

Country Report: Belgium



2022
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 attained 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 it receives numerous questions on the rights and position of asylum seekers, refugees and persons benefitting from subsidiary protection. It is also present at the entrance of the asylum authorities, where it provides newly arrived asylum seekers with crucial information about the asylum procedure and their rights in Belgium. This allows for the swift monitoring of any changes in asylum seekers' profiles and the registration practice. The information concerning the detention of migrants in Belgium is updated by the Move Coalition, a formal coalition of NGOs accredited to visit detention centres.

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Unless otherwise stated, the information in this report is up-to-date as of 31 December 2022.

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 practices 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, Türkiye, 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 protection standards in line with international refugee and human rights law and based on best practices.



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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. Since 2021, the informal Transit group was substituted by the official Move coalition.
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	Office of the Commissioner General for Refugees and Stateless Persons Commissariat 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
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECSR	European Committee for Social Rights
EMN	European Migration Network
EUAA	European Union Agency for Asylum
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
TP	Temporary Protection
TPD	Temporary Protection Directive
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 Office of 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 Contact Group on International Protection reports, bringing together national authorities, UNHCR and civil society organisations.²

Applications and granting of protection status at first instance: 2022

	Applicants in 2022 (1)	Pending at end of 2022 (2)	Refugee status ³	Subsidiary protection ⁴	Rejection (3)	Refugee rate	Sub. Prot. rate	Rejection rate
Total	36,871	16,415	10,632	429	13,041	44,1%	1,8%	54,1%

Breakdown by countries of origin of the total numbers:

Afghanistan	6,156	n/a	2,467	9	3,136	43,9%	0,2%	55,9%
Syria	3,545	n/a	2,499	37	445	83,8%	1,2%	14,9%
Palestine	2,802	n/a	760	23	719	50,6%	1,5%	47,9%
Burundi	2,736	n/a	358	0	82	81,4%	n/a	18,6%
Eritrea	1,953	n/a	1.357	0	185	88%	n/a	12%
Türkiye	1,728	n/a	546	0	207	72,5%	n/a	27,5%
Georgia	1,026	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Moldavia	980	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Guinea	902	n/a	245	1	562	30,3%	0,1%	69,6%
Iran⁵	895	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Source: CGRS, Figures, available in English, Dutch and French at: <https://bit.ly/3uk6M9L>.

¹ CGRS, *Figures*, available in English, Dutch and French at: <https://bit.ly/3uk6M9L>.

² Myria, Contact group international protection, available in French and Dutch at: <https://bit.ly/3sE592s>.

³ This concerns the total number of persons in whose case a decision has been taken in 2022, regardless of whether the application was lodged in 2022 or in previous year.

⁴ This concerns the total number of persons in whose case a decision has been taken in 2022, regardless of whether the application was lodged in 2022 or in previous year.

⁵ In the contact meeting of Myria in January 2023, the CGRS indicated that the total recognition rate (refugee and subsidiary protection status) for applicants from Iran in 2022 was 38.8%. Myria, Contact meeting 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, 23.

(1) 'Applicants in 2022' refers to the total amount of applicants for both first and subsequent applications for international protection. 4,652 of these (12,6%, compared to 20,9 % in 2021) are persons who filed a subsequent application for international protection. 32,141 of these are persons who filed a first application for international protection, and another 78 are persons who filed a first application after resettlement to Belgium.

(2) 'Pending at the end of 2022' concerns the total amount of cases that are still pending, regardless of whether the application was lodged in 2022 or previous years. The 16,415 pending cases involved 19,157 applicants. The workload increased slightly in 2022: 16,415 cases pending vs 15,685 cases at the end of 2021.

(3) 'Rejection' covers the number of persons who received a decision refusing refugee status and refusing subsidiary protection status (total: 7,742) and those whose applications were declared inadmissible after subsequent applications and towards beneficiaries of international protection in another member state (total: 4,253) or were declared manifestly unfounded (total: 1,046).

Gender/age breakdown of the total number of applicants: 2022

	Number	Percentage
Total number of applicants	36,871	-
Men	26,031	70,6%
Women	10,840	29.4%
Unaccompanied children	2,394 (decl. 3,615)	6.5% (decl. 9.8%)

Source: CGRS, Figures, available in English, Dutch and French at: <https://bit.ly/3uk6M9L>.

* 3,615 applicants declared being unaccompanied minors at the moment of their application for international protection (an increase of 12,3% compared to 2021). After the age assessment, 2,394 of them were indeed considered unaccompanied minors. These numbers concern the situation at the start of January 2022. The Immigration Office will further actualise these numbers throughout the year based on the results of ongoing age assessment tests.

Appeal decision rates: 2022

	Appeal	
	Number	Percentage
Total number of decisions	5,042	100%
Positive decisions	240	4.76%
<i>Refugee status</i>	193	3.83%
<i>Subsidiary protection</i>	47	0.93%
Negative decisions	4,019	79.71%
Annulments	783	15.53%

Source: CALL Activity report 2022.⁶

Subsequent applications

Subsequent applicants by 5 main countries of origin: 2022	
Country	Number
Afghanistan	394
Iran	341
Palestine	302
Syria	274
Georgia	186
Other countries	3,155
Total	4,652

Source: CGRS, Asylum statistics 2022.

⁶ More statistics available in the activity report: <http://bit.ly/3nQHrmA>.

Overview of the legal framework

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

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

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

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

<p>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>	<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>	<p>Royal Decree on Immigration Office Asylum Procedure</p>	<p>http://bit.ly/1KOyLBU (NL)</p>
<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: Royal Decree of 27 June 2018</i></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>	<p>Royal Decree on CGRS Procedure</p>	<p>http://bit.ly/1FYKWaB (FR)</p> <p>http://bit.ly/1Jo26J (NL)</p> <p>https://bit.ly/2WhfNwS (FR)</p> <p>https://bit.ly/2Ten2U4 (NL)</p>
<p>Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation</p>	<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>	<p>Royal Decree on CALL Procedure</p>	<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: Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers</i></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>	<p>Royal Decree on Foreign Workers</p>	<p>http://bit.ly/1Q9rEXZ (NL)</p> <p>http://bit.ly/1MYS23I (FR)</p>
<p>Royal Decree of 12 January 2011 on the granting of material assistance to asylum seekers receiving income from employment related activity</p>	<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>	<p>Royal Decree on Material Assistance to</p>	<p>http://bit.ly/1IAukcQ (FR)</p>

	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)

<i>Amended by:</i> 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)
<i>Amended by:</i> Royal Decree of 22 July 2018	Arrêté royal du 22 juillet 2018 Koninklijk besluit van 22 juli 2018		https://bit.ly/2DrHA6e (FR) https://bit.ly/2R5VvCH (NL)
Royal Decree of 9 April 2007 determining the regime and functioning rules of the Centres for Observation and Orientation of Unaccompanied Minors	Arrêté royal du 9 avril 2007 déterminant le régime et les règles de fonctionnement applicables aux centres d'observation et d'orientation pour les mineurs étrangers non accompagnés Koninklijk besluit van 9 april 2007 tot vastlegging van het stelsel en de werkingsregels voor de centra voor observatie en oriëntatie voor niet-begeleide minderjarige vreemdelingen	Royal Decree on OOC	http://bit.ly/1QLxABu (FR) http://bit.ly/1S40bo8 (NL)
Royal Decree of 24 June 2013 on the rules for the training on the use of coercion for security personnel	Arrêté royal déterminant les règles relatives à la formation dispensée dans le cadre du recours à la contrainte, prise en exécution de l'article 74/8, § 6, alinéa 3, de la loi du 15 décembre 1980 Koninklijk besluit tot bepaling van de regels voor de opleiding in het kader van het gebruik van dwang, genomen in uitvoering van artikel 74/8, § 6, derde lid, van de wet van 15 december 1980	Royal Decree on the Use of Coercion for Security Personnel	http://bit.ly/1IuWwLu (FR) http://bit.ly/1cLmdvV (NL)
Royal Decree of 18 December 2003 establishing the conditions for second line legal assistance and legal aid fully or partially free of charge	Arrêté royal de 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire Koninklijk besluit van 18 december 2003 tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand	Royal Decree on Legal Aid	http://bit.ly/1EZmLoC (FR) http://bit.ly/1Ihe2CS (NL)
Ministerial Decree of 5 June 2008 establishing the list of points for tasks carried out by lawyers charged with providing second line legal assistance fully or partially free of charge	Arrêté ministériel de 5 juin 2008 fixant la liste des points pour les prestations effectuées par les avocats chargés de l'aide juridique de deuxième ligne partiellement ou complètement gratuite Ministerieel besluit van 5 juni 2008 tot vaststelling van de lijst met punten voor prestaties verricht door advocaten belast met gedeeltelijk of volledig kosteloze juridische tweedelijnsbijstand	Ministerial Decree on Second Line Assistance	http://bit.ly/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, l'établissement et l'éloignement des étrangers, établissant la liste des pays d'origine sûrs	Royal Decree on Safe Countries of Origin	https://bit.ly/2XAvXlr (FR)

	Koninklijk besluit tot uitvoering van het artikel 57/6/1, vierde lid, van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, houdende de vastlegging van de lijst van veilige landen van herkomst		https://bit.ly/2XFXPob (NL)
Royal Decree of 2 September 2018 establishing the rules and regime for reception 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	<p>https://bit.ly/2BZbL3F (FR)</p> <p>https://bit.ly/2ENzJAz (NL)</p>

Overview of the main changes since the previous report update

The report was previously updated in **April 2022**.

Asylum procedure

- ❖ **Key asylum statistics:** In 2022, a total of 36,871 applications for international protection were lodged on the Belgian territory (36,023), at the border (580) and in detention facilities (268). Out of this number, 4,652 were subsequent applications. Throughout 2022, the CGRS granted refugee status to 10,632 persons and subsidiary protection status to 429 persons, bringing the total recognition rate to 43%. The refugee status was mostly granted to Syrians (2,499), Afghans (2,467), Eritreans (1,357) and Palestinians (760). The subsidiary protection status was mostly granted to Yemenites (133), Somalians (130), Syrians (37) and Palestinians (23). A total of 13,041 persons were refused international protection (57%). This covers the number of persons who received a decision refusing refugee status and refusing subsidiary protection status (7,742) and those whose applications were declared inadmissible after subsequent applications and towards beneficiaries of international protection in another member state (4,253) or were declared manifestly unfounded (1,046). If only decisions towards 'first-time applicants' were considered, the recognition rate was instead of 52.8%. By the end of 2022, 16,415 cases (concerning 19,157 persons) were pending before the CGRS. In 2022, the CGRS decided on the cessation or withdrawal of the protection status in 120 cases. In the context of the Dublin procedure, a total of 15,052 take charge and take back-requests were sent to other states, 8,735 of which were accepted. A total of 831 persons were effectively transferred from Belgium to other Member States in 2022. There were 2,787 incoming take charge and take back requests, of which the Belgian authorities accepted 1,696. Still, only 357 persons were transferred to Belgium in the Dublin procedure (for more statistics about the Dublin procedure, see: [Dublin](#)).
- ❖ **Limitation of access to the asylum procedure:** In the context of the reception crisis that started in mid-October 2021 and endures up until today, access to the asylum procedure has been severely impacted in 2022. During several periods in the first half of 2022, the number of persons allowed to apply for international protection at the 'arrival centre' ('Petit Château'/'Klein Kasteeltje') was limited to the places available on that day in the reception system. Some men had to wait in line for days before being able to make their asylum application. Consequently, these men were not yet considered 'asylum seekers' and could not claim certain fundamental rights linked to this status, such as the right to reception. In a judgment of 19 January 2022, the Brussels court of first instance condemned the Belgian State and Fedasil for not ensuring access to the asylum procedure and reception conditions. During the first period following the judgment, all applicants went back to receive immediate access to the asylum procedure, being allowed to make their asylum application on the first day of presence at the arrival centre. However, an increase in applicants following the outbreak of the war in Ukraine led to people once more being impeded from accessing the asylum procedure. On 29 August 2022, the registration centre for applications for international protection moved from the 'arrival centre' to the building of the Immigration Office ('Pacheco') since the situation in the neighbourhood around Petit Château became untenable for the neighbours due to the numerous people sleeping on the streets around the arrival centre. After this move and throughout the second half of 2022, not all people could apply for asylum on the day they presented themselves due to the limited registration capacity at Pacheco. The Immigration Office cannot predict how many people they can register on a given day. Priority is always given to minors, families and vulnerable people. Single men who could not register on the same day were sometimes given a paper with an invitation to present themselves at another specific moment within 3 working days. On other days, these men did not receive any paper and they were simply refused entry. The daily number of applicants being lower during the first three months of 2023, all applicants were able to register on the day of presentation at the registration centre.

- ❖ **Audit of the Belgian asylum authorities:** An audit of the Belgian asylum authorities (Immigration Office, CGRS, CALL and Fedasil) was conducted in 2022. The main results indicate a lack of staff at the Immigration Office and the CGRS, outdated IT-systems hindering the efficient exchange of information between the different authorities and significant backlogs of cases at the different authorities. In her policy note of 28 October 2022, the Secretary of State for asylum and migration paid specific attention to the shortage of staff on the level of the asylum authorities. She announced that the Council of Ministers agreed to hire 800 new caseworkers for the different services, and a specific website - www.werkenbijasielenmigratie.be – will be created for this purpose. The Commissary-General for Refugees and Stateless Persons stressed the importance of reducing the backlog at the level of the CGRS. To this purpose, actions were taken to increase the number of decisions – leading to an increase in the number of decisions in the period September-December 2022 by 25 % compared to the number of decisions in the same period in 2021 - and the CGRS also continued to invest in the recruitment of new staff. Despite these efforts, the caseload at the CGRA steadily increased to an all-time high of 18,390 files. The CGRS considers 4,800 as an average working load, meaning that only 13,590 files are considered as backlog.⁷
- ❖ **Legal framework for remote interviews:** Since 19 September 2022, two Royal Decrees allow the Immigration Office and the CGRS to organise ‘remote’ interviews, allowing the caseworker to be physically present in another room than the applicant and conduct the interview through communication tools that would enable a conversation on distance in ‘real time’, such as audio-visual connections or videoconference technology. Audio(visual) recordings of the interviews are not allowed. Physical interviews remain the standard procedure. The Immigration Office and the CGRS investigate on a case-by-case basis whether a remote interview should be preferred. Applicants can object to this measure on the level of the Immigration Office or the CGRS, but no appeal is possible against a decision to conduct the interview remotely. Guardians, lawyers and trustees can attend the remote interview. However, both Royal Decrees allow the agent conducting the interview to decide that they can no longer be present in case they do not respect the measures that aim to ascertain the confidentiality of the interview. The interview can continue in their absence. In two judgments of 3 October 2022, the Council of State has suspended the execution of these exceptions as far as the guardians of unaccompanied minors are concerned. Article 9 of the ‘Guardianship Law’ requires the presence of guardians during interviews of their pupils. The Council of State did not suspend the exception concerning lawyers and trustees. For all three categories, action for annulment of the articles stipulating the exceptions are currently pending. Following the entry into force of these Royal Decrees, the CGRS has resumed the interviews by videoconference in the closed centres. The project for conducting remote interviews from open reception centres has been put ‘on hold’. Lawyers or trustees need to be present in the same room as the applicant because the current software does not allow a third party to participate in the videoconference while also ensuring its confidentiality.
- ❖ **Granting of international protection without personal interview:** In 2022, the CGRS continued granting international protection to certain applicants without first conducting a personal interview. This practice first started in the context of the COVID-19 sanitary measures and has continued since. In these cases, the application is investigated based on the elements and documents provided by the applicant, internet and social media research etc. The CGRS selects the cases through an internal screening procedure. The CGRS indicates that this approach is applied to applicants from all countries of origin, not only those with a high recognition rate. Sometimes, the CGRS asks the applicant for additional information through a written questionnaire.
- ❖ **New way of submitting documents in support of an application:** From 1 March 2023, the CGRS has changed the procedure for submitting documents in support of an application for international protection. Because practical and technical issues sometimes create difficulties in assessing documents transmitted by electronic mail or on a digital data carrier (e.g. firewalls blocking the

⁷ CGRA, ‘Asylum Statistics February 2023’, 21 March 2023, available at: <https://bit.ly/40TbnNG>.

opening of documents or internet links) the CGRS now decided that these documents may only be submitted by registered mail or by delivery to the CGRS against receipt.

