ Article 11(4) Reception Act.

⁴⁰⁰ Article 14 Law on Social Integration, available at: <http://bit.ly/2kopTt5>.

Cohabitant	626,74
Person with family at charge	1270,51

In practice, most asylum seekers who presented themselves to the PCSW after having been turned down at the Fedasil dispatching desk during the reception crisis of 2009-2012 were refused this financial allowance and had to take their request to the Labour Courts. In its February 2014 judgment in *Saciri*,⁴⁰¹ the CJEU ruled that in case the accommodation facilities are overloaded, asylum seekers may be referred to the PCSW, provided that this system ensures the minimum standards laid down in the Reception Conditions Directive. In particular, the total amount of the financial allowances shall be sufficient to ensure a dignified standard of living and should provide enough to ensure 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, however.

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 decrees 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 rooms⁴⁰²
- A ministerial decree on common house rules in reception centres⁴⁰³

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 varies depending on the specific reception structure. These rules apply in all reception facilities, except the observation and orientation centres for minors.

The common obligatory house rules include:

- 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)

⁴⁰¹ CJEU, Case C-79/13 *Federaal agentschap voor de opvang van asielzoekers (Fedasil) v Selver Saciri and OCMW Diest*, Judgment of 27 February 2014.

⁴⁰² Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018

⁴⁰³ Ministerial Decree on house rules in reception centers, 21 September 2018

The possible sanctions are enumerated in Article 45 of the Reception Act:

1. the formal warning with an entry in the social dossier;
2. the temporary exclusion from the activities organised by the reception structure;
3. the temporary exclusion from the possibility of doing paid community services;
4. the restriction of access to certain services;
5. the obligation to perform tasks of general benefit (in case of non-performance or defective performance this may be considered as a new offence);
6. the temporary suspension or reduction of the daily allowance, with a maximum period of four weeks;
7. the transfer, without delay, of the asylum seeker to another reception structure;
8. the temporary exclusion of the right to material assistance, for a maximum duration of one month;
9. the definitive exclusion of the right to material assistance in a reception structure

The procedures on how to apply these sanctions can be found in a Royal Decree.⁴⁰⁴

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.⁴⁰⁵ This measure was taken against 133 persons in 2019, for a period varying between 3 and 30 days.⁴⁰⁶

The law makes it possible to withdraw reception permanently.⁴⁰⁷ 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 2019.⁴⁰⁸

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 non-suspensive appeal is possible in front of the Labour Court.⁴⁰⁹ 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 of 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. The applicant has the legal right to ask Fedasil for a reconsideration of this sanction, in case he or she can demonstrate that there is no other possibility to ensure living conditions in accordance with human dignity. Fedasil should answer this request within 5 days, after which an onward appeal is again possible in front of the Labour Court.⁴¹⁰ In 2019 only one request for reconsideration of the exclusion from the reception facilities was made, but it was refused by Fedasil.⁴¹¹

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

⁴⁰⁴ Royal Decree of 15 May 2014 on the procedures for disciplinary action, sanctions and complaints of residents in reception centres.

⁴⁰⁵ Article 45(8) Reception Act.

⁴⁰⁶ Information provided by Fedasil, February 2020.

⁴⁰⁷ Article 45(9) Reception Act.

⁴⁰⁸ Information provided by Fedasil, February 2020.

⁴⁰⁹ Article 47 Reception Act.

⁴¹⁰ Article 45 Reception Act.

⁴¹¹ Information provided by Fedasil, February 2020.

them. UNHCR recommended 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 (e.g. the vulnerability) 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.⁴¹²

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.⁴¹³

The possibilities on how to ensure dignified living conditions were in the end not clearly mentioned in the law, although during the preparatory works of the law Fedasil made clear that it has a cooperation with an organisation that works for homeless people to which it 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 “guarantees for dignified living conditions” are not used as a criteria during the decision-making.

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.⁴¹⁴ The case concerned an unaccompanied minor who was refused the right to an accommodation during 15 days. He therefore had to live on the street and at a relative’s place. After 15 days, he was finally accommodated by Fedasil again. In its decision *Haqbin* of 12 November 2019, the CJEU ruled that, where house rules of an accommodation are breached or where a violent behaviour occurs, the sanction cannot be the withdrawal of material reception conditions relating to housing, food or clothing, even if it is temporary. Such sanctions must be taken with even more precaution when they involve vulnerable applicants such as unaccompanied minors. According to the CJEU, even the most severe sanction should not deprive the applicant of the possibility of meeting his most basic needs. Member States should ensure such a standard of living on an ongoing basis and without interruption. They should grant access to material reception conditions in an organised manner and under their own responsibility, including when they call upon the private sector to fulfil that obligation. It is therefore not sufficient for them to provide a list of private homeless centres which could be contacted by the applicant, as Fedasil did in the present case. The competent authorities must always ensure that a sanction complies with the principle of proportionality and does not affect the dignity of the applicant.⁴¹⁵

At the time of writing, Fedasil had no information yet on how the Belgian law and practice will be adapted to this jurisprudence.⁴¹⁶

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

⁴¹² 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>.

⁴¹³ Council of State, Opinion 59/196/4, 27 April 2016, available at: <http://bit.ly/2kVBgvT>.

⁴¹⁴ Labour Court Brussel No 2017/AB/277, 22 March 2018, available at: <https://bit.ly/2Thk6dM>.

⁴¹⁵ CJEU, Case C-233/18 *Haqbin*, Judgment of 12 November 2019.

⁴¹⁶ Information provided by Fedasil, January 2020

can be sanctioned. Since January 2020 Fedasil applies a new instruction based on this provision (see [Right to reception: Dublin procedure](#)).

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. Worryingly, Fedasil is not required to await an official decision of the Immigration Office, CGRS or CALL on the asylum procedure in order to take such a decision. In early 2020 Fedasil published instructions applying this possibility.⁴¹⁷ If an asylum seeker doesn't lodge the application for international protection after he/she made it (on the appointment date the Immigration Office gave on "the certificate of declaration") and he/she didn't present himself to the new appointment date obtained with the help of the social worker in the centre, the centre will end the material reception. The asylum seeker will only have the right to ask for the reimbursement of medical costs, until he/she regularises his/her situation and lodges an application at the Immigration Office. Once the annexe 26 has been obtained, the applicant can request material reception again at the "Infopunt" of Fedasil..

3. The applicant makes a [Subsequent Application](#).

On the basis of Article 4(3) and 4 of the Reception Act, the decisions of revocation or limitation of reception conditions should always:

- be individually motivated;
- be taken with due regard to the specific situation of the person concerned, in particular where vulnerable persons are concerned, and to the principle of reasonableness;
- to ensure access to medical care and a dignified standard of living.

According to the Reception Act, it is 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 sufficient financial resources. Such a sanction can also be imposed for not having omitted to declare resources at the time of making the application.⁴¹⁸ 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.⁴¹⁹ The applicant also has an obligation to inform the authorities thereof. Although a control mechanism is provided for in the abovementioned Royal Decree, Fedasil did not dispose of the necessary means or control mechanisms at the time of writing. Most of the local PCSWs' have the resources to carry out such controls, however. In 2019, 19 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 288,509.49€.⁴²⁰

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.

⁴¹⁷ Instructions of Fedasil on the limitations on the right to reception in case of non-lodging an application for international protection, of 20 January 2020.

⁴¹⁸ Articles 35/1 and 35/2 Reception Act.

⁴¹⁹ 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).

⁴²⁰ Information provided by Fedasil, January 2020.

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 and where he or she also 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.⁴²¹

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of collective reception centres:⁴²² 98
2. Total number of places in the collective reception centres: 20,275
3. Total number of places in LRI: 5,975
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,⁴²³ depending on the profile of the asylum seeker and the phase of the asylum procedure the asylum seeker is in (see section on [Forms and Levels of Material Reception Conditions](#)).

Fedasil was established in 2001 to manage the network of reception centres in an efficient and coordinated way and has fallen under the competence of the Secretary of State for Migration and Integration since the end of 2011. Fedasil is in charge of the management and coordination of the network, which includes collective and individual reception places, in addition to other responsibilities such as coordinating the voluntary return programs, the observation and orientation of unaccompanied children

⁴²¹ Article 4 Reception Act.

⁴²² Information provided by Fedasil, January 2020; Statistics Fedasil available at: <https://bit.ly/2Une7k6>.

⁴²³ Article 16, 62 and 64 Reception Act.

and the integration of reception facilities in the municipalities.⁴²⁴ 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.⁴²⁵ The partners include amongst others 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 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 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 (see [Right to shelter and assignment to a centre](#)). In order to be able to provide more accommodations, the closure of many individual places was postponed as well.

During 2019 this precarious situation persisted and the lack of staff at the Immigration Office and the CGRS resulted in lengthy asylum procedures, thus forcing Fedasil to continuously open new places throughout the year. Amongst these new places, many places included tents and containers which are not adequate to meet the needs of certain applicants.⁴²⁶ This situation also led to the introduction of new instructions by Fedasil limiting the reception conditions for several categories of asylum seekers (see [Right to reception: Dublin procedure](#) and [Right to reception: Applicants with a protection status in another EU Member State](#)).⁴²⁷ It should further be noted that the saturation of the Fedasil reception network has put resettlement operations on hold since July 2019. The operations will resume once the reception capacity has improved.⁴²⁸

As of January 2020, the 71 main collective reception centres were mainly managed and organised by:

Collective reception centres: Management and capacity		
Partner	Number of centres	Total capacity
Fedasil	29	8,785
Croix Rouge	24	6,716
Rode Kruis	18	3,627

Source: Statistics of 1 January 2020, available at: <https://www.fedasil.be/nl/statistics>.

⁴²⁴ Article 56 Reception Act.

⁴²⁵ Article 62 Reception Act.

⁴²⁶ Myria, *Contact Meeting*, September 2019, <https://bit.ly/397g0sz>; *Contact Meeting*, October 2019, <https://bit.ly/2TmOrEN>; *Contact Meeting*, November 2019, <https://bit.ly/3af2qDg>; *Contact Meeting*, December 2019, <https://bit.ly/385AZL0>.

⁴²⁷ 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>; Fedasil, 'Druk op opvangnetwerk steeds hoger', 8 November 2019, available in Dutch, <https://bit.ly/384yGry>; Vluchtelingenwerk Vlaanderen, 'Opnieuw asielzoekers op straat, kroniek van een aangekondigde opvangcrisis', 18 November 2019, available in Dutch at: <https://bit.ly/2TpITdM>; Vlaamse Vereniging voor Steden en Gemeenten, 'Lokale besturen zijn jojo-effect federaal opvangbeleid beu', 13 November 2019, available in Dutch at: <https://bit.ly/2VuNEV9>.

⁴²⁸ Fedasil, The resettlement of refugees on hold, 12 March 2020, available at: <https://bit.ly/2JDIQW5>.

The individual reception initiatives are mainly run by the PCSW and by NGO partners. As of 1 January 2020, the PCSW had 5,975 places in LRI, while NGO partners currently have 501 places.

The entire reception system had a total 26,751 places, out of which 25,711 (96%) were occupied on 1 January 2020. An occupation rate of 94% is considered as a saturation of the reception network so Fedasil is still continuously looking for new places.⁴²⁹

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

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☒ Yes ☐ No
2. What is the average length of stay of asylum seekers in the reception centres? 9 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,⁴³⁰ 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. NGOs have requested for an evaluation of the current reception model but this is currently not planned according to Fedasil.⁴³¹

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.⁴³²

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.⁴³³

⁴²⁹ Myria, *Contact Meeting*, December 2019, available in Dutch at: <https://bit.ly/2whWOcL>.

⁴³⁰ Articles 11, 22, 28 and 36 Reception Act.

⁴³¹ Information provided by Fedasil, January 2020.

⁴³² *Ibid*, 22-23 and 61.

⁴³³ *Ibid*, 61-62.

2.2. Overall conditions

The minimum material reception rights for asylum seekers are described in the Reception Act, mostly in a very general way.⁴³⁴ Fedasil puts them into 4 categories of aid:⁴³⁵

- 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.⁴³⁶

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.⁴³⁷

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 were conducted at all levels of the reception system (both by Fedasil and partners, and both in collective and individual shelters). The findings are not public and only communicated to the reception facility concerned. In 2020, 30 audits are planned by Fedasil.⁴³⁸

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.⁴³⁹ 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.

The extensive closure and re-opening of reception places in the past years caused many problems throughout 2019. This includes poor reception conditions as it mainly involves tents and containers as

⁴³⁴ Articles 14-35 Reception Act.

⁴³⁵ Fedasil, *About the Reception Centres*, available at: <http://bit.ly/1IuvC6u>.

⁴³⁶ Vluchtelingenwerk Vlaanderen, *Annual Report 2013*, available at: <http://bit.ly/1dvBxgS>, 7-8.

⁴³⁷ Court of Auditors, *Opvang van asielzoekers*, October 2017, 47-48.

⁴³⁸ Information provided by Fedasil, January 2020.

⁴³⁹ Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018.

well as poor quality of services provided during the asylum procedure and at reception centres as unexperienced social workers have been recruited, after the experienced social workers had to leave due to closure (see: [Types of accommodation](#)).⁴⁴⁰ Due to a lack of staff at the Immigration Office and the CGRS, the asylum procedure takes longer and subsequently asylum seekers stay longer in reception centres.

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, especially when it comes to non-governmental services. Organisations such as Vluchtelingenwerk Vlaanderen and the Belgian Refugee Council (CBAR-BCHV) have lost substantial parts of their public funding, or, in case of the latter, the organisation has disappeared altogether. In 2017, the government has also decided to cut the budget of the Integration Agency (*Agentschap Inburgering en Integratie*) which provides *inter alia* legal advice and integration courses.⁴⁴¹

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

The access to the labour market of asylum seekers is regulated by the Law of 9 May 2018,⁴⁴² 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.⁴⁴³ 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 (orange card). 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

⁴⁴⁰ Vlaamse Vereniging voor Steden en Gemeenten, 'Lokale besturen zijn jojo-effect federaal opvangbeleid beu', 13 November 2019, available in Dutch at: <https://bit.ly/3ab3Y1i>.

⁴⁴¹ 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 wachtlijst voor cursus inburgering', 7 February 2018, available in Dutch at: <http://bit.ly/2G1bTyZ>.

⁴⁴² 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>.

⁴⁴³ 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>.

months.⁴⁴⁴ 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.

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 during 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](#)).⁴⁴⁵

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.⁴⁴⁶

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

⁴⁴⁴ Article 18, 3° and article 19,3° Royal Decree on Foreign Workers, 2 September 2018.

⁴⁴⁵ 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).

⁴⁴⁶ Article 34 Reception Act.

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 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.⁴⁴⁷

In reception centres for asylum seekers, all residents can take part in activities that encourage integration and knowledge of the host country. They have the right to attend professional training and education courses.⁴⁴⁸ 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.⁴⁴⁹ 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.⁴⁵⁰

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.⁴⁵¹

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.

⁴⁴⁷ Labour Court of Charleroi, Judgment of 6 May 2014, available at: <http://bit.ly/1F5Hyqq>.

⁴⁴⁸ Article 35 Reception Act.

⁴⁴⁹ Article 23 Reception Act.

⁴⁵⁰ Article 24 Reception Act and Royal Decree of 9 April 2007 on Medical Assistance.

⁴⁵¹ 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 recruited by Fedasil, is present only in 8 centres of Fedasil. This doctor may refer asylum seekers to a specialist where necessary. Fedasil stated they will not recruit internal doctors anymore, but will favour the system of working with external doctors.⁴⁵²

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 (*Programmatoreische 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.⁴⁵³

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,⁴⁵⁴ 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. When the workload is high, it can take up to a few weeks before the medical service of Fedasil answers.⁴⁵⁵

Once the asylum application has been refused and the reception rights have come to an end, the person concerned will only be entitled to emergency medical assistance, for which he or she must refer to the local PCSW.⁴⁵⁶

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.⁴⁵⁷

On 29 October 2019, the Federal Knowledge Centre for Health Care (KCE) published the results of a field survey on the provision of health care to applicants for international protection. It shows that the organisation of health care in Belgium is unequal and not efficient. This leads to different treatment of asylum seekers although they are in the exact same procedural situation, purely on the basis of their place of residence. This makes the system non-transparent and complicated for social workers but also for the service provider themselves, as they have their own administration, control mechanisms and

⁴⁵² Myria, *Contact Meeting*, 17 October 2018, available in Dutch at: <https://bit.ly/2FNSKEW>, paras 96-101.

⁴⁵³ Court of Auditors, *Opvang van asielzoekers*, October 2017, 57-58; Information provided by VVSG, February 2018.

⁴⁵⁴ Article 45 Reception Act.

⁴⁵⁵ Court of Auditors, *Opvang van asielzoekers*, October 2017, 58.

⁴⁵⁶ Articles 57 and 57ter/1 of the Organic Law of 8 July 1976 on the PCSW.

⁴⁵⁷ Court of Auditors, *Opvang van asielzoekers*, October 2017, 55-56.

decision-making structure; thus resulting in a lack of coordination and cooperation. Access to specialised care also appears to be difficult for all asylum seekers due to a slow and complex administration that has to grant permission first. The KCE also identified other various thresholds that hamper access to health care, such as language barriers, a lack of interpreters and limited transport possibilities. The KCE proposes that the financing of health care for all asylum seekers should be included to a global envelope, which includes services for prevention, health promotion and support in terms of translation and/or transportation etc. The report identifies several avenues in this regard. For example, all asylum seekers could be covered by compulsory health insurance, or Fedasil could manage care centrally. The report analyses the advantages and disadvantages of these options, and the conditions for their implementation.⁴⁵⁸ Fedasil stated that consultations with different actors and authorities are ongoing to create a more equal system for all asylum seekers.⁴⁵⁹

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

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.⁴⁶⁰ 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 Immigration 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 Immigration 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 Immigration Office/Immigration 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](#)).

⁴⁵⁸ KCE, *Asylum seekers: options for more equal access to health care. A stakeholder survey*, 29 October 2019, available at: <https://bit.ly/2T8Ef3G>.

⁴⁵⁹ Information provided by Fedasil, January 2020.

⁴⁶⁰ Article 36(1) Reception Act.

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 Immigration 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.⁴⁶¹ 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.⁴⁶² A Royal Decree has formalised this evaluation procedure, requiring an interview with a social assistant, followed by a written evaluation report within 30 days, which has to be continuously and permanently updated, and should lead to a conclusion within a maximum of 6 months. The evaluation should contain a conclusion on the adequacy of the accommodation to the individual medical, social and psychological needs, with a recommendation as to appropriate measures to be taken, if any.⁴⁶³ 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.⁴⁶⁴ Since May 2018, however, Fedasil issued two instructions about transfers (see [Forms and levels of material reception conditions](#)), but due to the current shortage of places, the application of these instructions remains strict. .

In a report from February 2017, Fedasil has highlighted several barriers to identification of vulnerable persons with specific reception needs.⁴⁶⁵ 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 at the very beginning of the procedure by the Immigration 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

⁴⁶¹ Information provided by Fedasil, February 2018.

⁴⁶² Article 22 Reception Act.

⁴⁶³ Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

⁴⁶⁴ Court of Auditors, *Opvang van asielzoekers*, October 2017, 63.

⁴⁶⁵ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

the different categories that are defined as vulnerable by the Immigration Office and the Dispatching desk.

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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.⁴⁶⁷

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

⁴⁶⁶ Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available at: <https://bit.ly/2S7NtO5>, 25.

⁴⁶⁷ 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>.

to the needs of the specific child.⁴⁶⁸ Currently, there are 239 places in OCC and they are occupied at 77.82%.

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. There are 1,008 places in collective reception centres, occupied at 93.75%. 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. 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. This practice ended in August 2019, however.⁴⁶⁹
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. 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 319 places in individual reception facilities, occupied at 87.77%.

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 currently has 30 places.

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**, **Synergie 14**, **Pamex-SAM asbl Liège**, and **Oranje Huis**. There were 34 of these places available by the end of 2019 which were occupied at 52.94%.