- ❖ **Dublin caselaw - CALL, 5 December 2022 & 7 December 2022:**⁸ In November 2022, the Croatian Ministry of Internal Affairs sent out a communication regarding its willingness to correctly apply the provisions of the Dublin III Regulation. However, the CALL ruled that this communication from the Croatian Ministry of Internal Affairs does not provide the same guarantee as individualised guarantees, which means that this communication is not sufficient to exclude any risk of a violation of Article 3 ECHR. Similarly, the CALL suspended the Immigration Office's decision to transfer an applicant to Croatia due to the lack individualised guarantees in a case of 5 December 2022. This case concerns an applicant who was mistreated and arrested in Croatia. The applicant's statements are supported by, among others, Croatia's AIDA report. Moreover, for Dublin applicants, there is a risk of refoulement in Croatia, in the absence of individual guarantees from the Croatian authorities prior to transfer. Given that no individual guarantees were demanded from the Croatian authorities in this case, the risk of refoulement and a violation of Article 3 ECHR has not been ruled out, which is why the CALL suspended the Immigration Office's decision.
- ❖ **Shortage of guardians:** Due to a shortage of guardians, 1,700 minors were waiting for the appointment of a guardian in October 2022, the average waiting time amounting up to 4 months in Brussels, Wallonia and East-Flanders and even 8 months in the Flemish region of Limburg. This is problematic since the appointment of a guardian is required before the minor can undertake certain essential things, such as getting access to legal representation and financial aid ("Groeipakket") and subscribing to a school. The Guardianship Service indicates that selection processes for new voluntary and professional guardians were ongoing but that it is difficult to find appropriate candidates.

Reception conditions

- ❖ **Reception crisis:** The reception crisis that started in mid-October 2021 (see [AIDA report Belgium 2021](#)) endured for the whole of 2022 and persists at the time of writing (April 2023). Because the shortage of places has only increased, available places are prioritised to 'the most vulnerable' applicants for international protection. In practice, these are families with children, single women and unaccompanied minors. At the end of 2022, there were days on which not all families with children and unaccompanied minors received access to the reception network. Adult single male applicants for international protection are systematically denied access to the reception network and have to register on a waiting list. Priority is given to men who, with the help of a lawyer, have denounced the violation of their right to reception before the court. Over the course of the whole reception crisis, these legal proceedings have led to more than 8,000 convictions of the federal reception agency (Fedasil) on the national level and more than 1,100 interim measures against the Belgian state granted by the European Court of Human Rights (Rule 39). Even after receiving a positive court injunction, applicants have to wait for several months before receiving an invitation to access the reception network. In practice, obtaining shelter without appealing to a court is nearly impossible. During this time, they are forced to sleep rough (on the street, in tents or squats) or seek shelter with friends or family. Medical civil society organisations such as Doctors of the World and Doctors Without Borders have denounced the dire medical situation of destitute applicants on numerous occasions. They have warned of the risk of hypothermia in winter and the spread of highly infectious diseases such as scabies and diphtheria. Legal practitioners, judges and courts have denounced the impact of the reception crisis on the legal apparatus. The crisis significantly increased the courts' workload, negatively impacting other legal proceedings.
- ❖ **Limited access to reception for unaccompanied minors:** Between October and December, there was a prolonged period during which not all unaccompanied minors received reception. In case of

⁸ CALL, Decision No 281.547, 7 December 2022, available in French at: <https://bit.ly/3MBKtVV>, Decision No 281.327, 5 December 2022, available in French at: <https://bit.ly/41mCZdH>.

doubt about the self-proclaimed minor's age on the day of registration of the asylum application, no reception place was assigned as long as there was no proof of their effective minority. Initially, they were invited to undergo an age assessment (see [Age assessment of unaccompanied children](#)). If this test proved minority, the minor was given a reception place. If the test proved that the youngster was above 18 years old, he was not given a reception place and was invited to register on the waiting list for reception. However, between 16 October and 13 December, the Guardianship Service responsible for conducting the age assessment no longer conducted these tests. According to the Guardianship Service, asking minors without access to reception to undergo an age assessment was not justified. As a result, these minors were not given access to the reception network and could not dispute the doubt about their minority. In the second week of January 2023, Caritas International Belgium reported that 24 of these minors were gone missing.⁹

❖ **Relevant case law on the reception crisis**

- **Tribunal of first instance Brussels, 19 January 2022:**¹⁰ Condemnation of the Belgian State and Fedasil for not ensuring access to the asylum procedure and to reception conditions and ordered both parties to ensure the respect of these fundamental rights, imposing a €5000 penalty payment for the respective parties for each day during the following 6 months on which at least one person would not receive access to the asylum procedure (penalty for the Belgian State) or to the reception system (penalty for Fedasil), with a maximum amount of €100.000 that can be claimed per party.
- **Tribunal of first instance Brussels, 25 March 2022:**¹¹ Heightening of the penalties imposed on Fedasil by the judgement of 19 January 2022 to €10.000 for each day during the following 3 months on which Fedasil does not give someone access to the reception system.
- **Court of Appel Brussels, 22 October 2022:**¹² Rejection of Fedasil's appeal against the judgement of 25 March 2022. Lifting of the maximum amount of €100.000 that can be claimed from Fedasil and lifting of the 3-month period during which the penalty against Fedasil can be obtained. As a result, the penalty against Fedasil can be claimed until the judgement on the merits without a maximum amount. The decision on the merits is expected in June 2023.
- **Tribunal of first instance Brussels (distrain chamber), 30 January 2023:** Based on the judgements of 19 January 2022 and 25 March 2022, Fedasil was ordered to pay €490.000 of fines by the claiming parties for the period between 24 January and 10 June 2022. Fedasil did not pay these fines, so the claiming parties brought the case before the seizure court. The seizure court drafted a list of goods owned by Fedasil that can be claimed. Fedasil contested the list, arguing that it was not established that the right to reception was violated between the 24th of January and the 10th of June. The Court found that "Fedasil is clearly failing to provide unconditional and timely material assistance to any person applying for international protection". It further states that Fedasil did not execute the convictions of the orders of 19 January and 25 March 2022. The existence of the waiting list for persons without reception provides ample evidence. As long as at least one person is on this waiting list, Fedasil does not respect the right to reception, according to the Court. As a result, the Seizure court confirmed the list of goods that can be claimed.
- **ECtHR, Interim measures:**
 - o Interim measure of 31 October 2022, *Camara v. Belgium*, application no. 49255/22;¹³

⁹ De Standaard, *24 jonge asielzoekers officieel vermist*, 10 January 2023, available in Dutch at: <https://bit.ly/3CEYlcm>.

¹⁰ Tribunal of first instance of Brussels, 19 January 2022, 2021/164/C, available in French at <https://bit.ly/363NqvK>; The Brussels Time, 'Court condemns Belgium for asylum crisis, situation remains precarious', 21 January 2022, available at: <https://bit.ly/3H2kTUo>.

¹¹ Tribunal of first instance of Brussels, 25 March 2022, 2022/13/C, available in French via <https://bit.ly/3FcOke1>.

¹² Court of Appeal Brussels, 22 October 2022, 2022/KR/14.

¹³ HUDOC, Interim measure of 31 October 2022, *Camara v. Belgium*, application no. 49255/22, <http://bit.ly/42avsA2>.

- Interim measure of 15 November 2022, Msallem and 147 Others v. Belgium, applications nos. 48987/22 and 147 others;¹⁴
 - Interim measure of 21 November 2022, Reazei Shayan and 189 Others v. Belgium, applications nos. 49464/22 and 189 others;
 - Interim measure of 1 December 2022, Almassri and 121 Others v. Belgium, applications nos. 49424/22 and 121 others.
- **Rechtbank Den Haag, NL23.382, 20-02-2023:**¹⁵ Especially given the interim measures of the ECtHR, the judge decides that the Dutch government needs to motivate that on the subject of the reception situation in Belgium, the Netherlands can still rely on the principle of mutual interstate trust.

Detention of asylum seekers

- ❖ **Move Coalition monitors situation in detention centres:** In 2021, a formal coalition of NGOs accredited to visit detention centres was created: “Move: Beyond detention of migrants”. Visitors of Move visit all detention centres in Belgium on a weekly basis. In 2022, JRS Belgium published a monitoring report of the detention conditions in the centres, explicitly focusing on the centres of Merksplas, Brugge, Caricole and the FITT-unit that they visit every week.
- ❖ **Continued practice of systematic detention of asylum seekers at the border:** In its fourth periodic report on Belgium, the UN Committee against Torture formulated its concerns about the continued practice of systematic detention of asylum seekers at the border. In practice, standard motivations for the detention of asylum seekers at the border are being used without adequately considering their individual situations. This confirms the concerns about arbitrary detention previously formulated by UNHCR.
- ❖ **“Article 3 cell” verifies the compatibility of detention and expulsion with articles 3 and 8 ECHR:** Mid 2021, a specific cell with 3 legal experts was created within the Immigration Office to verify whether the detention and/or expulsion would violate article 3 and 8 ECHR. Figures provided by the Immigration Office show that in 2021, the cell analysed 1,131 files and gave its advice in 28 cases, of which 7 concerned general questions and 21 were individual cases.¹⁶ Move Coalition finds that the unit is not easily reachable, and the decision-making process generally lacks transparency.
- ❖ **ICAM-coaching as an alternative to detention:** In 2021, 60 new civil servants were recruited for the Immigration Office to start working for the newly founded department of ‘Alternatives to Detention’ as “ICAM-coaches” (Individual Case Management Support). These return-coaches provide intensive guidance for return. After receiving an order to leave the territory, a migrant will be invited to a series of interviews, where his/her file will be explained to them, and a trajectory towards a return or other existing procedures will be organised (depending on the individual). Attendance is mandatory, and failure to cooperate with return procedures or to show up may result in detention. In 2021, several cases of asylum-seekers in the Dublin procedure were arrested after the first or second appointment with an ICAM coach. Since 2022, Dublin cases are, among other target groups, the priorities of the ICAM coaches. It is yet too early to report on the concrete impact of these so-called ICAM coaches and whether this approach can be considered an effective alternative to detention. However, due to the influx of Ukrainians after the Russian invasion, most of the ICAM coaches were deployed in the registration centre at the Heysel to process the requests for temporary protection. As a result, the ICAM coaches could no longer follow up on their files for several months in 2022.
- ❖ **Condemnations by the Committee on the Rights of the Child for the detention of children:** In two decisions of March 2022, Belgium was condemned by the Committee on the Rights of the Child

¹⁴ The Brussels Times, ‘Court urges Belgium to provide immediate shelter for 148 asylum seekers’, 17 November 2022, <http://bit.ly/3Jr6gO8>.

¹⁵ Judgment available in Dutch: <http://bit.ly/3lfSc8w>

¹⁶ Immigration Office, Annual Rapport 2021, available in Dutch at: <https://bit.ly/3JESFn3>.

for having detained children in the family units of the 127bis repatriation centre. The Committee recalled that the detention of any child because of their parent's migration status contravenes the principle of the child's best interests and that "detaining children as a measure of last resort must not be applicable in immigration proceedings". The Committee, moreover, reminded Belgium of its obligation to use alternatives to detention. Belgium has already been condemned before by the ECtHR for the detention of children in closed centres that provided inhumane living conditions. In the context of the 'Migration Deal' of 9 March 2023, the government has announced it would officially insert the prohibition of child detention into the law.¹⁷

❖ **Relevant case law on detention**

- **CALL, 10 February 2023, 284.595:** The Court of Alien Law Litigation (CALL) has criticized the use of this fast-tracked procedure and annulled the decision of the asylum authorities in a case of an asylum applicant at the border because of the threat to his rights of defence and the principle of equality of arms.
- **Committee on the Rights of the Child 24 March 2022, E.B. v. Belgium, CRC/C/89/D/55/2018 and Committee on the Rights of the Child 22 March 2022, K.K. and R.H. v. Belgium, CRC/C/89/D/73/2019:** The Committee on the Rights of the Child condemned Belgium for having detained children in the family units of the 127bis repatriation centre. The Committee recalled that the detention of any child because of their parent's migration status contravenes the principle of the child's best interests. It further stated, that "detaining children as a measure of last resort must not be applicable in immigration proceedings", reminding Belgium of its obligation to use alternatives to detention.

Content of international protection

- ❖ **Beneficiaries of international protection without shelter:** In the context of the reception crisis, some applicants received international protection without access to the reception network and thus were homeless. In the absence of an address, obtaining a residence permit (A-card) at the local commune is very difficult when receiving a favourable decision. Without this permit, the status holder can encounter difficulties obtaining financial aid, opening a bank account and renting a place to live.
- ❖ **Changes to the Code of Belgian Nationality:** On 31 December 2022, some changes were made to the Code of Belgian Nationality. Among other things, the formulation of article 10 is altered in the sense that a child born in Belgium who does not have another nationality automatically has the Belgian nationality without first having to be recognised as stateless and a Central Authority for nationality is constituted within the Federal Public Service (FPS) Justice charged with the task of giving non-binding advice to local officers with doubts about the application of the Code.
- ❖ **Ongoing difficulties with the procedure of family reunification with beneficiaries of international protection:** Given the preparations of a new legislative proposal on this topic, the Federal Migration Centre (Myria), published a report establishing obstacles and formulating recommendations on the procedure of family reunification for beneficiaries of international protection. It establishes that the family reunification procedure for refugee families is very complex and challenging due to both the living circumstances of the applicants and the Belgian procedure. It concludes that if neither the delays are prolonged nor the application procedure is facilitated, international protection beneficiaries cannot realise their right to family reunification in practice. A separate report explicitly highlights the issues that Afghan family members encounter in applying for a visa in view of family reunification since the takeover of power by the Taliban.
- ❖ **Waiting lists for schools for non-Dutch speaking children:** The capacity of local schools is not always sufficient to absorb all non-Dutch speaking children entitled to education. During the school

¹⁷ Move Coalition, *One does not detain a child. Point.*, 21 March 2023, available in French and Dutch at <http://bit.ly/3zAt5Jx>.

year of 2022-2023, hundreds of non-Dutch-speaking children are on a waiting list to get access to the Flemish OKAN-classes. They might have to wait until September 2023 before they can access to education. Based on numbers provided by some cities, approximately 550 students are on a waiting list and do not have access to education. These numbers concern all non-Dutch speaking students and not only children of beneficiaries of international protection.

Temporary protection

The information given hereafter constitute a short summary of the Belgium Report on Temporary Protection, for further information, see Annex on [Temporary Protection](#).

Temporary protection procedure

- ❖ **Scope of temporary protection:** Following the Russian invasion, the Belgian senate agreed on 25 February 2022 that the necessary steps should be taken to accommodate Ukrainian war refugees temporarily.¹⁸ A registration centre was set up in Brussels for people with a potential right to temporary protection.¹⁹ Between 10 March 2022 and 28 February 2023, 66,386 persons received a temporary protection certificate in Belgium.²⁰ This includes 64,865 persons with Ukrainian nationality and 1,521 persons with another nationality.²¹ Under the implementation decision, the Belgian Aliens Act provides that temporary protection is applied to the same categories of people who are eligible for temporary protection.²² While this is the case overall, there are slight differences in interpretation and application. Common reasons for refusal are based on the fact that the person did not have his or her principal place of residence in Ukraine before 24 February or where the person already has a visa or residence permit for another member state (with the exclusion of a residence permit based on temporary protection). Belgium does not offer temporary protection to those who do not have a permanent residence permit in Ukraine. For those who fall outside the scope of Temporary protection, there is the possibility to apply for international protection. However, since the Council Implementation Decision, the applications of Ukrainian nationals are frozen, meaning that their request is not processed, and this will most likely remain so for as long as temporary protection is not suspended on a European level. On the other hand, the requirements for family reunification with a beneficiary have been significantly reduced.

Content of temporary protection

- ❖ **Residence permit:** Temporary protection applicants usually receive a decision on their application the same day or, at the latest, within three days at the registration centre in Brussels. They are supposed to present themselves with the necessary documents proving they fall under the scope of temporary protection (ID card, passport, proof of family ties,...). In the case of a positive decision, they receive a temporary protection certificate necessary to apply for a residence permit (the A-card) at the local municipality. 75% of applicants indicate not having a reception need. Persons who do indicate a reception need are selected based on vulnerabilities. Those with vulnerabilities (elderly persons, pregnant women,...) are housed at an emergency transit reception centre and dispatched to the local level. Persons who do not have such vulnerabilities are told to address themselves to a municipality of choice to express their reception needs.

¹⁸ The Senate, *The senate passes a resolution on the Russian invasion in Ukraine*, 25 February 2022, available in Dutch and French at: <http://bit.ly/3KPumms>

¹⁹ Fedasil, *Reception of the Ukrainian nationals*, 4 March, 2022, available in English at: <http://bit.ly/3KImDXF>.

²⁰ Statbel, *Displaced persons from Ukraine*, available in English at: <https://bit.ly/3ZmG5O4>

²¹ IBZ, *Temporary protection monthly statistics*, available in Dutch and French at: <https://bit.ly/3y1Kvyc>. The numbers from 2022 (from 10 March to 31 December) are added together with the numbers from January and February (from 1 January until 27 February), see table 2.8 for 2022 and 2.6 for 2023.