For unaccompanied children who have not applied for asylum there was a special reception facility in **Sugny** that met the requirements needed for their particular vulnerabilities; but the project has been put on hold in summer 2019.⁴⁷⁰ Unaccompanied children whose asylum procedure end 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 25 places for women and a maximum 53 for children in apartments run by Caritas in **Louvranges** and some individual reception initiatives for single women with children, where they get a specifically adapted accompaniment.

⁴⁶⁸ Article 41 Reception Act; Royal Decree of 9 April 2007 on the centres for the orientation and observation of unaccompanied minors.

⁴⁶⁹ Information provided by Fedasil, January 2020.

⁴⁷⁰ Information provided by Fedasil, January 2020.

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 families with children without legal stay when the parents cannot guarantee their basic needs.⁴⁷¹ 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 Immigration Office, and not Fedasil, which delivers material assistance, thus making this assistance conditional on the collaboration of the children's parents with the return.

In a Judgment of 24 April 2015, the Council of State declared the agreement of 2013 between Fedasil and the Immigration 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 Immigration Office.⁴⁷² The families are now sheltered in "open return houses" organised by the Immigration Office. These houses are used as an alternative for detention for families with children as well. Holsbeek is currently being used as a detention centre for single women (see [Detention: General](#)).

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 659 "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. This is the total number of places in the entire network (collective centres and individual housing).⁴⁷³

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](#)).⁴⁷⁴ The brochure "Asylum in Belgium" currently distributed is available in ten different languages⁴⁷⁵ and in a DVD version. These brochures are being distributed in the reception facilities.

⁴⁷¹ 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.

⁴⁷² Council of State, Judgment No 230.947 of 23 April 2015, available in French at: <http://bit.ly/1RZgJg8>.

⁴⁷³ Information provided by Fedasil, January 2020.

⁴⁷⁴ Article 14 Reception Act.

⁴⁷⁵ 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>.

As for the specific rights and obligations concerning reception conditions, the asylum seeker also receives a copy of the house rules; also available in different languages. According to the Reception Act this should be a general document applicable in all reception facilities and regulated by Royal Decree.⁴⁷⁶ In 2018 a Royal decree and a Ministerial Decree were published to this end. (See [Sanctions for violation of house rules](#)).

This written information, although handed over to every asylum seeker, is not always 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.

The law foresees that asylum seekers accommodated in one of the reception structures should have access to the interpretation and translation services to exercise their rights and obligations.⁴⁷⁷ In practice in many reception structures there are not enough interpreters available, however.

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.⁴⁷⁸ 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.⁴⁷⁹ Asylum seekers are entitled to public transport tickets to meet with their lawyer at the lawyer's office.

Moreover, lawyers and UNHCR and implementing partners have the right to visit their clients in the reception facilities to be able to advise them. Their access can be refused only in case of security threats. Collective centres also have to make sure that there is a separate room in which private conversations can take place.⁴⁸⁰

In practice, access does not seem to be problematic, but only few lawyers do 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, and EU citizens are not excluded by the Reception Act.

⁴⁷⁶ Article 19 Reception Act.

⁴⁷⁷ Article 15 Reception Act.

⁴⁷⁸ Article 33 Reception Act.

⁴⁷⁹ 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.

⁴⁸⁰ Article 21 Reception Act; Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018

In practice, **EU citizens** applying for asylum and their family members are not accommodated by Fedasil. Fedasil argues that EU citizens are legally on the territory since they are exercising their freedom of movement, but the Federal Ombudsman has discarded this argument because it goes against the interpretation of “legal residence” by the Constitutional Court and violates provisions of the Convention on the Rights of the Child and the constitutional non-discrimination and equality principles, when it considers EU families with minor children.⁴⁸¹ EU citizens applying for asylum can challenge the formal refusal decision of Fedasil (known as “non-designation of a code 207”) 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](#)).

⁴⁸¹ 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 2019:	Not available
2. Number of asylum seekers in detention at the end of 2019:	Not available
3. Number of detention centres:	6
4. Total capacity of detention centres:	660

A total of 8,158 migrants, including asylum seekers, were detained in the course of 2018.⁴⁸² According to Myria, this number includes asylum seekers at the border (2%) and asylum seekers who applied for asylum on the territory (12%).⁴⁸³ However, this breakdown must be read with caution as it does not include the number of persons who were detained and subsequently applied for asylum, nor the persons detained for the purpose of a Dublin transfer. Given that these categories of persons receive an order to leave the territory, they are no longer registered as asylum seekers⁴⁸⁴. The Immigration Office has not published statistics on the total number of detained asylum seekers since 2018.

Belgium has a total of 6 detention centres, commonly referred to as “closed centres”:⁴⁸⁵ the **127bis** repatriation centre, to which the closed family units have been attached; the “**Caricole**” near Brussels Airport; and 4 Centres for Illegal Aliens located in **Bruges** (CIB), in **Merkplas** near Antwerp (CIM), in **Vottem** near Liege (CIV) and in **Holsbeek** (near Leuven). In addition to the Caricole building, there are also some smaller Centres for Inadmissible Passengers (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 Immigration Office. The provisions of the Reception Conditions Directive are still not applicable to them.

The government decided on 14 May 2017 to maximise the number of places in existing detention facilities. In 2019 the open reception centre (**Holsbeek**) has thus been turned into a closed centre for women. Two additional detention centres will be established in **Zandvliet** and **Jumet**. While the government has communicated that its current capacity is at 660 places,⁴⁸⁶ these plans will bring Belgium’s detention capacity up to 1,066 places by 2022.⁴⁸⁷

In August 2018, the government opened five family units in the **127bis** repatriation centre, as a result of which families with children were being detained again. Detention is applied where the family manifestly refuses to cooperate with the return procedure.⁴⁸⁸ The royal decree allowing this practice was suspended by the Council of State in April 2019. Between August 2018 and April 2019 a total of 9 families were detained.⁴⁸⁹

⁴⁸² Dienst Vreemdelingenzaken, *Statistisch jaarverslag 2018*, available in Dutch and French at: <https://bit.ly/37CzR1V>, 9. The exact phrasing used is: ‘number of first detentions’.

⁴⁸³ Myria, ‘Myriatics 11, Terugkeer, detentie en verwijdering van vreemdelingen in 2018’, January 2020, available in Dutch and French at: <https://bit.ly/3agjidg>.

⁴⁸⁴ Whereas under the stipulation of art 2 c) the Dublin-III regulation people are deemed applicants until a final decision on their application for international protection has been taken.

⁴⁸⁵ For an overview, see Getting the Voice Out, ‘What are the detention centres in Belgium?’, available at: <http://bit.ly/1GxZAJd>.

⁴⁸⁶ Vrt.be, ‘Eerste gesloten terugkeercentrum voor vrouwen geopend’, 7 May 2019, available in Dutch at: <https://bit.ly/37D4pAC>.

⁴⁸⁷ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>.

⁴⁸⁸ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>, 34.

⁴⁸⁹ Council of State, Decision No 244190, 4 April 2019.

While in detention, the CGRS prioritises the examination of the asylum application, although no strict time limit is foreseen.⁴⁹⁰ The appeal must be lodged within 10 days after the first instance decision.⁴⁹¹

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained

❖ on the territory:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ at the border:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Are asylum seekers detained in practice during the Dublin procedure?

<input checked="" type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input type="checkbox"/> Never
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3. Are asylum seekers detained during a regular procedure in practice?

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
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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/she has submitted an application for international protection.”⁴⁹²

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 yet.

In practice, standard motivations for the detention of asylum seekers at the border are being used, without properly taking into account their individual situation. This confirms the concerns on arbitrary detention formulated by UNHCR. Recent legislative changes have not been able to properly address this issue.⁴⁹³

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.⁴⁹⁴

- 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;

⁴⁹⁰ Article 57/6(2) Aliens Act.

⁴⁹¹ Articles 39/57 and 39/77 Aliens Act.

⁴⁹² Article 74/5(1) Aliens Act.

⁴⁹³ See also: Marjan Claes, *Vasthouding van personen met een mogelijke nood aan internationale bescherming als uitzonderingsmaatregel na de wet van 21 november 2017*, December 2019, available in Dutch at: <https://bit.ly/36DloBA>.

⁴⁹⁴ Article 74/6(1) Aliens Act.

- 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 had served a sentence or been placed at the disposal of the government were also detained during the asylum procedure, which had its legal basis in a specific article in the Aliens Act attributing this power to the Minister.⁴⁹⁵ 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 their asylum claim, but before their responsibility has been accepted by that state.⁴⁹⁶ Until the entry into force of the law in 2018, there was no objective criteria indicating a risk of absconding in case a Dublin transfer was specified in Belgian law, as required by Article 2(n) of the Dublin III Regulation. As a result of the *Al Chodor* ruling of the CJEU,⁴⁹⁷ the Immigration Office stopped issuing detention orders on the basis of a risk of absconding in the context of Dublin procedures in 2017, while detention remains possible if other grounds are met.⁴⁹⁸

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 organisations for laying down overly broad criteria for the determination of a risk of absconding.⁴⁹⁹ 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, it has been reported 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. Detention titles have also been 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.

⁴⁹⁵ Article 74/8 Aliens Act.

⁴⁹⁶ Article 51/5 Aliens Act.

⁴⁹⁷ CJEU, Case C-528/15 *Al Chodor*, Judgment of 15 March 2017.

⁴⁹⁸ Information provided by the Immigration Office: Myria, *Contact meeting*, 21 June 2017, available at: <http://bit.ly/2BVIncU>.

⁴⁹⁹ 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>.

On 20 December 2017, the Court of Cassation ruled in the case of a Sudanese national who was detained in Belgium pending his expulsion to Sudan, while the detention decision explicitly stated that the applicant had to be detained “in order to issue a take back request to Italy”, where he had previously lodged an asylum application. The Court of Appeal of Brussels had followed the government’s argumentation that, in the absence of a new asylum application, the Dublin III Regulation was not applicable in relation to the detention of the asylum applicant. The Court of Cassation disagreed with the Court of Appeal and ruled that, in accordance with Article 18(2) of the Dublin III Regulation, the responsible Member State must take back “an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document”. Therefore, the Court of Cassation concluded that the provisions of the Dublin III Regulation are applicable even in cases where a new application for asylum has not been introduced in the requesting Member State, including the provisions regarding the detention of an asylum applicant who is subjected to a take charge or take back request.⁵⁰⁰

On 19 July 2019, Article 51/5/1 of the Aliens Act entered into force and implements the relevant articles on detention of the Dublin III Regulation for applicants who did not apply for asylum in Belgium, yet could be subject to a take-back decision because of a previous application that was registered in another Member State.⁵⁰¹

A worrying practice was also noticed regarding ‘implicit asylum applications’, whereby the authorities consider that an application has been “implicitly” lodged by persons falling under the Dublin procedure, thus enabling them to detain them for the purpose of the Dublin transfer in accordance with the Dublin Regulation. The European commissioner for Migration stated expressed doubts as regards the compliance of this practice with the recast Qualification Directive.⁵⁰²

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 still not 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.