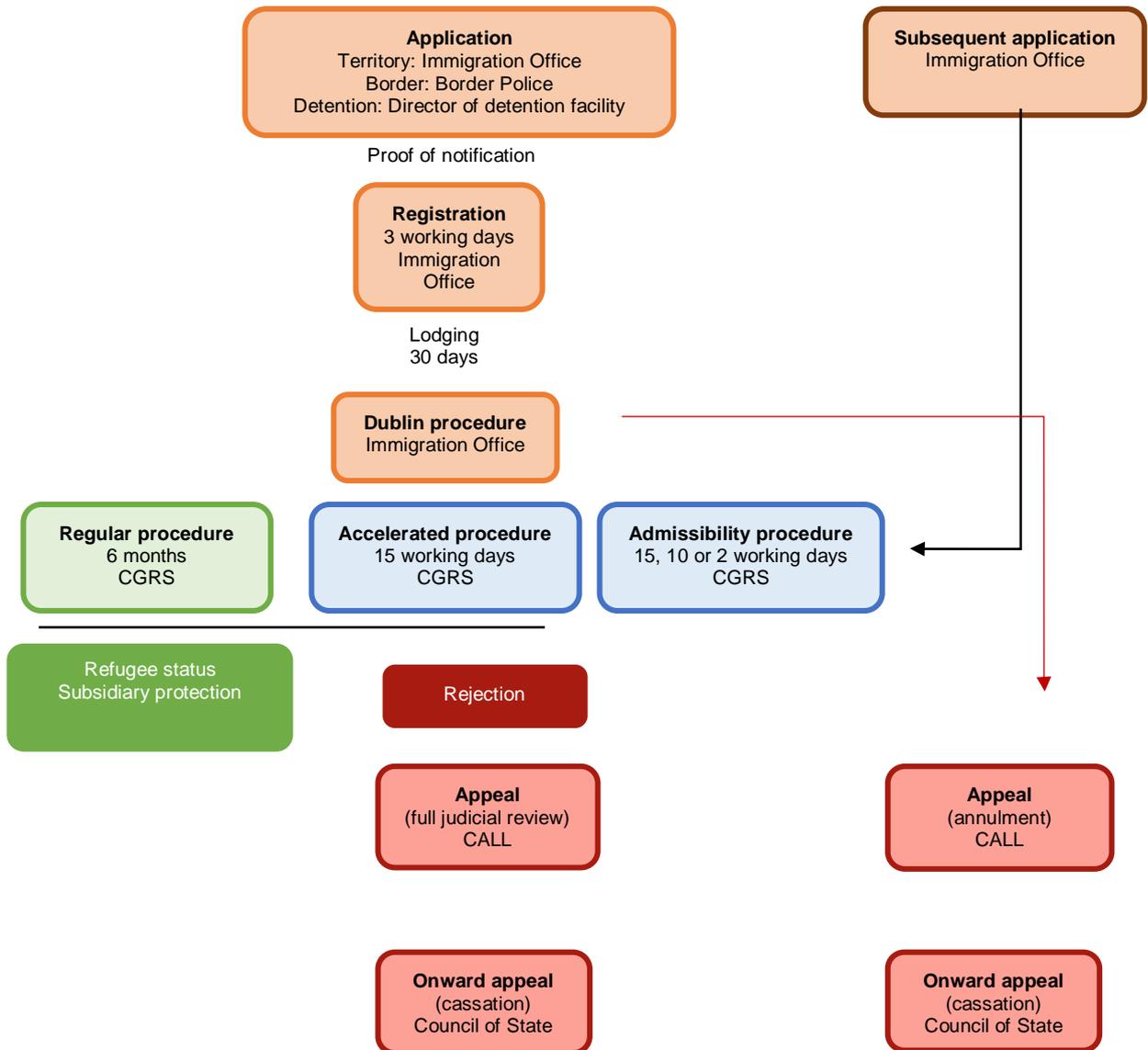
²² Article 59/27 Aliens Act.

- ❖ **Rights of temporary protection holders:** Beneficiaries have the right to health insurance and medical care, legal assistance, and access to the labour market and the education system. They receive social benefits if they need financial aid and have the option to follow integration courses. These rights can be opened almost immediately, although registration at the municipality is required to effectively enjoy these rights.

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: ²³ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ²⁴ | <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: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: Regularisation procedure ²⁵ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: Residence permit for unaccompanied children | | |

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

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 de Vluchtelingen en de 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 de Vluchtelingen en de Staatlozen (CGVS) Dienst Vreemdelingenzaken (DVZ) Office des étrangers (OE)

²³ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

²⁴ Accelerating the processing of specific caseloads as part of the regular procedure.

²⁵ Residence status is granted in the form of protection for medical reasons under a regularisation procedure rather than the asylum procedure, even where the serious risk of inhuman treatment upon return to the country of origin satisfies the criteria for subsidiary protection. See Article 9ter Aliens Act.

4. Number of staff and nature of the determining authority

Name in English	Number of staff in 2021	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)	487 FTE	Independent	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The CGRS is responsible for examining applications for international protection and is competent to take decisions at first instance. The institutional independence of the CGRS is explicitly laid down in law.²⁶ 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 asylum procedures. For example, the Ministry can ask the CGRS to re-examine a previously obtained protection status. It can also request from the determining authority to prioritise a specific case.²⁷

In 2021, the CGRS had a total of 487 FTE staff, out of which 259 FTE were caseworkers responsible for examining applications for international protection.²⁸ During 2022 and in the first two months of 2023, around 170 new caseworkers were hired. The start of 50 to 70 new caseworkers is planned in March and April 2023, bringing the total to about 600 FTE staff. This number is higher than ever before and aims to eliminate the backlog of cases on the level of the CGRS (see also: [Audit of the Belgian asylum authorities](#)).²⁹

Regarding its internal structure, the CGRS is divided into geographical departments and 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 before 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 discuss any case further if needed. At the Immigration Office, however, no institutional mechanisms are in place to control the quality of decisions relating to Dublin cases.

²⁶ Article 57/2 Aliens Act.

²⁷ Article 57/6 §2(3) Aliens Act.

²⁸ Information provided by the CGRS, February 2022.

²⁹ Myria, Contact meeting 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, 16.

5. Short overview of the asylum procedure

Registration

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 registers applications for international protection, including subsequent applications. It also decides on the application of the Dublin Regulation. If the Immigration Office decides that Belgium is the country responsible for treating the asylum application, it transfers the case to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS).

An asylum application may be **made** (see for more information: [Registration of the asylum application](#)) either:

- (a) on the territory with the Immigration Office, within 8 working days after arrival;³⁰
- (b) at the border with the border police, in case the asylum seeker does not dispose of valid travel documents to enter the territory; or
- (c) from a prison or a closed detention centre with the director of the detention facility, in case the person is being detained.

The applicant receives a “certificate of declaration” (*attestation de déclaration*). The Immigration Office **registers** the application within 3 working days of the declaration, 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 afterwards 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 26quinquies”).

First instance procedure

The CGRS is the central administrative authority exclusively responsible for the first instance procedure of examining and granting, refusing and withdrawing 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.³¹

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.³²

³⁰ 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.

³¹ Article 57/6(2) Aliens Act.

³² Article 57/6/1 Aliens Act.

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.³³

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

The CGRS mentions in its negative decisions the delays for appeals and whether they have suspensive effect or not. To this purpose, 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 this kind of decisions;
- ❖ Decisions declaring the application inadmissible, especially subsequent applications. These decisions 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 (10 or 5 days, depending on whether or not the applicant is being detained at the time of his or her application).³⁴

The CALL has no investigative competence and must decide based on all elements in the file presented by the applicant and the CGRS. In accordance with its “full judicial review” competence (*jurisdiction en plein contentieux*), 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 to decide on the appeal and further investigation by the CGRS is needed.

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

³³ Article 57/6(3) Aliens Act.

³⁴ CGRS, ‘Addition of clause in some refusal decisions’, 21 February 2019, available at: <https://bit.ly/30uGPDD>.

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.

Linking asylum and return

A negative decision taken by the CGRS (refusal of international protection) will not automatically include a return decision. A return decision can only be taken by the Immigration Office after the legal time limit to introduce an appeal at the CALL has expired or, in case an appeal is lodged after the CALL has responded negatively. Only in cases concerning a third or further subsequent application, an appeal does not have a suspensive effect and the Immigration Office will be able to take a return decision (annex 13quinquies) immediately after a decision of non-admissibility from the CGRS.

Before issuing a return decision, the Immigration Office needs to check whether a return of the rejected applicant would not violate fundamental rights such as article 3 ECHR and article 8 ECHR. In this regard, the CGRS can include in a refusal decision a “clause of no-removal”: a non-binding advice for the Immigration Office to not return a person to their country of origin because of a potential risk of inhuman treatment in case of return. For example, the CGRS can do this if it excludes a person from international protection or withdraws or revokes a previous decision granting someone international protection. Mid 2021, a specific cell with 3 legal experts was created within the Immigration Office to verify whether the detention and/or expulsion would violate articles 3 and 8 ECHR (for more information on the ‘article 3 cell’: see [Detention on the territory](#)). Figures provided by the Immigration Office show that in 2021, the cell has analysed 1,131 files and has given its advice in 28 cases of which 7 concerned general questions and 21 were individual cases.³⁵

In two decisions in 2022, the Council of State judged that the Immigration Office, when issuing a return decision, needs to explicitly motivate in what way it took into account certain fundamental rights of the person such as the higher interest of the child, the family life and the health situation of the person.³⁶

European and Belgian national case law are not yet aligned on the question whether the risk of violation of fundamental rights needs to be determined on the moment the return decision is taken or only on the moment of its execution. The CALL³⁷ and the Council of State³⁸ have previously judged that this risk must already be determined when the Immigration Office takes a return decision. The ‘Commission Bossuyt’ (a commission instituted by the secretary of state for asylum and migration with the mission of evaluating the policies on voluntary and forced return of migrants in Belgium) believes that it follows from case law from European courts, the Belgian constitutional court and the will of the Belgian legislator that this risk only needs to be determined on the moment of the execution of a return decision and not on the moment it is issued.³⁹

In 2021, 60 new civil servants were recruited for the Immigration Office to start working for the newly founded department of ‘Alternatives to Detention’ as “ICAM-coaches” (Individual Case Management Support). These return-coaches provide intensive guidance for return. After receiving an order to leave the territory, a migrant will be invited to a series of interviews, where their file will be explained to them

³⁵ Immigration Office, Annual Rapport 2021, available in Dutch at: <https://bit.ly/3JESFn3>.

³⁶ Council of State 9 June 2022, nr. 253.942, available in French at <https://bit.ly/3GIIesz> and Council of State 28 March 2022, nr. 253.374, available in Dutch at <https://bit.ly/3mcj1Ua>.

³⁷ E.g. CALL 8 March 2018, nr. 200.933; CALL 9 March 2018, nr. 200.976 and 200.977; CALL 5 September 2018, nr. 208.785; CALL 12 October 2018, nr. 210.906; to be consulted on the website of the CALL: <https://www.rvv-cce.be/nl/arr>

³⁸ E.g. Council of State (11th Chamber), 28 September 2017, nr. 239.259, p. 5; Council of State (11th Chamber), 8 February 2018, nr. 240.691, p. 9; Council of State (14th Chamber), 29 May 2018, nr. 241.623, points 7 and 8; Council of State (14th Chamber), 29 May 2018, nr. 241.625, points 8 and 9;

³⁹ Final report of the Commission for the evaluation of the policy concerning voluntary and forced return of migrants, 15 September 2020, available in Dutch at <https://bit.ly/3YEUTGR>, p. 25 etc.

and a trajectory towards a return or other existing procedures will be organised (depending on the individual). Attendance is mandatory, and failure to cooperate with return procedures or to show up may result in detention. Since 2022, Dublin cases are, among other target-groups, the priorities of the ICAM coaches.

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
2. Is there a border monitoring system in place? 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 allowing 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.

Border monitoring

In Belgium, there is no actual border monitoring system in place that corresponds to the definition set forth by UNHCR. However, several organisations have formed a coalition active in the field of administrative detention of migrants. Since January 2021, this coalition has been officially in place and known as Move (www.movecoalition.be). Move Coalition is accredited to visit detention centres. The visitors of Move visit all detention centres in Belgium on a weekly basis (see [Conditions of detention](#)).

Legal access to the territory

Humanitarian visa

1. Can third country nationals apply for a (humanitarian) visa, specifically with the intention to apply for international protection upon arrival? Yes No
2. Are these issued in practice? Yes No

Third country nationals can apply for a humanitarian visa. No exact criteria, definitions or requirements specified in law indicate who can obtain a humanitarian visa.⁴⁰ In 2021, the Immigration Office received a record of 3,393 applications for a humanitarian visa: 490 for a short stay and 2,903 for a long stay. 2,102 applications received a positive answer: 245 for a short stay (55% approval rate) and 1,857 for a long stay (75% approval rate). The approval rate for short stay humanitarian visa has continuously declined since 2017, from 90% in 2017 to 55% in 2021. For long stay humanitarian visa, approval rates have also been declining as of 2017 (from 91% in 2017 to 65% in 2020) but have again increased in 2021 (75%). The majority of long stay humanitarian visa was accorded to Syrian nationals. Many of them have come to Belgium via the resettlement scheme. A quarter of long stay humanitarian visa was accorded to Afghan nationals, many of them in the context of the evacuation missions in the summer of 2021.⁴¹

⁴⁰ Articles 9 & 13 in the Aliens Act provide the only legal basis for humanitarian visa.

⁴¹ Myria, *Migration in numbers and in rights: Year report Migration 2022 – Access to the territory*, available in French: <https://bit.ly/3PzkPRh>, 11.

Positive decisions on humanitarian visas in 2021, per nationality ⁴²	
Country	Number
Syria	326
Afghanistan	153
Türkiye	55
Palestine	34
Uganda	20
Other nationalities	109
Total	697

A humanitarian visa needs to be requested by the third country national at the competent Belgian embassy in the country of origin and/or in the country of residence.⁴³ The applicant needs to pay an administrative fee of €220 per adult person.⁴⁴ There are no deadlines for the Immigration Office laid down in law.

The Immigration Office has a broad margin of discretion and assesses each application on an individual basis. A humanitarian visa is not a right, but a favour granted by the government. However, from practice it is clear that in its assessment the Immigration Office mainly considers:

- ❖ vulnerability, need, humanitarian and/or isolated situation, or possible protection risks, and this in the country of origin and/or in the country of residence;
- ❖ special connections with persons in Belgium, especially family members (affective and/or financial dependence).

In addition, sufficient means of subsistence for the family member in Belgium may also play a role in avoiding the applicant having to rely on social assistance.

Due to the criteria above, a humanitarian visa is mainly delivered to:

- ❖ Third country nationals who fall just outside of the scope of the right to family reunification. In practice, it often concerns family members of recognized refugees or subsidiary protection persons, as they often find themselves in a humanitarian/precarious situation or are exposed to certain protection risks. The family is usually separated by the forced flight;
- ❖ Third country nationals who find themselves in an urgent humanitarian/precarious situation.

If the humanitarian visa is granted, applicants receive a long-term visa. Upon arrival in Belgium, they are given a temporary residence permit valid for 1 year. This residence permit can be extended annually. The extension can be subject to certain criteria such as proof of cohabitation with the family member in Belgium and the proof of work. Third country nationals who arrived in Belgium with a humanitarian visa, have the possibility to apply for international protection.

On 5 May 2020, the Grand Chamber of ECtHR issued its decision in the case of *M.N. and Others against Belgium*. This case deals with the refusal by the Belgian authorities to issue humanitarian visas to a Syrian family, requested at an embassy with the view to reach Belgium in a legal and safe way in order to apply for asylum upon arrival in Belgium. The applicants, a family of four, are Syrian nationals from Aleppo, Syria. In 2016, they requested visas on humanitarian grounds from the Belgian Consulate in Beirut, Lebanon. The Belgian Immigration Office rejected their requests, and the applicants requested the suspension of execution of the decision by the Council for Alien Law Litigation (CALL). The latter ruled that the political and security situation in Aleppo created an Article 3 risk and instructed the authorities to

⁴² Ibidem.

⁴³ Article 9, Aliens Act.