⁵⁰⁰ Court of Cassation, Decision No 9.17.1192.F, 20 December 2017.

⁵⁰¹ Before this legal amendment, such decisions could not be delegated by the Minister to a staff member of the Immigration Office.

⁵⁰² “While we fully understand the challenges that this situation creates for Belgium, the Commission finds it difficult to share the interpretation that the claims by third country nationals of a risk of violation of non-refoulement in the context you describe can be considered as the “making” of an application for international protection within the meaning of Directive 2013/32/EU. However there is no case-law on this specific matter and only the Court of Justice of the European Union can provide a final and binding interpretation of the EU acquis.”; see: Letter from EU Commissioner for Migration Avramopoulos to Belgian Secretary of State Francken, 2 July 2017

Despite the introduction of these measures, the government opened five family units in August 2018 in the **127bis** repatriation centre as a result of which families with children were being detained again. Detention is applied where the family manifestly refuses to cooperate with the return procedure.⁵⁰³ The royal decree allowing this practice was suspended by the Council of State in April 2019, however. Between August 2018 and April 2019 a total of 9 families have been detained.⁵⁰⁴

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.⁵⁰⁵ 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 Immigration Office, and the judicial review is mostly limited to the question of legality (see [Procedural Safeguards: Judicial Review](#)).⁵⁰⁶

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

Following the ECtHR's *Kanagaratnam*,⁵⁰⁷ and *Muskhadzhiyeva* judgments,⁵⁰⁸ 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 2019 as 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.⁵⁰⁹

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 Immigration Office to stay in their own house, and/or absconded from the return homes. The closed centre for families is located next to the **127bis**

⁵⁰³ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French at: <https://bit.ly/2sJL8uz>, 34.

⁵⁰⁴ Council of State, Decision No 244190, 4 April 2019.

⁵⁰⁵ 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>.

⁵⁰⁶ See also: Marjan Claes, *Vasthouding van personen met een mogelijke nood aan internationale bescherming als uitzonderingsmaatregel na de wet van 21 november 2017*, December 2019, available in Dutch at: <https://bit.ly/39kotIE>.

⁵⁰⁷ 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.

⁵⁰⁸ 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.

⁵⁰⁹ Information provided by the Jesuit Refugee Service Belgium.

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.⁵¹⁰ While the Royal Decree was suspended by the Council of State in April 2019,⁵¹¹ the latter must still issue a decision on the annulation of the Royal Decree.

The detention of unaccompanied children is explicitly prohibited by law.⁵¹² 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.⁵¹³ 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.⁵¹⁴ Within 15 calendar days, the Immigration 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.

Unaccompanied minors who are caught on the territory without residence permit are sometimes held in detention for the duration of their age assessment procedure. This can sometimes take more than a week before this is rectified. In 2019, 3 children whose age was tested during detention were considered 15 years old after the test and had thus wrongly been held in detention.⁵¹⁵

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. In 2018 for example, Myria, the Federal Migration Centre, 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).⁵¹⁶

In 2019 a report was published by several NGOs based on the testimonies of visitors. One case reported concerned an Eritrean man, with clear signs of torture on his body, who committed suicide before being sent back to Bulgaria. Another case concerned a person who committed self-harm while being detained. He was subsequently followed by a psychologist and released upon recognition of the refugee status.⁵¹⁷

⁵¹⁰ Arrêté royal du 22 juillet 2018 | Koninklijk besluit van 22 juli 2018

⁵¹¹ Council of State, Decision No 244.190, 4 April 2019.

⁵¹² Article 74/19 Aliens Act.

⁵¹³ Article 40 Reception Act.

⁵¹⁴ On the technicality of this legal fiction, see *inter alia* Council of State, Decisions No 102.722, 21 January 2002 and No 57831, 25 January 1996.

⁵¹⁵ Figures confirmed by the Immigration Office in January 2020.

⁵¹⁶ Myria, 'Myriadoc 8: Retour, détention et éloignement', December 2018, available in French at: <https://bit.ly/2FPAo6t>, 45.

⁵¹⁷ Caritas, Ciré, JRS Belgium, Platforme Mineurs en Exil, Point d'appui and Vluchtelingenwerk Vlaanderen, *Vulnerabilité et Détention en Centres Fermés*, October 2019, available in French at : <https://bit.ly/2Guh7ps>.

4. Duration of detention

Indicators: Duration of Detention

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

The law provides for a maximum of a 2-month detention period for asylum seekers.⁵¹⁸ Detention can be prolonged for another 2 months for reasons of national security or public order.⁵¹⁹ Where extended for these reasons, a one-month prolongation if possible each time. The maximum duration of detention on territory therefore cannot exceed 6 months (2+2+1+1). The detention at the border may not exceed 5 months. However, the period of detention is suspended for the time provided to appeal the decision on the asylum application.

Since the entry into force of the law in 2018, 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.

On 19 July 2019, Article 51/5/1 of the Aliens Act entered into force and implements the relevant articles on detention of the Dublin III Regulation for applicants who did not apply for asylum in Belgium, but who could be subject to a take-back decision because of a previous application that was registered in another Member State.⁵²⁰

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 starts 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 2018, asylum seekers are 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.⁵²¹ However, being admitted to the territory does not automatically mean that the asylum seeker will be set free. As shown in practice, the Immigration Office can take a new detention decision based on one of the grounds set out in article 74/6(1), which regulates detention on the territory.

While the duration of detention of asylum seekers is unknown in practice, the Immigration Office stated that the duration of detention of all persons detained in immigration detention amounted to 28,6 days in 2019.⁵²²

⁵¹⁸ Articles 74/5 and 74/6 Aliens Act.

⁵¹⁹ Ibid.

⁵²⁰ Before this legal amendment, these decisions could not be delegated by the minister to a staff member of the Immigration Office.

⁵²¹ Article 74/5(4)(4) and (5) Aliens Act, as amended by the Law of 21 November 2017.

⁵²² In 2017 this was 34,6 days; see: Myria, 'Myriadoc 8: *Retour, détention et éloignement*', December 2018, available in French at: <https://bit.ly/2FPAo6t>, 10.

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.⁵²³ 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.⁵²⁴ 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. However, in practice, some people who find themselves in prison as a result of criminal charges have also applied for international protection. After completing their sentence/or upon early release they can thus be transferred to a closed detention centre, if legal conditions are met.

1.1. Closed centres

The Belgian government stated that the current overall capacity of closed centres is 660 places,⁵²⁵ up from 609 in 2017, 453 in 2016 and 452 in 2015. In 2018, 8,158 persons were detained in a detention centre for the first time.

Since its decision of 14 May 2017, the government has been steadily increasing the number of places in existing detention facilities. In 2019 the open reception centre (**Holsbeek**) has been turned into a closed centre for women. Two additional detention centres will be established in **Zandvliet** and **Jumet**. These plans will bring Belgium's detention capacity to 1,066 places by 2022.⁵²⁶

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, 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".⁵²⁷ Children are able to go to school and adults can go out if they get permission to do so.⁵²⁸

In 2019, there were 5 sites with 27 housing units with a capacity of 169 persons spread over the communes of **Zulte**, **Tielt**, **Tubize**, **Sint-Gillis-Waas** and **Bauvechain**. A total of 497 persons resided in the housing units throughout that year, compared to 629 persons in 2018. Out of the 497 persons in 2019,

⁵²³ Article 4 Royal Decree on Closed Centres, referring to Articles 74/5 and 74/6 Aliens Act.

⁵²⁴ 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.

⁵²⁵ Vrt.be, 'Eerste gesloten terugkeercentrum voor vrouwen geopend', 7t May 2019, available in Dutch at: <https://bit.ly/3167CWJ>.

⁵²⁶ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French at: <https://bit.ly/2sJL8uz>.

⁵²⁷ Return coaches are staff members of the Immigration 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.

⁵²⁸ Royal Decree on Closed Centres, amended in October 2014.

218 were adults and 279 were children. Moreover, 78 families (equalling to 259 persons) were released in 2019.⁵²⁹

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 Immigration 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 legal provisions relating to detention under the recast Reception Conditions Directive have not been transposed. The failure of the recent reform to transpose these provisions is a missed opportunity in this regard.

The 2002 Royal Decree on Closed Centres provides for the legal regime and internal organisational guidelines. The closed centres are managed by the Immigration 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.⁵³⁰ In 2019 the same group also published a report focusing on vulnerability in detention.⁵³¹ It does not concern the detention conditions as such but addresses certain relevant topics such as the profiles of the detainees, the legality control on detention, the right to family life etc.

2.1. Overall conditions

The most essential basic rights of the asylum seeker are guaranteed by the Royal Decree on Closed Centres, including its amendment by the Royal Decree of 7 October 2014 which has established a complaints mechanism. The managing director of the centre has broad competences to limit or even refuse the execution of most of these rights if he or she deems this necessary for the public order or safety, to prevent criminal acts or to protect the health, morality or the rights of others. A whole range of measures of internal order, disciplinary measures, measures of coercion and body search can be imposed by the managing director of the centre, and in some case by other staff members.⁵³² The Immigration Office organises training for the security personnel at the detention centres on the use of coercion, as provided for by law.⁵³³ 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 Immigration 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.⁵³⁴ For persons who appear not to be able to adapt to the

⁵²⁹ Information provided by the Immigration Office, February 2020.

⁵³⁰ 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>.

⁵³¹ Caritas, Ciré, JRS Belgium, Platforme Mineurs en Exil, Point d'appui and Vluchtelingenwerk Vlaanderen, *Vulnerabilité et Détention en Centres Fermés*, October 2019, available in French at : <https://bit.ly/3aaUHG5>.

⁵³² Articles 85-111/4 Royal Decree on Closed Centres.

⁵³³ Article 74/8 Aliens Act and Royal Decree on the Use of Coercion for Security Personnel.

⁵³⁴ Article 83 Royal Decree on Closed Centres.

collective regime, the managing director can decide to adopt other specific measures e.g. a specific “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.⁵³⁵ The asylum seekers get the opportunity to wash themselves on a daily basis and toiletries are at their disposal free of charge.⁵³⁶ 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.⁵³⁷

In practice, conditions vary from one centre to another.

2.2. Activities

In detention centres asylum seekers 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 of exercise outside is provided.⁵³⁸

Assistance to religious services or non-confessional counselling is guaranteed in the detention centres and the provision of assistance by a minister of a non-officially recognised cult can be requested.⁵³⁹

The asylum seeker has an unlimited right to entertain correspondence during the day. Writing paper is provided in the centre, as is assistance with reading and writing by staff members.⁵⁴⁰ 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.⁵⁴¹ Calls can be made at the asylum seekers' own expenses during daytime to an unlimited extent.⁵⁴²

The social service of the centre has to organise sport, cultural and recreational activities.⁵⁴³ Every centre has a library at the disposal of the inhabitants and newspapers and other publication can be purchased at their own expense.⁵⁴⁴

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.⁵⁴⁵ The doctor attached to the centre can decide that a person has to be transferred to a specialised medical centre.⁵⁴⁶ 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.⁵⁴⁷ At the same time, the quality of the health

⁵³⁵ Articles 79-80 Royal Decree on Closed Centres.

⁵³⁶ Article 78 Royal Decree on Closed Centres.

⁵³⁷ Article 76 Royal Decree on Closed Centres.

⁵³⁸ Article 82 Royal Decree on Closed Centres.

⁵³⁹ Articles 46-50 Royal Decree on Closed Centres.

⁵⁴⁰ Articles 19, 22 and 23 Royal Decree on Closed Centres.

⁵⁴¹ Articles 20-21/2 Royal Decree on Closed Centres.

⁵⁴² Article 24 Royal Decree on Closed Centres.

⁵⁴³ Articles 69-70 Royal Decree on Closed Centres.

⁵⁴⁴ Articles 71-72 Royal Decree on Closed Centres.

⁵⁴⁵ Article 53 Royal Decree on Closed Centres.

⁵⁴⁶ Article 54-56 Royal Decree on Closed Centres.

⁵⁴⁷ 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

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 Immigration 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.⁵⁴⁸ After every failed attempt of removal, the doctor has to examine the person concerned.⁵⁴⁹ 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.

Following Belgium's conviction by the ECtHR in its *Paposhvili* judgment,⁵⁵⁰ a new 'special needs' procedure was introduced specifically for persons placed in detention prior to their return. However, the procedure is still not laid down in an official decision.⁵⁵¹

This new informal procedure foresees that, for each newcomer to a detention centre, the centre's doctor fills out a medical certificate stating whether or not the person concerned suffers from an illness that could subject him/her to a risk of inhuman or degrading treatment in the context of return (which is contrary to Article 3 of the ECHR), or if additional medical examinations have to be carried out to determine this. If such a risk is identified by the doctor, a second examination will be conducted. The medical certificate is binding for the central service of the Immigration Office (MedCOI) which must ensure that the recommended treatments are available and accessible in the country of return. If this is the case, return will be carried out. If this is not the case, the person concerned can appeal to the 'special needs' programme or be released. In 2017, several information requests were addressed to the MedCOI service in this regard, which led to the release of three persons.⁵⁵²

In 2017, 156 applications were made under this new 'special needs' procedure. Out of them, five persons were admitted to psychiatric care before return; 49 persons were provided medical treatment and medicine; two cases required a follow-up during the return procedure, and 59 cases required the provision of re-integration support upon return. The total number of repatriations of persons with 'special needs' amounted to 76 in 2017.⁵⁵³

Finally, the Royal Decree of 9 April 2007 on OOC regulates the functioning of the OOC for unaccompanied children. Specific measures are adopted to protect and accompany the children. During their stay of maximum 15 days, their contacts are subject 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 where vulnerable children (i.e. aged below 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.⁵⁵⁴

violation of Article 3 ECHR, but the delay in determining the appropriate treatment for the detainee at that advanced stage of her HIV infection.

⁵⁴⁸ Article 61 Royal Decree on Closed Centres.

⁵⁴⁹ Article 61/1 Royal Decree on Closed Centres.

⁵⁵⁰ ECtHR, *Paposhvili v. Belgium*, Application no. 41738/10, 13 December 2016.

⁵⁵¹ Myriadoc, *Terugkeer, detentie en verwijdering van vreemdelingen in België*, December 2018, available in Dutch: <https://bit.ly/2S3ooBM>, 30.

⁵⁵² Ibid.

⁵⁵³ Interim report by the commission for the evaluation of the policies concerning voluntary and forced returns of foreign nationals, 22 February 2019, available in Dutch at: <https://bit.ly/2WCijN9>, 84

⁵⁵⁴ Articles 10 and 11 Royal Decree on OOC.

The provision of medical assistance varies from centre to centre. It has been reported that in some centres, medical care is only for the purpose of repatriation and 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.⁵⁵⁵

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

Lawyers always have access to their client in detention.⁵⁵⁶ Access is granted to UNHCR, the Children's Rights Commissioner, Myria and to supranational human rights institutions.⁵⁵⁷ NGOs need to get the approval from the Immigration Office's managing director in advance to get access to the detention centres.⁵⁵⁸ In general, an individualised accreditation is issued for specific persons who conduct these visits for an NGO, as is the case for specific employees and volunteers 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.⁵⁵⁹ 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.⁵⁶⁰

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.⁵⁶¹ 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.⁵⁶² 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.⁵⁶³

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 an 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

⁵⁵⁵ Ciré, *Vulnérabilité et détention en centre fermé*, October 2019, available in French at : <https://bit.ly/2J6ucGR>.

⁵⁵⁶ Article 64 Royal Decree on Closed Centres.

⁵⁵⁷ Article 44 Royal Decree on Closed Centres.

⁵⁵⁸ Article 45 Royal Decree on Closed Centres.

⁵⁵⁹ Articles 33, 42 and 43 Royal Decree on Closed Centres.

⁵⁶⁰ Articles 37 and 40 Royal Decree on Closed Centres.

⁵⁶¹ Article 34 Royal Decree on Closed Centres.

⁵⁶² Article 36 Royal Decree on Closed Centres.

⁵⁶³ Articles 29-30 Royal Decree on Closed Centres.

absconding (in Dublin cases)". Translation of the detention decision in the language of the asylum seeker is not provided for by law, but in some centres a social interpreter is arranged by the centre's social assistant on request by the detainee.

National legislation does provide for judicial review of the lawfulness of detention. No habeas corpus writ is automatically brought before a judge when an asylum seeker is being detained, but he or she can lodge a request to be released with the Council Chamber of the Criminal Court every month.⁵⁶⁴ 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.⁵⁶⁵ 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 in front of the Court of Cassation.

When the Immigration 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.⁵⁶⁶

The scope of judicial review of detention remains very restrictive. Only the legality of the detention can be examined, not its appropriateness nor its proportionality. This means that only the accuracy of the factual motives of the detention order can be scrutinised i.e. whether the reasons for detention 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 Immigration 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](#)).

The scope of the judicial review on the legality of detention measures is almost arbitrary and the Court of Cassation 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*.⁵⁶⁷ The Council or Indictment Chambers have even sometimes considered the principle of proportionality as 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 or a particularly vulnerable person is generally not taken into consideration as an argument to limit the use of detention.⁵⁶⁸ 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.⁵⁶⁹ 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

⁵⁶⁴ Article 71 Aliens Act.

⁵⁶⁵ Article 72 Aliens Act.

⁵⁶⁶ Article 74 Aliens Act.

⁵⁶⁷ ECtHR, *Saadi v. United Kingdom*, Application No 13229/03, Judgment of 29 January 2008.

⁵⁶⁸ See for examples of jurisprudence and more on this issue, BCHV-CBAR, *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen*, January 2012.

⁵⁶⁹ Law of 20 July 1990 concerning pre-trial detention, available in French at: <http://bit.ly/1B626nE> and Dutch at: <http://bit.ly/1KpjZzR>.

remaining in detention for prolonged periods. This practice has repeatedly been found by the ECtHR to be a violation of Article 5(4) ECHR.⁵⁷⁰

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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Do asylum seekers have effective access to free legal assistance in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

The law provides for access to free legal assistance for the purpose of judicial review of the detention order. Free legal assistance is provided for in the Judicial Code under the same conditions as for other asylum-related procedures. A rebuttable presumption applies whereby the person detained is considered to not have 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.⁵⁷¹

In the closed centres in **Vottem and Bruges**, 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.⁵⁷² 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. Due to recent changes in the way pro-deo lawyers are remunerated, a decline in the number of beneficiaries of legal assistance by experienced lawyers had been noticed. There is 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.⁵⁷³ The concerns about the variable quality of legal aid in closed centres were reiterated in a recent report published by UNHCR.⁵⁷⁴

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

⁵⁷⁰ ECtHR, *Firoz Muneer v. Belgium; M.D. v. Belgium*.

⁵⁷¹ Articles 62 and 63 Royal Decree on Closed centres.

⁵⁷² UNHCR Belgium, *Juridische Begeleiding van verzoekers om internationale bescherming in België*, September 2019, available in Dutch at: <https://bit.ly/38NjQWZ>, 25 and 43.

⁵⁷³ The full report can be consulted in French at: <http://bit.ly/2k3PIQD>, or in Dutch at: <http://bit.ly/2klkWRY>.

⁵⁷⁴ UNHCR Belgium, *Juridische Begeleiding van verzoekers om internationale bescherming in België*, September 2019, available in Dutch at: <https://bit.ly/38NjQWZ>, 38.

North station were apprehended and transferred to a detention centre. Médecins du Monde published a report documenting police violence against these migrants.⁵⁷⁵ 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.⁵⁷⁶ In 2019 these measures were continued and in practice the capacity of the 127bis detention centre (and to a large extent of the detention centre in **Bruges**) was still dedicated to this specific target-group.