⁴⁴ Website Immigration Office, *Frequently Asked Questions*, <https://bit.ly/3V68y8g>.

issue new decisions. The Immigration Office again rejected the applicants' requests, and the CALL suspended the decisions of the Immigration Office once more. Subsequent applications for judicial review were dismissed. Given the Belgian authorities refusal to comply with the decisions of the CALL, the applicants brought the case before the Brussels Court of First Instance, which ruled that the state had to comply (December 2016). However, a later judgment of the Court of Appeal (June 2017), in a procedure initiated by the state, ruled that the applicants had not sought to set aside the visa refusal decisions, choosing to stay the proceedings instead, which meant that the refusal decisions were never set aside and had become final. Consequently, both the second CALL decisions and the December 2017 decision of the Court of Appeal were not operative. The applicants lodged an application before the European Court of Human Rights alleging a violation of Article 3 and Article 13, on account of Belgium's refusal to issue visas on humanitarian grounds, as well as a violation of Article 6 on the state's failure to execute the judgments. The ECtHR declared the case inadmissible as it found that there was no jurisdiction. The applicants do not have any connecting links with Belgium and their sole presence in the premises of the Belgian Embassy in Lebanon cannot establish jurisdiction, as they were never under the de facto control of Belgian diplomatic or consular agents. Jurisdiction under Article 1 ECHR cannot be established solely on the basis of an administrative procedure initiated by private individuals outside the territory of the chosen state, without them having any connection with that State nor any treaty obligation compelling them to choose that state.⁴⁵

Resettlement

1. Are there resettlement operations in place? Yes No
2. If so, how many resettlement places have been pledged and how many applicants for international protection were effectively resettled by the end of the year 2022?
1,250 places were pledged, 71 applicants were resettled in practice

Since 2013, Belgium has an official resettlement policy. To be resettled to Belgium, a third country national first has to be selected by UNHCR. After this initial selection, CGRA officials travel to the country of residence to screen the person's vulnerability and to carry out the required security checks. If a person is eligible to be resettled to Belgium, the third country national receives a humanitarian visa. Upon arrival in Belgium, the person can introduce an application for international protection.

Belgium pledged to resettle 1,250 persons in 2022, 1,400 in 2023 and 1,500 in 2024. Most of the third country nationals to be resettled would be Syrians currently hosted in Türkiye and Lebanon.⁴⁶

Due to the ongoing reception crisis (see [Constraints to the right to shelter](#)) the resettlement programme is severely impacted. During 2022, only 71 out of 1,250 resettlements (6%) were effectively executed.⁴⁷ These 71 were mainly Syrian refugees being transferred from Jordan, Egypt or Lebanon. According to the Secretary of State, the transfer of 361 refugees who had already been selected for the resettlement program were put 'on hold' for an undetermined period of time.⁴⁸ A lack of reception places being the main reason for the obstruction of the resettlement program, Fedasil has started to invest in a Community Sponsorship program in collaboration with Caritas International,⁴⁹ as an alternative reception model to secure the effective implementation of resettlement programs in the future.⁵⁰

⁴⁵ European Court of Human Rights [GC], M.N. and others v. Belgium, Application no. 3599/18, 5 May 2020, summary available at: <https://bit.ly/2NwtzLS>.

⁴⁶ Policy note of the Secretary of State on asylum and migration, 3 November 2021, available in French: <https://bit.ly/3rKjJH4>.

⁴⁷ Fedasil, 'Resettlement 71 refugees in 2022', 5 January 2023, available in Dutch via <http://bit.ly/3ZPGBop>. Statistics available via <https://bit.ly/3Js9jqj>; Standaard, 'For refugees who want to come to Europe via legal pathways, there is no place in Belgium', 24 January 2023, available in Dutch via <http://bit.ly/3ZALJfS>.

⁴⁸ Standaard, 'For refugees who want to come to Europe via legal pathways, there is no place in Belgium', 24 January 2023, available in Dutch via <http://bit.ly/3ZALJfS>.

⁴⁹ Information available on <http://bit.ly/3ZBB0Sr>.

⁵⁰ Fedasil, 'Resettlement 71 refugees in 2022', 5 January 2023, available in Dutch via <http://bit.ly/3ZPGBop>.

Number of third country nationals resettled to Belgium ⁵¹	
Year	Number
2015	276
2016	452
2017	1309
2018	880
2019	239
2020	176
2021	964
2022	71

Relocation

1. Are there relocation operations in place? Yes⁵² No
2. If so, how many relocation places have been pledged and how many applicants for international protection were effectively relocated by the end of the year? 0

Up until 2021, Belgium had an annual relocation policy in place. The highest number of relocated asylum seekers were registered in 2016 and 2017 (200 and 895, respectively) but significantly decreased in the following years, reaching only 18 in 2020 and 43 in 2021. After the fire in the Moria camp in Greece on 9 September 2021, the Belgian government pledged to relocate 117 persons in 2021. Due to administrative issues in Greece and the reception crisis in Belgium, only 43 persons were actually relocated. The remaining 74 persons will be relocated in 2022.⁵³

No pledge was made for 2022, as the Belgian government indicated it does not consider relocation as an effective solution to structural issues of the European asylum system.⁵⁴

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?⁵⁵ 30 days
3. Are registration and lodging distinct stages in the law or in practice? Yes No
4. Is the authority with which the application is lodged also the authority responsible for its examination? Yes No
5. Can an application be lodged at embassies, consulates or other external representations? Yes No

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

⁵¹ CGRA, 'Resettlement', available in English: <https://bit.ly/3rBRN7V>.

⁵² This was valid until 2021, while no pledge for relocation was made in 2022.

⁵³ Myria, *Contact Meeting*, 19 January 2021, available in French: <https://bit.ly/3HQ18z7>.

⁵⁴ Chambre des représentants de Belgique, Policy note on asylum and migration, 3 November 2021, available in French: <https://bit.ly/3rKjJH4>.

⁵⁵ The applicant must make the application within 8 working days of arrival in Belgium.

The registration process

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.⁵⁶ 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 Belgium⁵⁷ or with the prison director in penitentiary institutions. These authorities refer the application immediately to the Immigration Office. Other applicants make their application directly at the Immigration Office (previously at the arrival centre ‘Petit Château/Klein Kasteeltje’, since August 2022 at the building of the Immigration Office, Pachecolaan 44, 1000 Brussel - Cube). The asylum seeker receives a “certificate of declaration” (*attestation de déclaration/bewijs van aanmelding*) as soon as the application is made.⁵⁸

Under the law, failure to apply for a residence permit after irregularly entering the country or to apply for international protection within the 8-day deadline constitutes a criterion for determining a “risk of absconding”.⁵⁹ The CGRS can also consider non-compliance with this deadline 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.

2. The Immigration Office registers the application within 3 working days of “notification”.⁶⁰ 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.⁶¹
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.⁶² 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.⁶³

In the context of the COVID-19 sanitary measures, the three-phase system was changed and applicants now immediately lodge their application at the registration centre when they make the application. They instantly receive the Annex 26. The aim is to avoid unnecessary movements of applicants between the different services and to respect the 3-day time limit of article 50(2) of the Aliens Act even if confinement is necessary. This system is currently still being applied. Consequently, asylum applications are now being made, registered and lodged on the same day.⁶⁴

Limitations of the right to apply for asylum

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 Council of State on 20 December

⁵⁶ Article 50(1) Aliens Act.

⁵⁷ *Ibid.*

⁵⁸ Article 50(2) Aliens Act.

⁵⁹ Articles 1(11) and 1(2)(1) Aliens Act.

⁶⁰ Article 50(2) Aliens Act.

⁶¹ *Ibid.*

⁶² Article 50(3) Aliens Act.

⁶³ *Ibid.*

⁶⁴ Myria, *Contact meeting*, 16 September 2020, available in French at: <https://bit.ly/3sE592s>.

2018.⁶⁵ In the course of 2019 and the beginning of 2020, some isolated incidents concerning access to the asylum procedure were reported.⁶⁶

Due to the outbreak of the **COVID-19 pandemic**, the Immigration Office closed its doors to the public on 17 March 2020. As a result, applicants were unable to apply for international protection during this closure. On 3 April 2020 the Immigration Office re-opened its doors and launched a new online registration system for persons who wanted to apply for international protection. Applicants had to fill in their personal information in an online form, which was only accessible in Dutch or French. Once an applicant had completed the online registration, he/she received a confirmation email stating he/she would be invited at the Immigration Office to apply for international protection at a later date. After an undefined number of days/weeks, the person then received a second email with an invitation for an appointment at the Immigration Office. The applicant then had to be present at the Immigration Office on the indicated date in order to introduce his request for international protection. According to the Immigration Office, this new way of working would make it possible to resume registrations of requests for international protection while also respecting COVID-19 sanitary measures.⁶⁷ Asylum seekers faced various obstacles in accessing the asylum procedure due to this online registration system.⁶⁸ The Brussels court of first instance, seized by several NGOs, condemned the Belgian state, stating that completing the online registration was equal to ‘the formal lodging of a request for international protection’ and should therefore give the immediate right to reception conditions. As a result, the Immigration Office suspended the online registration system and resumed the previous system of physical, spontaneous registrations on 3 November 2020. The Immigration Office later announced it wanted to evolve towards a dual system, where applicants can choose to either register online and receive an appointment or go to the Immigration Office without registering online. At the time of writing, it is unknown when and how this system will be deployed in practice.⁶⁹

In the context of the **reception crisis** that started mid-October 2021, access to the asylum procedure was, once again, severely impacted. For several weeks, the number of persons allowed to make an application for international protection was limited to the places available on that day in the reception system. In practice, people lined up at the gates of the arrival centre “Klein Kasteeltje”/“Petit Château” every morning. Priority was given to families with minor children and unaccompanied minors. Afterwards, a different number of single men was given access to the arrival centre each day, depending on available places in the reception system. Once that number was reached, the remaining men were told to come back another day. Some men had to wait in line for days before being able to make their asylum application. Therefore, these men were not yet considered ‘asylum seekers’ and could not claim certain fundamental rights linked to this status, such as the right to reception. The Labour Court, where urgent appeal cases were introduced to demand a reception place for persons being refused access to the reception network, rejected the appeals introduced by applicants who had not been able to make their asylum application and thus did not dispose of an Annex 26 yet, by lack of their official quality of ‘asylum seeker’. Lawyers tried to remedy this issue by first sending an e-mail to the Immigration Office, signalling their clients’ intention to apply for asylum, before introducing their appeal at the Labour Court, maintaining that the practice was in contradiction with the jurisprudence of the CJEU.⁷⁰ Regardless, the Labour Court continued to reject the appeals for this category of applicants.

⁶⁵ Council of State, Decision No 243.306, 20 December 2018, available in Dutch at: <https://bit.ly/2WquTQK>. For further information, see the previous AIDA report Belgium 2018 update, p. 15 and 22, <https://bit.ly/3SAFd64>.

⁶⁶ For further information, see previous AIDA reports, such as AIDA Belgium 2018 update, p. 15 and 22, <https://bit.ly/3SAFd64>.

⁶⁷ Myria, *Contact meeting*, 6 May 2020, available in French at: <https://bit.ly/3sE592s>, 3-10; Myria, *Contact meeting*, 16 September 2020, available in French at: <https://bit.ly/3sE592s>, 3-7.

⁶⁸ See Vrt Nws, Vrt Nws, *Asylum seekers wait on the streets for weeks before being able to register: “Barely 1 in 3 gets the chance”*, 8 May 2020, available in Dutch at: <http://bit.ly/3t38o3D>.

⁶⁹ For a detailed overview of the issues caused by the introduction of the online system, please consult the AIDA reports 2020 (<https://bit.ly/3Y8pVqf>, 28-29) and 2021 (<https://bit.ly/3SA2Hbq>, 29-30).

⁷⁰ CJEU, judgment of 25 June 2020 in case nr. C-36/20 PPU, §§ 92-94.

On 18 November 2021, several national, Flemish and French-speaking NGOs (Vluchtelingenwerk Vlaanderen, CIRÉ, Médecins sans Frontières, Médecins du Monde, NANSEN vzw, ADDE, Ligue des Droits Humains, SAAMO and the Order of French and German-speaking bar associations (OBFG)) declared the Belgian State and Fedasil in default at the Brussels Court of First Instance. In a judgment of 19 January 2022, the court condemned the Belgian State and Fedasil for not ensuring access to the asylum procedure and to reception conditions and ordered both parties to ensure the respect of these fundamental rights, imposing a €5000 penalty payment for the respective parties for each day during the following 6 months on which at least one person would not receive access to the asylum procedure (penalty for the Belgian State) or to the reception system (penalty for Fedasil).⁷¹ During the first period following the judgment, all applicants went back to receiving immediate access to the asylum procedure, being allowed to make their asylum application on the first day of presence at the arrival centre.⁷² However, an increase of applicants following the outbreak of the war in Ukraine led to people once more being impeded from accessing the asylum procedure. Minors, families with children and particularly vulnerable applicants were given priority. A large part of newly arrived single men was refused access to the asylum procedure and asked to come back on an unspecified later date. On some days, more than 150 men were refused access to the asylum procedure and reception conditions.⁷³

On 29 August 2022, the registration centre for applications for international protection moved from the 'arrival centre' ('Petit Château'/'Klein Kasteeltje') to the building of the Immigration Office ('Pacheco'). This was because the situation in the neighbourhood around Petit Château became untenable due to the numerous people sleeping on the streets around the arrival centre, leading to complaints by the neighbours.⁷⁴ After this move and throughout the second half of 2022, not all people could apply for asylum on the day they presented themselves in the second half of 2022 due to the limited registration capacity at Pacheco. The Immigration Office cannot predict the number of people they are able to register on a given day. Priority is always given to minors, families and vulnerable people. Single men who were not able to register on the same day were sometimes given a paper with an invitation to present themselves on another specific moment within 3 working days. On other days, these men did not receive any paper and they were simply refused entry,⁷⁵ making it impossible to ensure the registration of their request within three days after their presentation at the Immigration Office.⁷⁶

⁷¹ The Brussels Time, 'Court condemns Belgium for asylum crisis, situation remains precarious', 21 January 2022, <https://bit.ly/3H2kTUo>.

⁷² However, only a week after the court decision, Fedasil again structurally refused access to reception conditions to applicants having already introduced an application for international protection or having already received an international protection status in another EU member state, in violation of the judgment of 19 January 2022 (see [Right to shelter and assignment to a centre](#)).

⁷³ Infomigrants, "They feel abandoned": Non-Ukrainian asylum seekers in Belgium left out in the cold', 25 March 2022, available in English at: <https://bit.ly/3LsUYY5>.

⁷⁴ Bruzz, 'Neighbours ask to move the registration centre Petit Château', 18 August 2022, available in Dutch on <http://bit.ly/3YuTrXn>; De Morgen, 'The moving from Petit Château to the Immigration Office will not solve the reception crisis', 24 August 2022, available in Dutch on <http://bit.ly/3ZzyhJb>;

⁷⁵ Myria, Contact meeting september 2022: Information provided by the Immigration Office in French (p. 9): « Comme expliqué précédemment, la capacité d'enregistrement ne peut être représentée par un chiffre concret. La capacité d'enregistrement de l'OE dépend d'une part du nombre de personnes qui se présentent, mais aussi du profil des personnes qui se présentent. Par exemple, l'enregistrement d'un MENA prendra beaucoup plus de temps que, par exemple, l'enregistrement d'un homme isolé. Il est donc impossible de représenter cette capacité d'enregistrement par un chiffre précis. En fait, la capacité est évaluée directement sur place et ajustée en fonction de la capacité dans la salle d'attente à ce moment-là. », complete report available via <https://bit.ly/3T1jvZ0>; Myria, Contact meeting october 2022: Information provided by the Immigration Office in French (p. 7) : « Non, il n'y a pas eu de changement depuis la réunion de contact de septembre. Il est vrai qu'en cas d'afflux très important, tout le monde ne peut pas avoir accès au bâtiment le même jour, et tout le monde ne peut pas non plus recevoir une invitation à se représenter à une date ultérieure. En effet, le OE n'a aucune idée du nombre de familles/personnes vulnérables qui se présenteront le lendemain, ce qui rend difficile l'estimation du nombre d'hommes isolés qui pourront être enregistrés le ou les jours ouvrables suivants. De cette façon, l'OE essaie de pouvoir donner la priorité aux familles et aux personnes vulnérables à tout moment. Toutefois, l'objectif reste toujours d'enregistrer toutes les personnes qui se sont proposées dans un délai d'une semaine au plus tard le vendredi de cette même semaine ; ce qui réussit généralement. La priorité absolue est toujours accordée aux MENA, aux familles et aux personnes vulnérables. », complete report available via <https://bit.ly/3ZBF6d7>.

⁷⁶ Art. 50(2) Aliens Act.

The daily number of applicants being lower during the first three months of 2023. All applicants were able to register on the day of presentation at the registration centre.

Procedure after registration

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/registre d’attente*), a provisional population register for foreign nationals (this occurs at the stage of the lodging phase);
- ❖ Taking fingerprints and a photograph;
- ❖ Conducting the Dublin procedure.

After having applied for asylum, the applicant is invited at the Immigration Office on a later date for a short interview to establish their identity, nationality and travel route. If it is suspected that another country is responsible under the Dublin Regulation, the applicant is interviewed about the reasons for leaving, and what motivated them to move to Belgium. During this short interview, a lawyer cannot be present.