⁵⁷⁵ Médecins du Monde, ‘Violences policières envers les migrants et les réfugiés en transit en Belgique’, available in French at: <https://bit.ly/2Wm3GhR>.

⁵⁷⁶ 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.⁵⁷⁷ The residence right for recognised refugees is limited to 5 years, which then becomes unlimited unless the CGRS takes a cessation or revocation decision on 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.⁵⁷⁸ After these 5 years they can receive an electronic B card which is valid indefinitely.

Beneficiaries of **subsidiary protection** receive a residence right for one year. Unless the Immigration Office is convinced that 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 status holder 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.⁵⁷⁹ Similarly to refugees, persons granted subsidiary protection receive an electronic “A card” valid for one year, renewable twice for a period of two years. Upon receiving the right to residence for unlimited time the beneficiary receives an electronic B card.⁵⁸⁰

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 Immigration Office itself gives instructions to the commune to register the person in the Aliens Register and issues 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 Immigration Office cannot timely prolong the card, a paper document temporarily covering the right to residence is issued by the commune. This document is named an “Annex 15”.⁵⁸¹

2. Civil registration

2.1. Civil birth registration and status of children

A child born in Belgium needs to be registered at the commune of the place of birth within 15 days, regardless of the residence status of the parents. 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.

⁵⁷⁷ Article 49 Aliens Act.

⁵⁷⁸ Article 76 Aliens Decree.

⁵⁷⁹ Article 49/2(2)(3) Aliens Act.

⁵⁸⁰ Article 77 Aliens Decree.

⁵⁸¹ 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. The annex 25/26 is proof that one has lodged an asylum application at the Immigration Office. 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 Immigration Office, which will modify the waiting registry and 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 Immigration 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.⁵⁸²

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 Immigration 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 if, when getting married, 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 a resident. If neither spouse has residence in Belgium or if the habitual residence of one of the spouses does not correspond to the place of residence, the marriage can be solemnised in the commune of habitual residence.

A foreign marriage certificate may be recognised in Belgium if the basic conditions for marriage applicable in the country of origin of the spouses and the official formalities of the country where the marriage was solemnised have been respected.

Certain documents may be needed for concluding a marriage in Belgium. For beneficiaries of **subsidiary protection** civil status documents might be harder to obtain. As the CGRS is not qualified to grant civil status documents e.g. certificate of birth, marriage certificate to persons holding subsidiary protection status, they will need to contact their embassy. For some procedures such as marriage or [Naturalisation](#),

⁵⁸² 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>.

an “act of notoriety” (*acte de notoriété*) can substitute a birth certificate.⁵⁸³ 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:	17,143
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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.⁵⁸⁴ 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:

- ❖ 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 2020 the required amount was set at 855 € per month, plus 285 € per dependent person.⁵⁸⁵
- ❖ 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 obtain the status of long-term resident (the so-called “Annex 16”) is lodged at the municipal authorities of the applicant’s place of residence.⁵⁸⁶ The municipal authorities confirm this by issuing a certificate of receipt (“Annex 16-bis”).⁵⁸⁷ The municipal authorities afterwards transfer the request to the Immigration Office, which takes a decision within 5 months. In the event of a positive decision, or the absence of a decision after 5 months, the applicant will be included in the civil register and receive an electronic D-card with a validity of 5 years and the mention “EC – long-term resident”. In addition to this the mention “international protection granted by Belgium on [date]” is written on the residence permit for

⁵⁸³ Article 5 Belgian Nationality Code.

⁵⁸⁴ 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.

⁵⁸⁵ More info available at: <http://bit.ly/2jAyqvU>.

⁵⁸⁶ Article 29(1) Aliens Decree.

⁵⁸⁷ Article 29(2) Aliens Decree.

long-term residents.⁵⁸⁸ The duration of validity of long-term residence status is unlimited, contrary to the residence card D itself.⁵⁸⁹

In the event of a refusal, the municipal authorities will notify the applicant with a so-called Annex 17.⁵⁹⁰ 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 2018:	36,129

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.

In 2018, 36,129 beneficiaries of protection were granted citizenship.⁵⁹¹

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:⁵⁹²

- ❖ 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.⁵⁹³ Legal stay implies a right to residence of unlimited duration.⁵⁹⁴

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.⁵⁹⁵

⁵⁸⁸ Article 30(2) Aliens Decree.

⁵⁸⁹ Article 18(1) Aliens Act.

⁵⁹⁰ Article 30(1) Aliens Decree.

⁵⁹¹ Myria, Annual Report 2019, available in French at: <https://bit.ly/2RCjUC7>, Chapter nationality, 108.

⁵⁹² Article 19 Code of Belgian Nationality and Circular of 8 March 2013, published on 14 March 2013.

⁵⁹³ 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.

⁵⁹⁴ Article 7-bis(2)(1) Code of Belgian Nationality.

⁵⁹⁵ Article 19(2) Code of Belgian Nationality.

4.2. Declaration of nationality

Apart from the aforementioned possibilities for acquiring Belgian nationality, aliens can also resort to a system called “declaration of nationality”. This possibility is laid down in Article 12bis of the Code of Nationality and contains the following possibilities that are relevant for refugees and beneficiaries of subsidiary protection based *inter alia* on:

- ❖ 5 years of legal stay and integration;⁵⁹⁶
- ❖ 10 years of legal stay.⁵⁹⁷

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.⁵⁹⁸ Since July 2018 the duration of the asylum procedure leading to the recognition of refugee status (for recognised refugees) are again taken into account when calculating the length of legal residence (5 or 10 years) preceding the declaration of nationality.

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 followed successfully 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 2013.⁵⁹⁹ 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.⁶⁰⁰ *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 2013.⁶⁰¹ Specific details on the documents available to prove social integration, knowledge of languages and economic participation are provided for in the March 2013 Circular.⁶⁰²

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

⁵⁹⁶ Article 12-bis(1)(2) Code of Belgian Nationality.

⁵⁹⁷ Article 12-bis(2)(5) Code of Belgian Nationality.

⁵⁹⁸ Article 7-bis(2)(1) Code of Belgian Nationality.

⁵⁹⁹ 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.

⁶⁰⁰ Court of Appeal Ghent, 2014/AR/1095, 24 December 2015.

⁶⁰¹ 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).

⁶⁰² Circular of 8 March 2013, para IV A(1)(1.2).

years and to have a right of residence of unlimited duration. The language requirement is explicitly mentioned as well. The new condition for this option is the fact that an applicant has to prove participation to life in the receiving society. There is no strict legal definition for 'receiving society' but the Circular of 2013 specifies that "receiving society" cannot be interpreted as meaning the society of people of the same origin as the applicant.⁶⁰³ 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 Immigration 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.

⁶⁰³ Circular of 8 March 2013, para IV A(1)(1.1)(4).

A second appeal is available with the court of appeal for both the applicant and the prosecutor. The time limit is again 15 days. The procedure however is expensive and can take a long time. The court will rule after advice from the general prosecutor and the applicant will be heard. In the event of a positive decision 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.⁶⁰⁴

5. Cessation and review of protection status⁶⁰⁵

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

In October 2017, a specific unit was created as part of the Immigration Office focusing specifically on requests towards the CGRS to end the international protection status and to follow-up on the cases where the status was put to an end.

In practice the Immigration Office will inform the CGRS of any elements it has at its disposal on travels to the country of origin, based on which the latter will effectively take a decision ending the status or not. This applies both to withdrawal and cessation decisions.

From 2016 to 2018, the Immigration Office send a request to the CGRS⁶⁰⁶:

- in 279 cases to end the refugee status based on such travels, and the number of requests increased from year to year. During the same time period the CGRS decided:
 - to end the refugee status (cessation and withdrawal combined) in 92 of these cases;
 - to maintain the refugee status in 93 cases;
 - 93 cases were still pending;
 - in 1 case the Immigration Office annulled its request.
- in 129 cases to end the subsidiary protection status based on such travels, and the number of requests increased from year to year. This concerns the number of cessation and withdrawal requests combined (see below). During the same 3-year period the CGRS decided:
 - to end the subsidiary protection status in 76 of these cases due to travels to the country of origin,
 - to maintain the protection status in 22 cases;
 - 30 cases were still pending;
 - and in 1 case the Immigration Office annulled its request.

⁶⁰⁴ Law of 28 April 2015 changing registration, mortgage and registrar fees in order to reform registrar rights, 26 May 2015, 2015003178.

⁶⁰⁵ 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.

⁶⁰⁶ EMN, *Beneficiaries of international protection travelling to their country of origin challenges, policies and practices in Belgium*, July 2019, available at: <https://bit.ly/2NIHhbP>, 42 and 55.

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 Immigration Office can ask the CGRS to cease refugee status on the basis of actions that fall under Article 1C of the Refugee Convention.⁶⁰⁷ 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 2016.⁶⁰⁸ 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.⁶⁰⁹

As mentioned above, 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 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.⁶¹⁰ In July 2019 the European Migration Network published an extensive study on beneficiaries of international protection travelling to their country of origin and the challenges, policies and practices that apply in this context in Belgium.⁶¹¹ A main finding was that the UNHCR Handbook is being used, but there are no formal internal guidelines with criteria. Determination is done on a case-by-case basis. However, there is internal supervision and support by the central legal service of the CGRS on such cases. The study gives an overview of the main considerations and criteria the CGRS uses to make a decision: amongst others, this is the length of the stay, the frequency of the traveling, the time span between the travel and the granting of the protection status and the circumstances during the stay.

Moreover, contacting the authorities of the country of origin – e.g. consulates, embassies, or other official representations of the country of origin - as a refugee can lead to the cessation of the refugee status. This is not explicitly foreseen in law (similarly to the fact of traveling to the country of origin), but in practice it can be considered as a change in personal circumstances and/or a re-availment of the protection from the authorities of the country of origin.⁶¹² It can be visits in person or other forms of contact with the purpose of requesting the issuance or extension of their passports or other official documents. In practice, cessation decisions in Belgium in this regard are often based on contacts with the authorities of the country of origin in combination with travels to the country of origin. In its report EMN Belgium found no case law on ending status for the sole reason of contacting the authorities of the country of origin.⁶¹³

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 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.⁶¹⁴

⁶⁰⁷ Article 49(1) Aliens Act.