If Belgium is the responsible country under the Dublin Regulation, 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. Afterwards, the file is sent to the CGRS. The questionnaire about the reasons for the asylum application and the impossibility of returning to the country of origin is also transferred to the CGRS.⁷⁷ The asylum section of the Immigration Office is furthermore responsible for the follow-up of the asylum seeker’s legal residence status throughout the procedure as well as the follow-up of the final decision on the asylum application. This means registration in the register for aliens in the case of a positive decision or issuing an order to leave the territory in the case of a negative decision.

Within the Immigration Office, the Closed Centre section is responsible for all the asylum applications lodged in detention centres and prisons. In contrast, 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, due to a high influx of cases and understaffing issues at the Immigration Office. Even though the lodging takes place no later than 30 days after the application has been made following legal standards, the first interview might be conducted more than several months later in certain cases.⁷⁸ Applications in which a Dublin hit will be prioritised to meet the time limits set out in the Dublin III regulation. Other cases, such as those from Afghan nationals and nationals from ‘safe countries’, are also prioritised.

⁷⁷ Articles 51/3-51/10 Aliens Act; Articles 10 and 15-17 Royal Decree on Immigration Office Procedure.

⁷⁸ Myria, Contact meeting 19 January 2022, available in French and Dutch at <https://bit.ly/3sy9SFN>, 14.

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 2022: ⁷⁹ | |
| ❖ Immigration Office | 16,233 ⁸⁰ |
| ❖ CGRS | 16,415 ⁸¹ |
| 4. Average length of the first instance procedure in 2022: | Not available ⁸² |

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, the competent determining authority, exclusively specialises 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.⁸³

The CGRS has the competence to:⁸⁴

- ❖ Grant or refuse refugee status or subsidiary protection status;
- ❖ Reject an asylum application as manifestly unfounded;⁸⁵
- ❖ Reject an asylum application as inadmissible;⁸⁶
- ❖ Apply cessation and exclusion clauses or 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;⁸⁷ and
- ❖ Issue civil status certificates for recognised refugees.

The CGRS has to decide within 6 months after receiving the asylum application from the Immigration Office.⁸⁸ 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

⁷⁹ Statistics provided by the Immigration Office, January 2021. See also an overview of statistics of the CGRS available in Dutch at: <https://bit.ly/3il2dhs>.

⁸⁰ Myria, Contact meeting 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, p. 7; This compared to 8,510 pending cases in December 2021: Myria, Contact meeting 19 January 2022, available in French and Dutch at <https://bit.ly/3sy9SFN>, 14.

⁸¹ Concerning a total of 19,157 persons: CGRS, Asylum statistics 2022, available in Dutch at <https://bit.ly/40JgEqF> and in French at <https://bit.ly/3MpATp8>. This compared to 15,685 pending cases in December 2021, concerning a total of 18,835 persons; CGRS, Asylum statistics 2021: a survey, available at: <https://bit.ly/3sA5oyn>.

⁸² In 2021, the average length of the first instance procedure was of 266 days. No similar average was provided for 2022. In the Contact meeting of Myria of 25 January 2023, the CGRS stated that it is not possible to give an average processing time for cases on the level of the CGRS, due to limited capacity of the data management service: Myria, Contact meeting 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, p. 18.

⁸³ Article 49/3 Aliens Act.

⁸⁴ Article 57/6(1) Aliens Act.

⁸⁵ Article 57/6(1)(2) Aliens Act.

⁸⁶ Article 57/6(3) Aliens Act.

⁸⁷ Article 57/6(5) Aliens Act sets out the reasons for terminating the procedure.

⁸⁸ Article 57/6(1) Aliens Act.

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.⁸⁹

Where needed, the deadline can be prolonged by 3 more months.⁹⁰ If the deadline is extended, the CGRS should inform the applicant of the reasons and give a timeframe within which the decision should be expected.⁹¹

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.⁹² This has not yet been applied in practice.⁹³

As in 2020 and 2021, the CGRS was unable to reduce the backlog of pending cases in 2022. As a result, the total work stock - i.e. the number of files for which the CGRS has not yet taken a decision - has steadily increased from 12,633 pending cases in 2020 to 15,685 asylum files by the end of 2021, and further up to 16,415 at the end of 2022. 11,615 of these files can be considered backlog cases, while 4.800 files are part of the standard work stock.⁹⁴ This results in longer waiting times for persons in the asylum procedure.

Aiming to clear the backlog in all stages of the asylum procedure by optimising the functioning of the Belgian asylum authorities, an audit of these authorities (Immigration Office, CGRS, CALL and Fedasil) was conducted in 2022. The main results indicated a lack of personnel at the Immigration Office and the CGRS, outdated IT systems hindering the efficient exchange of information between the different authorities and significant backlogs of cases at the different authorities.⁹⁵ In her policy note of 28 October 2022, the Secretary of State paid specific attention to the issue of shortage of personnel on the level of the asylum authorities, announcing that the Council of Ministers agreed to hire 800 new people for the different services and a specific website - www.werkenbijasielenmigratie.be – being created for this purpose.⁹⁶ The Commissary-General for Refugees and Stateless People stressed the importance of reducing the backlog at the level of the CGRS.⁹⁷ To this purpose, actions were taken to increase the number of decisions – leading to an increase in the number of decisions in the period September-December 2022 by 25 % compared to the number of decisions in the same period in 2021 - and the CGRS also continued to invest in the recruitment of new staff (see [Number of staff and nature of the determining authority](#)).⁹⁸

1.2. Prioritised examination and fast-track processing

The CGRS may prioritise the examination of an asylum application where:⁹⁹

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ Article 57/6(1) Aliens Act.

⁹² *Ibid.*

⁹³ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

⁹⁴ CGRS, *Asylum statistics 2022*, available in Dutch at <https://bit.ly/40JgEqF> and in French at: <https://bit.ly/3MpATp8>.

⁹⁵ De Standaard, 'Audit asylum authorities revealed weaknesses: too little personnel and outdated IT-systems', 4 October 2022, available in Dutch at <https://bit.ly/3J5UM18>.

⁹⁶ Secretary of State for Asylum and Migration, *General Policy Note 28 October 2022*, Chamber of Representatives Doc. 55 2934/006, available in Dutch and French via <https://bit.ly/3ZCFwQA>.

⁹⁷ Commissary-General for Refugees and Stateless persons Dirk Van den Bulck: "All of us at the CGRS will continue to do everything possible to reduce the backlog in order to return to the situation where all applicants receive a decision within a short period of time. This is as important as taking the right decision, which means granting international protection status to all those who need protection." website CGRS: <https://bit.ly/3ZCVPgi>.

⁹⁸ In December 2022 and January 2023, 85 people were recruited. Following the allocation of an additional budget by the Council of Ministers on 9 December 2022, an additional selection will be organised. Additional staff members (of various profiles) will enter into service in April-May 2023. See website of the CGRS: <https://bit.ly/3ZCVPgi>.

⁹⁹ Article 57/6(2) Aliens Act.

- 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
- d. The asylum application is manifestly well-founded.

In practice, the examination is prioritised for applicants in detention, applicants who have filed a subsequent application for international protection, unaccompanied minors, applicants who obtained a protection status in another EU member state, and applicants from safe countries of origin. In 2022, the CGRS also prioritised the examination of specific profiles with a relatively high protection rate from certain countries of origin (mainly Syria, Afghanistan, Yemen, Burundi, and Ethiopia). These profiles are determined after an internal screening procedure. Not all applicants from these countries are subject to this prioritised treatment. This practice will continue in 2023.¹⁰⁰

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
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? Yes No
 - If so, is this applied in practice for interviews? Yes No

At least one personal interview by a protection officer at the CGRS is imposed by law.¹⁰¹ The interview may be omitted where:

- (a) the CGRS can grant refugee status based on 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 decide on a subsequent application based on the elements in the file.¹⁰²

Generally, for every asylum application, the CGRS conducts an interview with the asylum seeker. However, the questions' length and substance 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.¹⁰³ The CGRS has elaborated an interview charter as a Code of Conduct for the protection officers, available on its website.¹⁰⁴

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 request written submissions on why the

¹⁰⁰ Myria, Contact meeting 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, 18.

¹⁰¹ Article 57/5-ter(1) Aliens Act.

¹⁰² Article 57/5-ter(2) Aliens Act.

¹⁰³ Article 13/1 Royal Decree on CGRS Procedure.

¹⁰⁴ CGRS, *Interview Charter*, available at: <http://bit.ly/1FAxkyQ>.

status should not be ceased or withdrawn instead.¹⁰⁵ In practice, however, these persons will be invited for a personal interview.¹⁰⁶

In the context of the COVID-19 sanitary measures, the CGRS started granting refugee status based on the elements in the file without conducting a personal interview. Although no fixed criteria were determined to decide whether a case qualified for this approach, it concerned cases containing manifestly sufficient elements in order to recognise the person concerned and not containing any problematic elements such as indications that the person might have to be excluded from international protection or indications that the person already obtained a protection status in another EU member state. The application was investigated based on the elements and documents provided by the applicant, internet and social media research etc.¹⁰⁷ The CGRS continued this approach throughout 2021, during which refugee status was granted without conducting a personal interview in around 1,000 cases, mostly concerning applicants from Burundi, Syria and Eritrea.¹⁰⁸ In 2022, the CGRS again continued this approach for people who are ‘usually granted international protection’. The CGRS selects the cases through an internal screening procedure. The CGRS does not want to specify for which nationalities or cases this approach is being applied¹⁰⁹ and indicates it is applied to all countries of origin, not only those with a high recognition rate. Sometimes, the CGRS asks the applicant for additional information through a written questionnaire.¹¹⁰

Documents

Before, during or after the personal interview at the CGRS, applicants can submit documents supporting their statements. From 1 March 2023, the CGRS has changed the procedure for submitting documents in support of an application for international protection.¹¹¹ In practice, documents were previously either submitted ‘live’ during the interviews at the Immigration Office or the CGRS by registered mail, e-mail, USB or other electronic devices. However, the CGRS has indicated that for practical and technical reasons, it cannot constantly assess documents transmitted by electronic mail or on a digital data carrier (e.g. firewalls blocking the opening of documents or internet links). Consequently, the CGRS now decided that these documents may only be submitted by registered mail or by delivery to the CGRS against receipt, following art. 17 § 3 of the Royal Decree of 11 July 2003.¹¹²

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 insufficient.¹¹³ In that case, the examination of the application is assigned to one of the two “language roles” without the applicant having any say in it and generally according to their nationality; the different nationalities being distributed to one of the two “roles”. In the case of a subsequent application, the same “role” as in the first asylum procedure is selected.¹¹⁴ However, very rarely - and for practical reasons - “the language role” can be changed in the case of a subsequent application.¹¹⁵

In general, an interpreter who speaks the mother tongue of the asylum seeker is always present. Issues arise only in cases of applicants that speak a rare language or idiom; for such situations, an interpreter speaking another language can be proposed. During and after the interview at the CGRS, the interpreter

¹⁰⁵ Article 57/6/7(2) Aliens Act.

¹⁰⁶ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

¹⁰⁷ Myria, *Contact meeting*, 20 January 2021, available in French at: <http://bit.ly/3sE592s>.

¹⁰⁸ Myria, *Contact meeting* 19 January 2022, available in French and Dutch at: <https://bit.ly/3sy9SFN>, 33.

¹⁰⁹ Myria, *Contact meeting* 19 October 2022, available in French and Dutch at: <https://bit.ly/3ZBF6d7>, p. 25.

¹¹⁰ Myria, *Contact meeting* 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, p. 25.

¹¹¹ CGRS, ‘New way of submitting documents in support of an application’, available in English at: <https://bit.ly/3ZTNOTz>.

¹¹² Royal Decree of 11 July 2003 for regulating the workings of and the judicial procedures for the Commissioner General for Refugees and Stateless Persons.

¹¹³ Article 51/4(2) Aliens Act.

¹¹⁴ *Ibid.*

¹¹⁵ Myria, *Contact meeting*, 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, para 3.

has to respect professional secrecy and act according to specific rules of deontology. A brochure on this Code of Conduct is also available on the CGRS website.¹¹⁶ Due to the varying quality of interpretation, the correct translation of the declarations transcribed in the interview report became in some cases a point of contention in the appeal procedures before the CALL. However, the CALL generally does not consider this element since proving that the interpreter mistranslated is complex. Suppose applicants requested the interview report copy and did not communicate their remarks on translating their declarations to the CGRS. In that case, they are considered to have approved the report's content (see below).

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,¹¹⁷ 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.¹¹⁸

The asylum seeker or his or her lawyer may request a copy of the interview report and the complete asylum file. This should be done within 2 working days following the interview.¹¹⁹ 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.¹²⁰ The asylum seeker or his or her lawyer may provide comments within 8 working days after the reception of the file.¹²¹ 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.¹²²

Since June 2016 the CGRS conducts interviews through videoconference in some of the closed detention centres. In 2019, this practice was extended to all 6 detention centres. It was especially common for people residing in the Transit centre Caricole near Brussels Airport. 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 as positive. Several lawyers were less positive about this approach and argued that it impedes the creation of a safe space. The videos themselves were not kept on file, and the CGRS used the transcript following the interview as the basis.¹²³ The asylum seeker and his or her lawyer could request for an interview in person when they could provide elements of vulnerability that would justify such a request. In exceptional cases this was granted. However, the call for the interview did not mention the possibility of requesting an in-person interview.¹²⁴ The mere fact of not being familiar with this type of technology is not sufficient to be granted an in-person interview.

In the light of the sanitary measures taken to halt the spread of COVID-19, on 18 November 2020, the CGRS announced it would also switch to interviews through videoconference for people residing in open reception centres. They envisaged introducing this interview method in a limited number of open centres at first, then generalising it. Though taken in the context of the pandemic, the decision explicitly put forward the aim of introducing interviews through videoconference structurally on the long term as an alternative to in-person interviews.

¹¹⁶ CGRS, *Deontology for translations and interpretations*, available at: <http://bit.ly/1ROmcHs>.

¹¹⁷ Article 57/5-quater(1) Aliens Act.

¹¹⁸ Articles 16-17 and 20 Royal Decree on CGRS Procedure.

¹¹⁹ Article 57/5-quater(2) Aliens Act.

¹²⁰ Myria, *Contact meeting*, 20 June 2018, available in Dutch at: <https://bit.ly/2WiFPjf>, para.35.

¹²¹ Article 57/5-quater(3) Aliens Act.

¹²² *Ibid.*

¹²³ Myria, *Contact meeting*, 21 September 2016, available at: <http://bit.ly/2kxOqOG>, para 25.

¹²⁴ Myria, *Contact meeting*, 22 January 2020, available at: <https://bit.ly/2LtQV3K>.

Several civil society organisations introduced an urgent procedure before the Council of State to suspend this decision. In its judgment nr. 249.163 of 7 December 2020¹²⁵ the Council of State suspended the decision of the CGRS claiming not to be the authority competent to alter the modalities of the personal interviews. Given that the conditions of the personal interview are regulated in a Royal Decree,¹²⁶ any changes to these conditions need to be adopted by Royal Decree or law too, in order to ensure compliance with the necessary democratic safeguards. Following this judgment, the CALL annulled a decision by the CGRS in the case of an asylum seeker residing in a closed centre, for the same reason as the judgment of 7 December 2020: the lack of legal basis providing for videoconferences.¹²⁷ The CGRS has, however, continued organising interviews by videoconference in the closed centres in 2021, in 72 cases with high recognition chances.

Since 19 September 2022, two Royal Decrees have allowed the Immigration Office and the CGRS to organise 'remote' interviews.¹²⁸ This means that it is now allowed for the investigating officer to be physically present in another room than the applicant and conduct the interview through communication means that allow a conversation at a distance in 'real time', such as audio-visual connections or videoconference technology. The interpreter should always be situated in another room than the applicant to ensure their impartiality. Audio(visual) recordings of the interviews are not allowed. Physical interviews remain the standard procedure. The Immigration Office and the CGRS investigate on a case-by-case basis whether a remote interview should be preferred. They have discretionary power in this regard and consider the application's or the person's operational context and specificities. The applicant needs to be informed about the possibility that their interview takes place remotely, the modalities and measures taken to guarantee confidentiality, and the possibility of objecting to this measure. If such an objection is made, the Immigration Office or the CGRS investigate the arguments formulated by the applicant. However, no appeal is possible against a decision to conduct the interview remotely. In case of a negative decision, applicants can formulate their objections as an element in their appeal before the CALL.

Guardians, lawyers and trustees can attend to the remote interview. However, both Royal Decrees stipulate an exception on this principle for reasons of confidentiality: if the guardian, lawyer or trust person do not respect the measures that aim to ascertain the confidentiality of the interview, the agent conducting the interview can decide that they can no longer assist to the interview. The interview can continue in their absence. Appeals to suspend these exceptions were lodged before the Council of State. In two judgments of 3 October 2022, the Council of State has suspended the execution of these exceptions as far as the guardians of unaccompanied minors are concerned, stating that this exception is contrary to article 9 of the 'Guardianship Law'¹²⁹ which requires the presence of guardians during interviews of their pupils.¹³⁰ The Council of State did not suspend the exception concerning lawyers and trustees. For all three categories, action for annulment of the articles stipulating the exceptions is currently pending.

Following the entry into force of these Royal Decrees, the CGRS has indicated to resume the interviews by videoconference in the closed centres. The project for conducting remote interviews from open reception centres has been put 'on hold'. The CGRS uses MS Teams to conduct remote interviews.

¹²⁵ Council of State nr. 249.163, 7 December 2020, available at: <https://bit.ly/3hzEyA2>.

¹²⁶ Procedures before the CGRS (freely translated from *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*)

¹²⁷ CALL judgment no. 247 396 of 14 January 2021.

¹²⁸ Royal Decree of 26 November 2021 modifying the Royal Decree of 11 July 2003 on the functioning and the procedure before the Commissary General for Refugees and Stateless persons and Royal Decree of 26 November 2021 modifying the Royal Decree of 11 July 2003 concerning certain elements of the procedure that has to be followed by the Immigration Office charged with the investigation of asylum applications on the basis of the law of 15 December 1980, available in Dutch and French at <http://bit.ly/3m4azX6>.

¹²⁹ Title XIII, Chapter VI of the Program Law of 24 December 2002, <https://bit.ly/40N0JHV>.

¹³⁰ Council of State 3 October 2022 nr. 254.656, available in French at <https://bit.ly/3ZU2bY4> and Council of State 3 October 2022 nr. 254.655, available in French at <https://bit.ly/3nL2UgF>.

Lawyers or trustees need to be present in the same room as the applicant because the current software does not allow a third party to participate in the videoconference while also ensuring its confidentiality.¹³¹

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular 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
2. Average processing time for the appeal body to make a decision in asylum cases (full judicial review competence) in 2022:
6 months

1.4.1. Appeal before the CALL

Introduction of the appeal

A judicial appeal can be introduced with a petition before the CALL against all negative decisions of the CGRS within 30 days.¹³² When the applicant is being detained in a specific place in view of his or her removal from the territory (a place as described in art. 74/8 and 74/9 of the Aliens act), the time limit to appeal is reduced to 10 days, and to 5 days if a thus detained person appeals against an inadmissibility decision after a subsequent application for international protection.¹³³ The time limit is also reduced to 10 days for appeals against inadmissibility decisions after subsequent applications for international protection of other applicants (see [Admissibility procedure: Appeal](#)), and for appeals in cases in which the CGRS has applied the accelerated procedure (see [Accelerated procedure: Appeal](#)).

As of 1 March 2022, the appeal petition can no longer only be introduced by registered letter but also digitally through the digital application 'J-BOX'.¹³⁴ The Royal Decree of 21 November 2021, introducing this digital communication system in the procedures before the CALL, makes it possible for parties to send all procedural documents (petition, note with remarks, synthesis memoir, additional notes...) both digitally and by registered letter. In accelerated and suspension procedures in cases of 'extremely urgent necessity', procedural documents can, as of 1 March, only be directed to the CALL through either the digital system or by depositing the documents physically at the clerk service of the CALL against receipt, excluding the previously habitual possibility of sending these documents by fax.¹³⁵ For detention applicants, the petition's introduction remains possible in the hands of the director of the detention facility.¹³⁶ Finally, the Royal Decree allows the CALL to send procedural documents (such as invitations for hearings, judgements, ...) to the parties through J-BOX.¹³⁷ The CALL has communicated on its website that when the applicant is assisted by a lawyer who has a J-BOX account, it will preferably send all procedural documents digitally through J-BOX.¹³⁸

While right after the introduction of its introduction, 28% of the lawyers used J-BOX, 84% of the lawyers were doing so by the end of 2022.¹³⁹

¹³¹ CGRS, 'Videoconferences in closed reception centres', 19 September 2022, available in Dutch at <https://bit.ly/3MEV6aR>.

¹³² Article 39/57(1) Aliens Act.

¹³³ *Ibid.*

¹³⁴ Article 39/57-1 Aliens Act; Royal Decree of 21 November 2021 modifying the Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation. See also on the website of the CALL: Numérisation du Conseil: J-Box, 7 December 2021, <https://bit.ly/3hKHqud> and EU via J-BOX, <https://bit.ly/3w4AOPN>.

¹³⁵ Article 3, § 1, 2nd al. Royal Decree 21 December 2006.

¹³⁶ Article 39/69, § 2 Aliens Act and article 3, §1, al. 4 Royal Decree 21 December 2006.

¹³⁷ Article 3bis Royal Decree 21 December 2006.

¹³⁸ CALL, Frequently Asked Questions, <https://bit.ly/3tliGbF>.

¹³⁹ CALL, Activity report 2022, available in French and Dutch at: <http://bit.ly/3nQHrmA>, 5.

Although the digitalisation of the procedure before the CALL is a long-awaited measure, questions are raised as to the total abandonment of fax or any other easily accessible digital communication means. The current system risks negatively affecting applicants not assisted by a lawyer who cannot access the J-BOX system. In its advisory opinion, the Council of State raised the question if the abandonment of fax notifications would not deprive certain categories of applicants of a fundamental communication method, thus violating the general principle of law of access to justice. The Council of State indicated that, unless the legislator would allow for the system not to be applied in cases of extremely urgent necessity, the abandonment of fax communications would violate the right to access to justice in a discriminatory way.¹⁴⁰ Notwithstanding this advisory opinion, the legislator has decided to abandon the use of fax as a communication method altogether, without providing other electronic communication means for people who do not have access to J-BOX, arguing that in the current state of jurisprudence, the introduction of a suspension appeal in extremely urgent necessity is only possible for people faced with the imminent risk of being removed from the territory. These people can either introduce the appeal in the hands of the director of the detention facility, if they are being detained, or physically at the clerk service of the CALL against receipt. However, the limitation of the suspension procedures in extremely urgent necessity to this category of applicants is not based on legislative texts but on the latest jurisprudence of the CALL. Since the Belgian legal system is not based on precedents, this situation might evolve in time, making it possible for other people – for example persons applying for student visa and residing abroad – to introduce suspension procedures in extremely urgent necessity. The new appeal system may make it very difficult for them to access the appeal procedure without seeking help from a Belgian lawyer.

Effects of the appeal

The appeal has an automatic suspensive effect on the regular procedure.¹⁴¹

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 unfavourable 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.¹⁴²

The CALL has no investigative powers of its own, meaning that it must decide based on the existing case file. Therefore, if it considers important information 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 *de facto* necessary. All relevant elements have to be mentioned in the petition to the CALL.¹⁴³ Parties and their lawyers are then invited to an oral hearing, during which they can explain their arguments to the extent they were mentioned in the petition.¹⁴⁴ The CALL is also obliged to consider every new element brought forward by any of the parties with an additional written note before the end of the hearing.¹⁴⁵ Depending on how the CALL assesses the prospects of such new elements leading to the recognition or granting of international protection status, it can annul the decision and send it back to the

¹⁴⁰ Council of State, Advisory opinion nr. 66.857/4 of 20 January 2020, <https://bit.ly/35zJEdt>, 9-10; referred to in Council of State, Advisory opinion nr. 68.601/4 of 20 January 2021, <https://bit.ly/3tEcjJ>, 27-28.

¹⁴¹ Article 39/70 Aliens Act.

¹⁴² Article 39/2 Aliens Act.

¹⁴³ Article 39/69 Aliens Act.

¹⁴⁴ Article 39/60 Aliens Act.

¹⁴⁵ Article 39/76(1) Aliens Act. 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: ECtHR, *Singh and Others v. Belgium*, Application No 33210/11, Judgment of 2 October 2012.

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.

In some cases, the CALL can choose to apply a ‘written procedure’ if it does not consider an oral hearing necessary to render a judgement. The parties then receive a provisional decision containing the reasons why the written procedure is being applied as well as the judgement the CALL makes based on the elements in the administrative file. If one of the parties disagrees with the judgment, it has 15 days to ask the CALL to be heard, in which case an oral hearing will be organised. If none of the parties asks to be heard, they are supposed to consent to the judgment, which is subsequently confirmed by a final judgment.¹⁴⁶

Since 10 December 2021, two new possibilities of applying a purely written procedure were added to the Aliens Act:

- (1) Both parties can at all times ask to apply a purely written procedure.¹⁴⁷ Both the counterpart and the judge have to agree. In that case, the judge decides when the debates will be closed. Until that day, both parties can introduce pleading notes with written arguments.
- (2) in exceptional circumstances (e.g. a sanitary crisis, a natural disaster, fire in the buildings of the CALL), the Aliens Act allows for the adoption of a Royal Decree to activate an ‘emergency scenario’ in which the possibilities of applying a purely written procedure are enlarged during a (prolongable) period of six months.¹⁴⁸ During this period, the parties’ right to demand to be heard in case of application of the purely written procedure in the application of article 39/73, §2 Aliens Act, is replaced by the possibility of introducing a pleading note. After receiving the provisional decision containing the reasons why the written procedure is being applied and the judgement the CALL makes based on the elements in the administrative file, both parties have 15 days to introduce a pleading note arguing why they disagree with the content of the decision. If none of the parties asks to be heard, they are supposed to consent to the judgment, which is subsequently confirmed by a final judgment. In case one of the parties introduced a pleading note, the judge can either take a decision, considering the arguments developed in the pleading note, or decide to reopen the debates. In the last case, the other party has 15 days to introduce its own pleading note.¹⁴⁹ The judge can apply a purely written procedure in accelerated procedures with full judicial review and suspension procedures in extremely urgent necessity.¹⁵⁰

In the preparatory works of this new legislation, it is explained that the expansion of the possibilities of applying the written procedure aims to clear the backlog of pending cases at the second instance and render the procedure more efficient. It is argued that the organisation of oral hearings significantly increases the length of the procedure, especially given the sanitary measures and necessity of ‘social distancing’.¹⁵¹

The CALL must decide on the appeal within 3 months in the regular procedure.¹⁵² There are no sanctions for not respecting the time limit. In practice, the appeal procedure often takes longer. In 2022, the average processing time (the total of the delays divided by the total number of files) of appeals concerning decisions on applications for international protection (where the CALL has “full judicial review” competence) was 125,6 calendar days or 4 months.¹⁵³

¹⁴⁶ Article 39/73 Aliens Act.

¹⁴⁷ Art. 39/73-2 Aliens Act.

¹⁴⁸ Art. 39/73-3 Aliens Act.

¹⁴⁹ Art. 39/73-3, §§1-3 Aliens Act.

¹⁵⁰ Art. 39/73-3, §4 Aliens Act.

¹⁵¹ Chamber of representatives, Proposition of law changing the law of 15 December 1980, Doc. Nr. 55 2034/001, 1 June 2021, available in Dutch and French at: <https://bit.ly/3tEcjPJ>, 6.

¹⁵² Article 39/76(3) Aliens Act.

¹⁵³ CALL Activity report 2022, available in Dutch and French at: <http://bit.ly/3nQHrmA>.

Decisions of the CALL are publicly available.¹⁵⁴

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.¹⁵⁵ 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.¹⁵⁶ 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).¹⁵⁷ On the other hand, the quality of appeals is not always guaranteed, especially if specialised lawyers do not introduce these. In 2022, the discrepancy between the jurisprudence of the Francophone and Dutch chambers remained significant. In appeals concerning decisions on applications for international protection (where the CALL has “full judicial review” competence), the rejection rate in Francophone chambers was 63,45% compared to 90,79% in Dutch chambers. Francophone chambers recognised the refugee status in 7,93% of the appeals, compared to a recognition rate of only 1,03% in Dutch chambers.¹⁵⁸

The Immigration Office will give the 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, only a non-suspensive appeal is left in an annulment procedure before the CALL (within 30 days).

Unlike 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 return decision, invoking a potential breach of an absolute fundamental right (e.g. Article 3 ECHR).¹⁵⁹ This appeal is suspended until a judgment is issued.¹⁶⁰ It demands a swift decision of the CALL within 48 hours; the time limit is extended to 5 days, where the person's expulsion is not foreseen to occur until 8 days after the decision.¹⁶¹

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.¹⁶² 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)– too complex to meet the requirements of an effective remedy to avoid the risk of

¹⁵⁴ Judgments are available on the website of the CALL at: <http://bit.ly/2waz6tu>.

¹⁵⁵ CALL Activity report 2022, available in Dutch and French at: <http://bit.ly/3nQHrmA>.

¹⁵⁶ CALL, *Report of activities of the year 2019*, available in Dutch at: <https://bit.ly/2YjQlsQ>, p. 17 etc.; 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>.

¹⁵⁷ Myria, *Contact meeting*, 20 March 2019, available in French: <https://bit.ly/306X4GF>, 319-329.

¹⁵⁸ CALL Activity report 2022, available in Dutch and French at: <http://bit.ly/3nQHrmA>, 29.

¹⁵⁹ Article 39/82(4) Aliens Act; Article 39/57(1) Aliens Act.

¹⁶⁰ Articles 39/82 and 39/83 Aliens Act.

¹⁶¹ Article 39/82(4) Aliens Act.

¹⁶² 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.

Article 3 ECHR violations. The case was struck out of the ECtHR Grand Chamber's list in March 2015, as the applicant had already been granted residence status.¹⁶³

A study by UNHCR in 2019 states that several actors regret the rigidity and complexity of the asylum procedure in Belgium, which inevitably requires greater specialisation by lawyers. While most of them generally agree that the time limits inherent in the asylum procedure are 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.¹⁶⁴

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.¹⁶⁵ 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 concerning the general situation in Colombia and the applicant's individual circumstances. Such an assurance is made to remedy the apparent lack of effective remedy available to the applicant.

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.¹⁶⁶ Appeals, before the Council of State must be filed within 30 calendar days after the decision of the CALL has been notified and have no suspensive effect. They are so called "cassation appeals" that allow the Council of State only to verify whether the CALL respected the applicable legal provisions and substantial formal requirements, failing which the decision should be annulled.¹⁶⁷ 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 chance of success or are only intended to prolong the procedure.¹⁶⁸ If the decision under review is annulled ("quashed"), the case is sent back to the CALL for a new assessment of the initial appeal.

¹⁶³ ECtHR, *S.J. v. Belgium*, Application No 70055/10, Judgment of 19 March 2015.

¹⁶⁴ UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at: <https://bit.ly/35G2h9s>, 7.

¹⁶⁵ EDAL, ECtHR, *R.L. V. Belgium*, Application No 15388/18, 16 January 2020, available in French at: <https://bit.ly/2SZiXWb>.

¹⁶⁶ Article 39/67 Aliens Act.

¹⁶⁷ Article 14(2) Acts on the Council of State.

¹⁶⁸ 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).

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

Article 23 of the Belgian Constitution determines that the right to a life in dignity implies for every person *inter alia* the right to legal assistance. The Aliens Act guarantees free legal assistance by a lawyer to all asylum seekers, at every stage (first instance, appeal, cassation) of the procedure and in all types of procedures (regular, accelerated, admissibility, appeal in full jurisdiction, annulment and suspension), with the exception of the Immigration Office stage.¹⁶⁹ 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.¹⁷⁰

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

There are two types of free legal assistance: first-line and second-line.¹⁷¹ The competence of the organisation of 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, other public social organisations and NGOs provide this kind of first-line legal assistance.

1.5.2. Second-line legal assistance

“Second line assistance” is organised by the local bar association that exists in every judicial district. Each bar association has a bureau for legal assistance that can appoint a lawyer for (entirely or partially) free second-line assistance, the so-called “pro-Deo lawyer”. In practice, this might limit the free choice of a lawyer to a certain extent. Still, 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 assigned 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 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 to it.

¹⁶⁹ Articles 39/56 and 90 Aliens Act.

¹⁷⁰ Article 33 Reception Act.

¹⁷¹ Article 508/1-508/25 Judicial Code.

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.¹⁷²

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 generally defined depending on the income or financial resources level and, concerning specific procedures, on the social group they belong to. There is a rebuttable presumption of being without sufficient financial resources for asylum seekers and persons in detention. Concerning children, unaccompanied or not, this presumption is conclusive. Adults should prove their lack of financial resources to support the aforementioned presumption. The local bureau for legal assistance assesses the proof provided. Applicants residing in a reception centre during their asylum procedure are considered to meet the conditions for free legal assistance, given that the condition of having insufficient resources also applies to get access to the reception system. Applicants staying at a private address during their asylum procedure, however, need in principle to provide information on the identity of the people staying at the same address and their respective income. Because of the presumption of being without sufficient financial resources, the elements of proof provided are assessed less strictly than is the case for other categories of people applying for free legal assistance. Practice varies between the different bureaus for legal assistance, however.