⁶⁰⁸ Article 49(2) Aliens Act.

⁶⁰⁹ Article 11(3)(1) Aliens Act.

⁶¹⁰ Commissie voor de Binnenlandse Zaken, de Algemene Zaken en het Openbaar Ambt, Integraal verslag, 5 December 2017, 13, CRIV 54 COM 774.

⁶¹¹ EMN, Beneficiaries of international protection travelling to their country of origin challenges, policies and practices in Belgium, July 2019, available at: <https://bit.ly/2JD4UAq>.

⁶¹² See also Article of the 1951 Convention.

⁶¹³ EMN, Beneficiaries of international protection travelling to their country of origin challenges, policies and practices in Belgium, July 2019, available at: <https://bit.ly/2NIHhbP>, 34.

⁶¹⁴ CALL, 24 February 2017, No 182.917; CALL, 13 September 2017, No 191.961; CALL 13 September 2017, No 191.956.

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.⁶¹⁵ 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.⁶¹⁶

Cessation of status is possible during the 5 years of temporary residence as provided for in Article 49/2 of the Aliens Act.⁶¹⁷ The Immigration 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.⁶¹⁸ 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.⁶¹⁹

A 2016 amendment changed the wording of the Aliens Act, thereby allowing the Immigration 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.⁶²⁰ Furthermore, in the event of a cessation on the aforementioned grounds, the Immigration Office has to assess the proportionality of an expulsion measure. This requires the Immigration 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 Immigration Office.⁶²¹

In 2019, the CGRS took 75 cessation decisions.⁶²² In 34 cases it concerned the cessation of the refugee status: Russian Federation (10), Iraq (6), Undetermined (4), DRC (3), Serbia (2). In 41 cases, it concerned the cessation of subsidiary protection: Afghanistan (20), Iraq (21).

In case of a (final) decision to cease international protection status, this has no automatic consequences on family members and dependents of the former beneficiary of international protection a case by case decision is taken if they keep or lose their international protection status. The conditions for cessation or withdrawal need to be fulfilled for every family member separately.

⁶¹⁵ Myria, *Contact meeting*, 22 November 2017, para 23.

⁶¹⁶ CALL, 27 October 2017, No 194.465.

⁶¹⁷ Article 49/2(3) Aliens Act.

⁶¹⁸ Article 11(3)(1) Aliens Act.

⁶¹⁹ Article 35/2 Royal Decree on CGRS Procedure.

⁶²⁰ Article 11(3)(1) Aliens Act.

⁶²¹ Myria, *Contact meeting*, 20 September 2017, para 22.

⁶²² Information provided by the CGRS, February 2020.

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 Immigration 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.⁶²³ The exclusion clause refers to Articles 1 D, E and F of the 1951 Convention.⁶²⁴

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.⁶²⁵

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 consider the applicant's statements on his or her the sexual orientation credible. The protection status can also be withdrawn after receiving new element, as was the case in 2019 for a couple that had presented an Iraqi passport to the municipality (in the context of a procedure to acquire Belgian nationality) which had not been presented to the CGRS and contained elements contrary to the claims made during the asylum procedure. Moreover, the stamps in the passport showed that the couple had travelled back to Iraq for almost two months. Based on these new elements, and the lack of credible explanations by the couple, the CGRS could conclude they came from another region than the one that they had claimed, and therefore the need for protection had wrongly been examined in regard to the other region. The CALL thus confirmed both the lack of a protection need and the withdrawal of the subsidiary protection status which had been granted based on false declarations.⁶²⁶

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.⁶²⁷ This ground for revocation was added in 2015 and is not limited in time.⁶²⁸ 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.⁶²⁹

The Immigration Office sends the CGRS every element that could justify a revocation of the refugee status on the basis of Article 55/3/1 Aliens Act. The CGRS will take a decision within 60 days and inform the Immigration Office of the outcome. However, this time limit is not enforceable and not respected in practice. In the event of a revocation of refugee status on the grounds of Article 55/3/1(1) or 55/3/1(2)(2)

⁶²³ Article 55/3/1(2) Aliens Act.

⁶²⁴ Article 55/2 Aliens Act.

⁶²⁵ CALL, 11 March 2016, No 163942.

⁶²⁶ CALL, 27 February 2019, Decision No 217584.

⁶²⁷ Article 55/3/1(1) in conjunction with Article 49(2) Aliens Act.

⁶²⁸ 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.

⁶²⁹ Myria, *Contact meeting*, 20 September 2017, para 24.

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 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.⁶³⁰ This ground for revocation was only included in 2015 and is not limited in time.⁶³¹

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.⁶³² The subsidiary protection status can also be revoked any time when the beneficiary is considered to be a threat for society or national security.⁶³³ 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.⁶³⁴ Revocation on the grounds of a fraudulent basis can only occur during the first 10 years of residence in Belgium.

The Immigration 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 Immigration Office and the person concerned of the outcome. However, this time limit is not enforceable and not respected in practice.⁶³⁵ 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.⁶³⁶

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

⁶³⁰ Article 55/5/1(1) Aliens Act.

⁶³¹ Article 10 Law of 10 August 2015.

⁶³² The crimes listed in Article 55/4(1) Aliens Act are also known as the 'exclusion clause' 1F of the 1951 Refugee Convention.

⁶³³ Article 55/4(2) Aliens Act.

⁶³⁴ Article 55/5/1(2)(2) Aliens Act.

⁶³⁵ EMN, Beneficiaries of international protection travelling to their country of origin challenges, policies and practices in Belgium, July 2019, available at: <https://bit.ly/2NIHhBP>, 66.

⁶³⁶ 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.

demonstrate the danger to society. The risk of recidivism plays a role in the assessment of the CAL 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 Immigration Office to end the right to residence of a person whose protection status is revoked on the grounds of Article 55/3/1(1) or 55/5/1(1) Aliens Act. A person can also be ordered to leave the territory if the protection status is revoked on the grounds of Article 55/3/1(2) or 55/5/1(2) Aliens Act. In the event of a revocation on the aforementioned grounds, the Immigration Office has to assess the proportionality of an expulsion measure. This requires the Immigration 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 2019, the CGRS withdrew the protection status in 147 cases.⁶³⁷ Out of them, 99 concerned the refugee status of beneficiaries originating from Iraq (19), Afghanistan (16), Russia (14), Albania (6) and Iran (5). The other 48 withdrawals concerned the subsidiary protection of persons originating from Iraq (27), Afghanistan (15), Serbia (1), Montenegro (1), Somalia (1), and Venezuela (1).

In case a (final) decision to cease international protection status is issued, it has no automatic consequences on family members and dependents of the former beneficiary of international protection. A case by case decision is taken to determine whether they are entitled to keep or lose their international protection status. The conditions for cessation or withdrawal need to be fulfilled for every family member separately.

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?
❖ If yes, what is the waiting period? ☐ Yes ☒ No
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.⁶³⁸ 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 illustrating the main obstacles that beneficiaries of international protection currently face in the context of family reunification. These include:⁶³⁹

- obstacles encountered in submitting a visa application;
- the narrow definition of the family members of a beneficiary of international protection and the long and uncertain procedure for humanitarian visas;

⁶³⁷ Information provided by the CGRS January 2020.

⁶³⁸ More practical information can be found in: Myria, *Le regroupement familial des bénéficiaires de protection internationale en Belgique*, September 2019, available in French at: <https://bit.ly/2TFM9T1>.

⁶³⁹ UNHCR and Myria, *'Le regroupement familial des bénéficiaires d'une protection internationale en Belgique', June 2018*, available in French at: <https://bit.ly/2GdKJIF>.

- the strict conditions for family reunification where the application could not be submitted within one year of recognition or granting of international protection status;
- the complexity of proving family ties and regular recourse to DNA testing;
- the difficulty of financing the costs of family reunification; and finally, family reunification in the event of a humanitarian crisis.

1.1. Eligible family members

Four categories of persons may join a beneficiary in Belgium.

- ❖ A spouse, equalled partner,⁶⁴⁰ 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.⁶⁴¹ Both partners have to be over the age of 21, unless the union took place before arrival in Belgium, in which case the minimum age is reduced to 18. The spouse or equalled partner must come and live with the beneficiary in Belgium. Polygamous marriages are excluded, only one of the wives can join the beneficiary.⁶⁴² 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 Immigration Office can revoke the right to residence.⁶⁴³

The conditions for a registered partner are largely similar but require proof of a “stable and lasting” relationship.⁶⁴⁴ 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.⁶⁴⁵ Until April 2018, family reunification with an

⁶⁴⁰ 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.

⁶⁴¹ Article 10(1)(4) Aliens Act.

⁶⁴² Children from a polygamous marriage are not excluded if they meet the general conditions: Constitutional Court, Decision No 95/2008, 26 June 2008.

⁶⁴³ Articles 11(2) and 12-bis Aliens Act.

⁶⁴⁴ Article 10(1)(5) Aliens Act.

⁶⁴⁵ Article 10(1)(7) Aliens Act.

unaccompanied minor was only possible when he or she was recognised as a refugee or was granted subsidiary protection status.⁶⁴⁶ 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 *A and S v Staatssecretaris van Veiligheid en Justitie*,⁶⁴⁷ that the date of introduction of the asylum application of the unaccompanied minor is decisive for the right to family reunification, the Immigration 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 the child has obtained the protection status. The Immigration Office extended this practice to beneficiaries of subsidiary protection.⁶⁴⁸

To establish family ties, Belgian law foresees a cascade system.⁶⁴⁹ 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 Immigration Office can take other valid proof into account.⁶⁵⁰ In the absence of other valid proof, the Belgian authorities may conduct interviews or any other inquiry deemed necessary, such as a DNA test.⁶⁵¹ In practice the Immigration Office makes little use of this cascade system and will often require the expensive DNA-testing.⁶⁵²

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.⁶⁵³ A legislative proposal was being discussed in Parliament at the time of writing to reduce this time limit to three months, in line with the EU directive on family reunification.⁶⁵⁴

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.

⁶⁴⁶ Art. 10 of the Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens.