The law permits the Bureau for legal assistance to apply a preliminary merits test before appointing a “pro-Deo” lawyer to refuse those manifestly unfounded requests, which have no chance of success.¹⁷³ 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 being consulted by an asylum seeker, especially in case of subsequent asylum applications.¹⁷⁴

Since September 2016, the second-line assistance has changed significantly.

The starting point for the remuneration of each pro bono intervention by a lawyer is a nomenclature, in which a list of points granted per intervention is determined.¹⁷⁵ This nomenclature has been modified by a Ministerial Decree of 19 July 2016. The amount of points equals the estimated work time for each intervention, with one point equalling one hour of work. For example:

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

Lawyers do not have to prove the time spent executing each intervention. It suffices to provide proof of the intervention itself. If the lawyer believes his or her actual work time exceeded the estimation put forward in the nomenclature by more than 100%, he or she can introduce a motivated request for an augmentation of the points. On the other hand, the Bureau of legal assistance can also reduce the points attributed to a lawyer if it considers that the lawyer has not executed the intervention with due diligence

¹⁷² UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at : <https://bit.ly/35G2h9s>, 44.

¹⁷³ Article 508/14 Judicial Code.

¹⁷⁴ 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.

¹⁷⁵ For an overview of the full nomenclature, please consult the Ministerial Decree of 19 July 2016, available at: <http://bit.ly/2jAdVzs>.

and efficiency.¹⁷⁶ To that end, the different bureaus of legal assistance have established an audit mechanism in which a group of volunteer lawyers checks the quality of the work of pro deo lawyers. There is also a “cross-control” system in which the bureaus of legal assistance audit each other’s work. The results are sent to the Minister of Justice, who can affect additional audits.

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). Currently, the lawyer receives a basis of 3 points plus 1 point per started hour of the interview he or she attended. A lawyer can receive a maximum of 11 points for a first appeal in asylum cases. 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 prove 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 from the bureau for legal assistance, which is financed by the bar associations that receive a fixed annual subsidy “envelope” from the Ministry of Justice. Since 2018, the value per point was finally determined at €75.¹⁷⁷ This is still applied today.

In theory, costs can be reclaimed by the state if the asylum seeker appears to have sufficient income, but this does not happen in practice. However, the 2016 reform made the “pro-Deo” remuneration system less attractive to 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. The case can only be closed once all procedures are finished, which is long after the lawyer undertook the actual interventions. This legal aid funding appears to impact 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.¹⁷⁸

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

¹⁷⁶ Art. 2 of the Royal Decree of 20 December 1999 holding executive measures concerning the remuneration of lawyers in the context of second line legal assistance and concerning the subvention for the costs linked to the organisation of bureaus for legal assistance, available in Dutch at: <https://bit.ly/3ogXLri>.

¹⁷⁷ Orde van de Vlaamse Balie, ‘Begroting justitie: OVB waakzaam positief’, 24 March 2018, available in Dutch at: <https://bit.ly/2HxAeCm>.

¹⁷⁸ 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: 1 January – 31 December of year 2022¹⁷⁹

Outgoing procedure				Incoming procedure			
	Take Back Requests	Take Charge Requests	Transfers		Take Back Requests	Take Charge Request	Transfers
Total	12,038	3.040	831	Total	2,198	439	357
Austria	2,523	21	131	France	1,007	242	127
Germany	2,047	92	199	Germany	732	59	81
France	1,653	345	115	The Netherlands	193	13	29
Italy	625	1.359	52	Switzerland	103	17	25
Croatia	787	248	2	Austria	56	12	10

Nationalities of persons subject to Dublin requests and transfers in 2022							
Outgoing procedure				Incoming procedure			
	Take Back Requests	Take Charge Requests	Transfers		Take Back Requests	Take Charge Request	Transfers
Total	12,038	3,041	825	Total	2,322	472	418
Afghanistan	3,681	288	129	Afghanistan	564	34	61
Moldavia	1,337	13	15	Georgia	208	2	20
Eritrea	479	565	23	Congo	31	158	18
Burundi	763	260	5	Somalia	124	15	19
Palestine	787	217	29	Iraq	112	5	24

In 2022, the total number of outgoing take-charge and take back-requests was 15,078 (3.040 take-charge and 12,038 take-back requests). 13,758 of these requests were based on a hit from the Eurodac database. Out of which none for dependency reasons and four for humanitarian reasons.¹⁸⁰ 8,735 requests were accepted out of the total number of requests. The difference between the number of requests and the number of agreements is partly because the Immigration Office often sends requests to several countries simultaneously for a single person.

A total of 831 persons were transferred from Belgium to other Member States in 2022. The top 3 most transferred nationalities are Algeria (153 persons), Morocco (153) and Afghanistan (129). 740 of these transfers were carried out within six months, 88 within 12 months, and 3 within 18 months after the acceptance by the other Member State. The average duration of the Dublin procedure in 2022 (calculated from the day of the outgoing request until the moment of the effective transfer) was 92 calendar days.¹⁸¹

¹⁷⁹ Information provided by the Immigration office, April 2023 and Immigration Office, 'Procedure Dublin, Application du règlement (UE) n° 604/2013', available at : <https://bit.ly/3LbTmFg>.

¹⁸⁰ Information provided by the Immigration Office, April 2023.

¹⁸¹ Information provided by the Immigration Office, April 2023.

In 2022, there was a total of 2,787 incoming take charge and take back requests (468 take charge requests, and 2,319 take back requests), of which none for dependency reasons¹⁸² and 22 for humanitarian reasons.¹⁸³ Out of the total of incoming requests, 1,696 were accepted, none for dependency reasons and 9 for humanitarian reasons. 357 persons were effectively transferred to Belgium.

According to available statistics,¹⁸⁴ the Immigration Office accepted 2,244 persons under the sovereignty clause.¹⁸⁵ In 2022, Belgium further became responsible “by default” for 3,615 persons: 3,433 persons were not transferred in time;¹⁸⁶ 182 (173 for Greece, 9 for Estonia) were not transferred due to deficiencies in the asylum or reception system which could lead to inhumane and degrading treatment in another Member State or because no Member State responsible could be designated on the basis of the criteria listed in the Dublin III Regulation.¹⁸⁷

Application of the Dublin criteria¹⁸⁸

	Outgoing procedure			Incoming Procedure		
	Number of requests	Agreements	Transfers	Number of requests	Agreements	Transfers
Total	15,052	8,735	831	2,787	1,696	357
Family Reasons ¹⁸⁹	41	10	2	87	23	40
Documentation and legal entry reasons ¹⁹⁰	1,215	926	27	335	233	32
Art. 15	0	0	0	0	0	0
Art. 13.1	1,768	1,318	16	12	1	0
Art. 13.2	12	8	0	12	4	0
Art. 16	0	0	0	0	0	0
Art. 17	4	4	2	22	9	7
Art. 20.5	715	683	38	2	0	0
Art. 18.1.b	7,792	3,205	321	1,443	641	98
Art. 18.1.c	448	440	102	126	123	30
Art. 18.1.d	3,057	2,141	323	748	662	150

Since 2021 the Immigration Office has provided statistics about applying the Dublin criteria.¹⁹¹ This overview does not give a breakdown of the Dublin criteria per article. It instead provides a more general breakdown of the outgoing and incoming take charge and take back requests. Information about a more detailed breakdown of the Dublin criteria per article, can be obtained through Parliamentary questions and questions during the monthly contact meetings, of which the reports are published online.¹⁹² The

¹⁸² Art. 16 Dublin III Regulation.

¹⁸³ Art. 17 Dublin III Regulation.

¹⁸⁴ Information provided by the Immigration Office, April 2023.

¹⁸⁵ Art. 17(1) Dublin III Regulation.

¹⁸⁶ Art. 29(2) Dublin III Regulation.

¹⁸⁷ Art. 3(2) Dublin III Regulation.

¹⁸⁸ Information provided by the Immigration Office, April 2023.

¹⁸⁹ Articles 8, 9, 10 & 11 Dublin-III Regulation

¹⁹⁰ Articles 12.1, 12.2, 12.3, 12.4 & 14 Dublin-III Regulation

¹⁹¹ Immigration Office, ‘Application of the Dublin Regulation 2022’, available in French: <https://bit.ly/3maok6n> and Dutch at: <https://bit.ly/40JQJiB>.

¹⁹² See, for example, the reports in French available at: <https://bit.ly/2T8Lcj4>.

Aliens Act uses the term “European regulation” to refer to the Dublin III Regulation criteria for determining the responsible Member State.¹⁹³

In 2022 the Immigration Office sent 41 take charge requests for family reasons, 37 based on article 11, three based on article 8 and one based on article 9 of the Dublin-III Regulation. Nine requests were based on article 11 were accepted, and one was based on article 9. Only two transfers based on family reasons were realised in 2022.¹⁹⁴

In 2022 the Immigration Office received 87 take charge requests for family reasons, out of which 60 were based on article 8, nine were based on article 9, four were based on article 10 and 14 were based on article 11 of the Dublin Regulation. The Immigration Office accepted 23 of these requests, all based on article 8 of the Dublin Regulation. 34 transfers based on article 8, two transfers based on article 9 and four transfers based on article 10 were realised in 2022.¹⁹⁵ Since the number of implemented transfers based on family reasons is higher than those based on family reasons in 2022, some transfers were based on agreements given before 2022.

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.¹⁹⁶ However, this observation does not take into 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, such as detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible state, and aspects of dependency.

Moreover, case law analysis emphasises the necessity of submitting medical attestations when invoking medical problems.¹⁹⁷ 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 recovery.¹⁹⁸ Likewise, mere cash payments to someone who still works in the home country are not enough to prove dependency, nor is proof of the intention to care for a family member during the asylum procedure or living with said family member.¹⁹⁹ According to the CALL, there have to be indications of a ‘more than usual relationship of dependency’, which has to be proven by substantial evidence.²⁰⁰ 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.²⁰¹

¹⁹³ 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.

¹⁹⁴ Information provided by the Immigration Office, April 2023.

¹⁹⁵ Information provided by the Immigration Office, April 2023.

¹⁹⁶ Vluchtelingenwerk Vlaanderen, Contribution externe dans le rapport annuel de Myria 2018 : ‘Le droit à la vie privée et familiale dans le cadre du règlement de Dublin. Comment faire correspondre la pratique à la réalité des relations familiales?’, available in French at: <https://bit.ly/2RSPIv3>; Petra Baeyens and Eva Declerck, ‘Welk recht op een gezins- en familielevens binnen het Dublin-systeem’, Tijdschrift Vreemdelingenrecht, 2017/4, 389-400.

¹⁹⁷ 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; CALL Decision No 239511, 10 August 2020 CALL Decision No 240517, 7 September 2020.

¹⁹⁸ CALL, Decision No 198726, 25 January 2018.

¹⁹⁹ CALL, Decision No 180718, 13 January 2017; CALL, Decision No 198815, 29 January 2018; CALL, Decision No 204600, 29 May 2018.

²⁰⁰ CALL, Decision No 234423, 25 March 2020; CALL, Decision No 230767, 22 December 2019

²⁰¹ CALL, Decision No 199262, 6 February 2018.

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 are 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 considered 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,²⁰² the CALL pays particular attention to the risk of inhuman and/or degrading treatment that a transfer in itself might entail for people with severe mental or physical illnesses, even if the responsible Member State does not demonstrate systematic flaws.²⁰³ 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. Case law analysis shows that CALL uses a very strict standard concerning the nature of the illness and the evidence thereof.²⁰⁴ For instance, suffering from epilepsy or a returning brain tumour does not meet the abovementioned standard.²⁰⁵ Heavy reliance is placed on medical attestations for both the state of health and the impact of a transfer thereon.²⁰⁶

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?
 83 days until moment of effective transfer

In practice, all asylum seekers are fingerprinted and checked in the Eurodac database after making their asylum application with the Immigration Office.²⁰⁷ In case they refuse to be fingerprinted, their claim may be processed under the **Accelerated Procedure**.²⁰⁸ The CGRS stated that it has not used this legal possibility yet in practice and it does not keep statistics of these cases.²⁰⁹ 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 the file must be transferred to the CGRS. 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.²¹⁰

The Immigration Office has clarified that, in line with the CJEU ruling in *Mengesteab*,²¹¹ 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’).²¹²

²⁰² CJEU, Case C-578/16, *C. K. and Others*, Judgment of 16 February 2017.

²⁰³ See for example CALL, Decision No 215 169, 15 January 2019; CALL, Decision No. 223 809, 9 July 2019.

²⁰⁴ CALL, Decision no 245144, 30 November 2020

²⁰⁵ CALL, Decision No 205298, 13 June 2018; CALL, Decision No 194730, 9 November 2017.

²⁰⁶ CALL, Decision No 206588, 5 July 2018.

²⁰⁷ Article 51/3 Aliens Act.

²⁰⁸ Article 57/6/1(i) Aliens Act.

²⁰⁹ Myria, *Contact meeting*, 16 January 2019, available in French at: <https://bit.ly/2Hj4pLJ>, para 290.

²¹⁰ Article 51/7 Aliens Act.

²¹¹ CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

²¹² Myria, *Contact meeting*, 22 November 2017, para 10.

A decision to transfer following an implicit 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 26quater' – or 'Annex 25quater' when in detention). However, the asylum seeker's lawyer does not automatically receive a copy of the decision sent to the asylum seeker.²¹³

Individualised guarantees

Following the 2014 ECtHR ruling in *Tarakhel v. Switzerland*,²¹⁴ 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.²¹⁵ This practice ended in January 2019 following a letter from the Italian authorities stating that families with children would be accommodated in specific reception centres and that family unity would be respected. The Immigration Office considers this as sufficient guarantee.

The Immigration Office does not systematically ask for individualised guarantees for vulnerable asylum applicants. However, it sometimes requests guarantees when the continuity of an asylum seeker's medical treatment has to be ensured in the country of destination. In the past, the CALL has overruled the Immigration Office's practice in some cases, without this having a generalised effect on it.²¹⁶ Adopting a similar approach, the CALL ruled in 2021 that a transfer of a psychologically vulnerable asylum applicant to Italy might be in violation of article 3 ECHR. It further stated that the Aliens Office did not adequately consider the applicant's vulnerability, especially not in light of the situation in Italy, where psychological support for applicants has decreased over the years.²¹⁷

In 2022, some decisions of the Immigration Office to transfer an asylum applicant with a specific vulnerability to Croatia were suspended by the CALL, because no guarantees concerning the possibility to reintroduce an asylum application had been demanded beforehand.²¹⁸ In November 2022, the Croatian Ministry of Internal Affairs sent out a communication regarding its willingness to correctly apply the provisions of the Dublin III Regulation and to guarantee the possibility for applicants transferred under the Dublin III Regulation to reapply for international protection. However, the CALL ruled that this communication from the Croatian Ministry of Internal Affairs does not provide the same guarantee as individualised guarantees, which means that this communication is not sufficient to exclude any risk of a violation of Article 3 ECHR.²¹⁹

Similarly, the CALL suspended the Immigration Office's decision to transfer an applicant to Croatia due to the lack of individualised guarantees in a case of 5 December 2022.²²⁰ This case concerns an applicant who was mistreated and arrested in Croatia. The applicant's statements are supported by, among others, Croatia's AIDA report. Moreover, for Dublin applicants, there is a risk of refoulement in Croatia, in the absence of individual guarantees from the Croatian authorities prior to transfer. Given that no individual guarantees were demanded from the Croatian authorities in this case, the risk of refoulement and a

²¹³ Article 71/3 Royal Decree 1981.

²¹⁴ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

²¹⁵ Immigration Office, Letter to CBAR-BCHV in response to questions concerning the implementation of the *Tarakhel* judgment, 17 November 2014, unpublished.

²¹⁶ 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; for further examples of case law, we refer to the previous versions of the AIDA report.

²¹⁷ CALL, Decision No 260 417, 9 September 2021.

²¹⁸ CALL, Decision No 278 106, 29 September 2022; CALL, Decision No 278 108, 29 September 2022; CALL, Decision No 279 783, 7 November 2022; CALL, Decision No 280 105, 14 November 2022; CALL, Decision No 280 106, 14 November 2022; CALL, Decision No 281 086, 29 November 2022; CALL, Decision No 281 327, 5 December 2022; CALL, Decision No 281 547, 7 December 2022; CALL, Decision No 281 730, 13 December 2022.

²¹⁹ CALL, Decision No 281 547, 7 December 2022.

²²⁰ CALL, Decision No 281 327, 5 December 2022.

violation of Article 3 ECHR has not been ruled out, which is why the CALL suspended the Immigration Office's decision.

Transfers

From the moment an applicant receives an annex 26quater, he or she is informed about the procedure in place to transfer the applicant to the responsible member state. The applicant is expected to collaborate with the transfer; in such case, a so-called 'voluntary return procedure' starts. If someone does not actively collaborate, this could be used to motivate their detention (see section on [Grounds for Detention](#)).