⁶⁴⁷ CJEU, Case C-550/16, *A and S v Staatssecretaris van Veiligheid en Justitie*, 12 April 2018

⁶⁴⁸ Myria, *Contact meeting*, 16 May 2018, , available at: www.myria.be, para. 6-9.

⁶⁴⁹ Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, Belgian Official Gazette, 2 July 2009.

⁶⁵⁰ Article 12-bis(5) Aliens Act.

⁶⁵¹ Article 12-bis(6) Aliens Act.

⁶⁵² UNHCR and Myria, ‘Gezinshereniging van begunstigten van internationale bescherming in België: vaststellingen en aanbevelingen’, June 2018, available in Dutch at: www.myria.be, p.19.

⁶⁵³ Constitutional Court, Decision No 95/2008 of 26 June 2008.

⁶⁵⁴ Chamber of Representatives of Belgium, Law Proposal No. 574, available in French at: <https://bit.ly/2TEKHjF>.

In addition to these standard documents, a spouse will have to provide a marriage certificate. A registered partner has to provide a certificate of registered partnership and additional proof of the lasting relationship, such as photos, emails, travel tickets, etc. For minor children applying to reunify with a parent a copy of the judgment granting sole custody will have to be provided. If custody is shared, consent of the one parent that the child can join the other parent in Belgium is required. Where the child is only of the spouse/partner a marriage certificate, divorce certificate or registered partnership contract is required.

Children over 18 with a disability have to provide a medical certificate.

All foreign documents have to be legalised by both the foreign authorities that issued them and the Belgian authorities. Documents provided in another language than German, French, Dutch or English will have to be translated by a sworn translator.

After submitting all the certified and translated documents, the file is complete and the applicant will receive proof of submission of the application (a so-called “Annex 15quinquies”). The file then gets sent to the Immigration Office for examination. When the proof of submission is delivered, a 9-month period starts during which the Immigration 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 Immigration Office decides that all conditions are fulfilled it will issue a positive decision and the family member will receive a D type visa mentioning “family reunification”. This visa is valid for 1 year and allows the applicant to travel to Belgium via other Schengen countries or stay in another Schengen country for a maximum total duration of 3 months within a period of 6 months.

2. Status and rights of family members

After arrival in Belgium, the applicant has to register in the municipality where he/she stays within the first 8 days of the arrival.⁶⁵⁵ 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.⁶⁵⁶ 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 Immigration Office can review the situation every time an electronic A card has to be renewed, but also at any moment when the Immigration Office has well-founded suspicions of fraud or a marriage of convenience. If after a review the Immigration 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.

⁶⁵⁵ Circular of 21 June 2007 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.

⁶⁵⁶ Article 13(3) Aliens Act.

The Immigration Office then issues an Annex 14ter to leave the territory. However, before ending the right to residence, the Immigration 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 Immigration Office cannot end the right to residence. Rape, deliberate assault and battery and attempts to poison all fall under this exception as well.⁶⁵⁷ Proof of domestic violence suffices, a conviction is not required. Psychological violence also suffices, but the Immigration 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 Immigration 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 becomes unlimited in duration. The person concerned has to apply for an electronic B card at the municipality during the duration of his electronic A card. If the applicant still fulfils the conditions, he/she receives a definitive, unconditional and unlimited right to residence. The municipality will issue an electronic B card valid for 5 years.

If the applicant does not satisfy the conditions anymore, a new right to residence of limited duration will be issued if the person concerned has sufficient means of existence not to become a burden to the State, has health insurance and poses no threat to public order or security.

Exceptionally the Immigration Office can end the right to residence in the event of fraud or a marriage of convenience.

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 Immigration Office will investigate the personal situation of the applicant and may still prolong the duration of the right to residence.⁶⁵⁸

Resources are considered sufficient when they are 120% of the living wage of the category 'person with a dependent family'.⁶⁵⁹ Currently this amounts to €1,524.61 per month. The Constitutional Court ruled that as soon as the threshold is reached, the Immigration Office is not allowed to further investigate the exact amount of resources.⁶⁶⁰ 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 Immigration 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.⁶⁶¹ On the basis of that analysis the Immigration Office can adjust the threshold.

⁶⁵⁷ Articles 375, 398-400, 402, 403 and 405 Penal Code.

⁶⁵⁸ 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.

⁶⁵⁹ Article 10(5) Aliens Act.

⁶⁶⁰ Constitutional Court, Decision No 121/2013, 26 September 2013.

⁶⁶¹ Article 12-bis(2) Aliens Act.

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.⁶⁶² 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.⁶⁶³

2. Travel documents

Belgium issues travel documents for both refugees and beneficiaries of subsidiary protection.⁶⁶⁴ The duration of validity of both documents is 2 years.⁶⁶⁵ 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”.⁶⁶⁶ 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.⁶⁶⁷

Travel documents for beneficiaries of subsidiary protection are issued only if beneficiaries are unable to obtain one from their national authorities.⁶⁶⁸ 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

⁶⁶² Reference Point Migration-Integration, *Monitoring movements*, October 2016, available in Dutch at: <http://bit.ly/2kWCldt>.

⁶⁶³ De Standaard, ‘Vluchtelingen vluchten weg uit Wallonië’, 3 November 2016, available in Dutch at: <http://bit.ly/2jx04dh>.

⁶⁶⁴ Article 57(3) Consular Code.

⁶⁶⁵ Circular on travel documents for non-Belgians, 7 September 2016.

⁶⁶⁶ CGRS, ‘You are recognised as a refugee in Belgium’, January 2018, available at: <http://bit.ly/2BjIRbd>.

⁶⁶⁷ Myria, *Contact Meeting*, 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 15-16.

⁶⁶⁸ CGRS, ‘You are eligible for subsidiary protection in Belgium’, November 2017, available at: <http://bit.ly/2n2fFBj>.

identity and nationality are established and a certificate of impossibility to obtain a national passport or travel document is submitted.

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.⁶⁶⁹

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 2019 | 2,6% ⁶⁷⁰ |

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.

This is specified in internal instructions of Fedasil (see [End of the right to reception](#)).⁶⁷¹

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". 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.⁶⁷² Finding affordable and adequate housing is even more problematic for beneficiaries of international protection, that are reunited with their family.⁶⁷³

Several civil society organisations and many volunteering groups offer support to refugees and beneficiaries of subsidiary protection by helping them to search a place to stay, such as Convivial and Caritas International.

⁶⁶⁹ For more information: Foreign Affairs Office, 'Titre de voyage pour réfugié, apatride ou étranger', available in French at : <https://bit.ly/2UzuQQW>.

⁶⁷⁰ Myria, *Contact meeting*, 16 October 2019, available in Dutch at: <https://bit.ly/3boxS2T>

⁶⁷¹ 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.

⁶⁷² 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/2MNtLOo>, 30.

⁶⁷³ Vluchtelingenwerk Vlaanderen en Orbit VZW, *Beleidsnota Gezinshereniging en Wonen*, August 2019, available in Dutch at: <https://bit.ly/2Rev4ht>.

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.⁶⁷⁴ They are equally exempt from a professional card.⁶⁷⁵ 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.⁶⁷⁶ 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 can be lodged at 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 a renewal 3 months before the expiration date of the current professional card. As soon as a beneficiary of subsidiary protection receives a right to unlimited residence, he or she is exempt from a professional card.

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.

⁶⁷⁴ 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.

⁶⁷⁵ Article 1(4) Royal Decree on the professional card.

⁶⁷⁶ 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.

In July 2019, the European Migration Network (EMN) published a study on the social-economic trajectories of beneficiaries of international protection in Belgium.⁶⁷⁷ The researchers compared the cohorts of persons granted a protection status in the periods 2001-2006 and 2007-2009 with persons granted a protection status in the period 2010-2014, in order to evaluate their respective participation to the labour market. Five years after they received protection status, 37% of the persons granted international protection in 2001-2006 and 2007-2009 were effectively working, compared to only 29% for those granted protection between 2010-2014. Where this could be verified, especially for the first two categories of persons, the labour market participation continued to increase. For example: 10 years after their recognition, approximately 50% of the persons granted international protection in the period 2001-2006 were effectively employed. The proportion of persons who have worked at least once was much higher, as 81% of them worked at least during a quarter of a year. This means that the majority of them had a formal job during their stay, after their recognition, and despite the vulnerability inherent to their group. Initial and subsequent periods of employment often last less than a year, indicating short working periods and a high degree instability. Therefore, a sustainable integration in the labour market still needs to improved according to the study.

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

⁶⁷⁷ EMN, *Socio-economic trajectories of beneficiaries of international protection*, 4 July 2019, available at <https://bit.ly/2x8vZbl>.

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 he/she can register either in the capacity as an employee or entrepreneur or on the basis of the right to residence.⁶⁷⁸ 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.

⁶⁷⁸ Article 32 Law of 14 July 1994 on insurance for medical care and benefits, 27 August 1994, 1994071451, 21524.

Dependent persons of an entitled persons include the spouse, (grand)child, (grand)parent and cohabitant.⁶⁷⁹ To be registered as a spouse both the marriage certificate and proof of living together have to be provided.⁶⁸⁰ 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.⁶⁸¹ 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.⁶⁸²

⁶⁷⁹ Article 123 Royal Decree of 3 July 1996 implementing the Law of 14 July 1994 on insurance for medical care and benefits, 1996022344, 20285.

⁶⁸⁰ Article 124(3) Royal Decree 1996.

⁶⁸¹ Article 123(3) Royal Decree 1996.

⁶⁸² Circular Letter of 14 March 2014 on the minimum conditions for a social investigation in the light of the Law of 26 May 2002 on the right to societal integration and in the light of societal integration by PCSWs which is paid back by the State according to provisions in the Law of 2 April 1965, 4 July 2014, 2014011203, 51594.

ANNEX I – Transposition of the CEAS into national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	1 September 2013	Law of 8 May 2013 amending the Aliens Act	http://bit.ly/1GmsxXT (FR)
		3 September 2015	Law of 10 August 2015 amending the Aliens Act	
		21 November 2017	Law of 21 November 2017 amending the Aliens Act	
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	21 November 2017	Law of 21 November 2017 amending the Aliens Act	http://bit.ly/2FEqrZU (FR)
		17 December 2017	Law of 17 December 2017 amending the Aliens Act	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)