During the voluntary return procedure, the asylum seeker should stay at the disposal of the Immigration Office for the execution of the transfer. The Immigration Office has 6 months after the agreement of the responsible state to execute the transfer. In application of article 29(1) Dublin III regulation, the 6 months transfer period is suspended when a suspensive emergency appeal has been lodged (see [Dublin: Appeal](#)).

Suppose the asylum seeker does not stay at the disposal of the Immigration Office for the execution of the Dublin transfer, in particular by not communicating their new address when leaving the reception centre. In that case, they are considered to be absconding. In that case, the transfer period can be extended from 6 months to maximum 18 months. It is therefore recommended that asylum seekers systematically inform the Immigration Office on their address. The decision to extend the transfer deadline must be individually motivated in writing to make effective judicial review possible.²²¹

Once the transfer period of 6 or – in case of extension – maximum 18 months has passed, Belgium's responsibility for examining the asylum application will be accepted when the persons concerned present themselves to the Immigration Office again. The significant risk of absconding is defined in article 1, §2 of the Aliens Law. The CALL has further clarified this risk of absconding in its case law, which led to changes in policy from the Immigration Office:

- ❖ **In a judgment of 26 April 2019**, the CALL ruled that the choice of domicile at the lawyer's address is insufficient to exclude a risk of absconding.²²² Referring to the CJEU's *Jawo* judgment of 19 March 2019,²²³ 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 the authorities. As in the present case the applicant for international protection did not reside at the lawyer's address, so this domicile did not allow the Immigration Office to transfer the applicant to the responsible 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.
- ❖ **In February 2020**, the Immigration Office started a new practice regarding the organisation of the voluntary return procedure for applicants who had received a Dublin decision. Upon notification of this decision, the applicant was given a 'voluntary return form', to be filled in with their contact information and address. This had to be sent to the Immigration Office by mail within ten days. If the applicant failed to comply with this procedure, there was the risk that he would be considered absconded, which resulted in extending the transfer deadline from 6 to 18 months.²²⁴ This practice came under heavy criticism by various organisations and lawyers since it denied applicants in the Dublin procedure the possibility to execute their right to a practical appeal. In addition, the practice

²²¹ CALL, Decision No 203684; CALL, Decision No 203685, 8 May 2018 and Council of State, Decision No 245 799, 17 October 2019.

²²² CALL, Decision No 220401, 26 April 2019.

²²³ EDAL, CJEU, *Jawo*, Judgment in case C-163/17, 19 March 2019, available at: <https://bit.ly/3c9TxNq>.

²²⁴ Myria, contact meeting, 19.02.2020.

was based upon a faulty interpretation of the *Jawo* judgment and its definition of ‘absconding’.²²⁵ The CALL confirmed this view in a judgment in July 2020,²²⁶ ruling that, according to the *Jawo* judgment, there has to be an intentional element linked to a material element in order to consider someone as having absconded. According to the CALL, the absence of a filled-in ‘voluntary return form’ within 10 days after notification of the Dublin decision was not sufficient proof to indicate that the applicant was intentionally withdrawing from the voluntary return procedure. Based on the CALL’s motivation in this judgment, the Immigration Office decided to end this practice altogether.

Voluntary return procedure and extension of the transfer deadline

In 2022, the Immigration Office introduced a new practice in the voluntary return procedure, called the ‘ICAM-procedure’ (short for ‘Individual Case Management’). When someone receives an annex 26quater, this person will have to engage in the voluntary return procedure. Someone residing in the reception network can be asked to move to an ‘open return centre’. In this open return centre, the Immigration Office will organise interviews with the applicant concerning the voluntary return procedure. If the applicant gives indications that he does not wish to collaborate, the Immigration Office can decide to detain the applicant. If the applicant declines the transfer to the open return centre, the right to reception can be suspended. In this case, the applicant will reside outside of the reception network.

Someone residing on a private address or outside of an open return place will be invited for a first interview with an ‘ICAM-coach.’ The voluntary return to the responsible Member State will be discussed during this interview. If the applicant does not attend this interview, this might result in the withdrawal of material aid by Fedasil. If the applicant does attend this interview, but indicates that he does not wish to collaborate with the voluntary return procedure, he will be invited on a later date to discuss the voluntary return procedure once more. Suppose the applicant does not attend this second interview or does not wish to collaborate with the voluntary return procedure. In that case, this might result in the withdrawal of material aid by Fedasil as well. If an applicant decides not to collaborate with the ‘ICAM-procedure’, they could be re-invited by the Immigration Office, and be taken in detention with the aim of removal to the responsible member state.

This ‘ICAM-procedure’ has already been the subject of several decisions of the CALL. The Immigration Office is of the opinion that non-cooperation in this ‘ICAM-procedure’ (both in case of absence at an interview with the ‘ICAM-coach’ and in the expression of doubts about cooperating with the voluntary return) leads to absconding within the meaning of article 29.2 of the Dublin III Regulation.

The CCE has already overruled this reasoning of the Immigration Office several times.²²⁷ For instance, in its decisions of 29 November 2022 and 23 December 2022, the CALL ruled that the reasoning of the Immigration Office is invalid because of two major reasons.²²⁸ Briefly, the reasoning of the Immigration Office in these cases is based on the fact that any foreigner who repeatedly indicates that he or she will not voluntarily comply with the transfer decision should be considered as absconding.²²⁹ The CALL ruled that, on the one hand, this argument is invalid because of the established case law of the CALL that applicants lose the interest in the appeal against the transfer decision when they voluntarily give effect to this transfer decision. In the context of a Dublin transfer, an applicant is not obliged to give voluntary effect to the transfer decision. The fact that the applicant has filed an appeal against the transfer decision must be considered. The CALL finds it lawful for the Immigration Office to seek voluntary execution of the

²²⁵ EDAL, CJEU, *Jawo*, Judgment in case C-163/17, 19 March 2019, available at: <https://bit.ly/3c9TxNq>.

²²⁶ CALL, Decision No 237903, 2 July 2020 and Myria, Contact Meeting 16 September 2020, paragraph 16.

²²⁷ See e.g. CALL, Decision No 278 146, 29 September 2022; CALL, Decision No 281 100, 29 November 2022; CALL, Decision No 282 524, 23 December 2022; CALL, Decision No 282 525, 23 December 2022; CALL, Decision No 282 966, 10 January 2023.

²²⁸ CALL, Decision No 281 100, 29 November 2022; CALL, Decision No 282 524, 23 December 2022; CALL, Decision No 282 525, 23 December 2022.

²²⁹ CALL, Decision No 281 100, 29 November 2022; CALL, Decision No 282 524, 23 December 2022; CALL, Decision No 282 525, 23 December 2022.

transfer decision. Since the appeal procedure against the transfer decision is not suspensive, a forced transfer is possible. However, if an applicant does not give voluntary effect to the transfer decision, this element is insufficient to consider that person as absconding.

In contrast, it follows from the *Jawo* judgement that, in principle, there is 'absconding' only when the foreign national intentionally absconds from the authorities, which is presumed, unless there is evidence to the contrary, when the foreign national has left the residence assigned to him without informing the competent national authorities of his absence. It is undisputed that this presumption is not in doubt in these cases, as the applicants were still residing in the assigned place of residence at the time the contested decision was taken. The Immigration Office, therefore, has to prove that the applicant intentionally evaded the authorities and thus the transfer. It is undisputed that the mere circumstance that the applicant indicates that he will not voluntarily comply with the transfer decision is not sufficient for that purpose.

In a subsequent ruling, the CALL confirmed the above case-law in the case where an applicant had expressed doubts about voluntary return during a first interview with the 'ICAM-coach', and subsequently did not attend the second interview with the 'ICAM-coach'.²³⁰ The Immigration Office concluded from this situation that the applicant deliberately ensured that he remained out of the reach of the authorities responsible for the transfer to prevent the transfer or make the transfer more difficult. The CALL stated that it cannot be concluded from this situation that the applicant deliberately avoided the transfer, so it is clear that the required intentional element (*Jawo* judgment) is not fulfilled in this case. Indeed, the Immigration Office has not demonstrated that the mere fact that the applicant expressed doubts about voluntary return and did not show up for the second interview makes the transfer to the responsible Member State materially impossible.

In the defence memorandum, the Immigration Office sometimes provides an argument addressing the 'risk of absconding' as defined in Article 2(n) of the Dublin III Regulation and Article 1(2) of the Aliens Act. Regarding this argument, the CALL points out each time that the CJEU did not in any way state in its *Jawo* judgment that the term 'absconding' of Article 29(2) of the Dublin III Regulation should be interpreted as the way the Return Directive and the Return Manual define the term 'risk of absconding'. Moreover, the term 'risk of absconding' further only appears in Article 28 of the Dublin III Regulation, which specifically refers to the cases in which the member states may detain the person concerned in order to secure transfer procedures following this Regulation when there is a significant risk of a person absconding. This argument of the Immigration Office is, therefore, not relevant in these cases.²³¹

To address the above ambiguities regarding interpreting the concept of 'absconding', a legislative proposal to define the concept of "absconding" is currently being drafted in Belgium.

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 accepting a request until the actual transfer is 83 calendar days.

²³⁰ CALL, Decision No 282 966, 10 January 2023.

²³¹ CALL, Decision No 278 146, 29 September 2022; CALL, Decision No 282 524, 23 December 2022; CALL, Decision No 282 525, 23 December 2022; CALL, Decision No 282 966, 10 January 2023.

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.²³² Lawyers are prohibited from being 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 others.²³³ 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.²³⁴ 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 relevant elements for determining if the sovereignty clause should be applied to avoid potential inhuman treatment of the person concerned in case of transfer to another responsible EU or Schengen Associated state. The asylum seekers are asked why they cannot or do not want to return to that 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 explicitly asked about the detention conditions, the asylum procedure and the access to an effective remedy 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.²³⁵ 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.²³⁶

²³² Article 10 Royal Decree on Immigration Office Procedure.

²³³ Article 18 Royal Decree on Immigration Office Procedure.

²³⁴ Article 10 Royal Decree on Immigration Office Procedure.

²³⁵ 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.

²³⁶ Myria, *Contact meeting*, 21 December 2016, available at: <http://bit.ly/2jGwYmM>, para 29.

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 minor's best interest is considered. Based on their advice, the Dublin Unit of the Immigration Office decides if 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?

<ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive <ul style="list-style-type: none"> ○ Annulment appeal ○ Extreme urgency procedure 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes 	<ul style="list-style-type: none"> <input type="checkbox"/> No <input type="checkbox"/> Administrative <input checked="" type="checkbox"/> No <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 precisely this appeal procedure that the ECtHR considered not to be an effective remedy in *M.S.S. v. Belgium and Greece*. However, under the “extreme urgency” procedure, an appeal with short automatic suspensive effect may be provided (see section on [Regular Procedure: Appeal](#)). In its C-149/19 judgement of 15 April 2021 the CJEU ruled that an effective legal remedy has to consider any relevant elements that arose after the moment decision of “refusal of entry or residence” was given.²³⁷ The Belgian Council of State further clarified the implications of this ruling on the legal remedy provided by the CALL. It stated that the CALL has to assess whether any element provided after the decision of “refusal of entry or residence” significantly impacts the execution of the Dublin Regulation.²³⁸

The CALL further verifies if the Immigration Office has respected all substantial formalities.²³⁹ In 2016 this included cases where the Immigration Office ordered a Dublin transfer without indicating which responsibility criterion was applicable.²⁴⁰ The amenability to the scrutiny of the correct application of the Dublin criteria was confirmed in the same year by the CJEU in the cases of *Ghezelbash* and *Karim*.²⁴¹

The CALL also considers whether the sovereignty or protection clauses should have been applied by assessing potential breaches of Article 3 ECHR. In order to do this, the CALL considers 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

²³⁷ CJEU, case C-194/19, H. A. v. Belgium, 15 April 2021, available at: <http://bit.ly/3JHeYqL>.

²³⁸ Council of State, Judgement No 252.462, 7 December 2021.

²³⁹ Article 39/2(2) Aliens Act.

²⁴⁰ CALL, Decision No 165134, 31 March 2016, available at: <http://bit.ly/2kZHIUV>.

²⁴¹ CJEU, Case C-63/15 *Ghezelbash* and Case C-155/15 *Karim v. Migrationsverket*, Judgments of 7 June 2016.

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.²⁴²

Following the *Tarakhel* judgment, in these suspension and action for annulment 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 the section on [Dublin: Procedure](#)).²⁴³

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 and 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.²⁴⁴

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

Same as regular procedure

3. 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

3. 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 are entitled to a “pro-Deo” lawyer regarding the Dublin procedure. However, since assistance by a lawyer is not allowed during the Dublin interview, the bureau will not apply the general category of administrative procedures for legal assistance. There might, however, be an analogy with the category of written legal advice if the lawyer intervenes in any other way (written or otherwise) at the Immigration Office concerning a Dublin case.

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

Impact of the reception crisis

Single male applicants who do not receive shelter often have their ‘Dublin interview’ within a month after registration. Since these destitute applicants do not have any social assistant (which is provided in the reception centre), they often experience difficulties obtaining second-line legal assistance. As a result,

²⁴² 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>.

²⁴³ 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.

²⁴⁴ Article 14(2) Acts on the Council of State.

some applicants have to go to their 'Dublin interview' without second-line legal assistance. This might have a negative impact on the applicant's ability to explain their situation.

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
Greece, Bulgaria and Hungary

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: Since 2016, the Immigration Office stopped Dublin transfers to Hungary, and Belgium started to declare itself responsible for the concerned asylum applications.²⁴⁵ In January 2023, the Immigration Office confirmed that no transfers were carried out to Hungary and that no Dublin-transfer decisions are currently taken for Hungary.²⁴⁶ The Dublin procedure takes place, but Belgium declares itself responsible for the asylum application by applying article 17(1) of the Dublin Regulation.²⁴⁷

Greece: In January 2023, the Immigration Office informed us that no Dublin-transfer decisions are currently taken for Greece.²⁴⁸ The Dublin procedure takes place, but Belgium declares itself responsible for the asylum application by applying article 17(1) of the Dublin Regulation.²⁴⁹

Bulgaria: In January 2023, the Immigration Office stated that no Dublin-transfer decisions are currently taken for Bulgaria.²⁵⁰ The Dublin procedure takes place, but Belgium declares itself responsible for the asylum application by applying article 17(1) of the Dublin Regulation.²⁵¹

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 country's limited capacity of reception centres.²⁵² 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 would be accommodated in specific reception centres and family unity will be respected. The Immigration Office considers this as sufficient guarantees.²⁵³ Since 2016, the CALL has upheld transfers to Italy for most asylum seekers,²⁵⁴ although it has ruled against transfers in other cases.²⁵⁵ The decisive criterion to rule against certain transfers is when applicants have a vulnerable profile, but the government did not ask for individualised guarantees or when the government did not investigate the return situation in Italy sufficiently.

²⁴⁵ Myria, *Contact meeting*, 21 December 2016, available at: <http://bit.ly/2jGwYmM>.

²⁴⁶ Myria, *Contact meeting*, 25 January 2023, page 9, available at <https://bit.ly/3JKpIWk>.

²⁴⁷ Ibidem.

²⁴⁸ Myria, *Contact meeting*, 25 January 2023, page 9, available at <https://bit.ly/3JKpIWk>.

²⁴⁹ Ibidem.

²⁵⁰ Ibidem.

²⁵¹ Ibidem.

²⁵² CALL, Decision No 138 940, 20 February 2015; No 144 488, 27 April 2015; No 144 400, 28 April 2015.

²⁵³ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

²⁵⁴ See e.g. CALL, Decision No 200515, 28 February 2018; No 205 763, 22 June 2018; No 229 191, 25 November 2019; No 230 811, 30 December 2019; No 231 645, 22 January 2020; No 235 537, 23 April 2020; No 239 671, 13 August 2020.

²⁵⁵ See e.g. CALL No 199 510, 5 February 2018; No 201 167, 15 March 2018; No 206 426, 2 July 2018; No. 224 129, 19 July 2019; No. 226 769, 26 September 2019; No. 228 640, 7 November 2019; No. 229 190, 25 November 2019; No 229 695, 2 December 2019; CALL, Decision No 260 417, 9 September 2021; CALL, Decision No 272 323, 5 May 2022; CALL, Decision No 278 667, 12 October 2022; CALL, Decision No 278 668, 12 October 2022.

For example, in a case of 5 May 2022, the CALL ruled that the Immigration Office did not provide sufficient motivation for its decision, because it did not take into account recent information showing that there are severe deficiencies in the reception system in Italy and limited access to the asylum procedure and that these deficiencies have been exacerbated by the current context (pandemic).²⁵⁶ Indeed, it cannot be ascertained from the reasons given by the Immigration Office whether it analysed the impact on the reception conditions for asylum seekers and, if so, on the basis of what reasoning it considered that the pandemic had not led to structural deficiencies of such a nature that there was a real risk that the applicant would be subjected to inhuman or degrading treatment within the meaning of Article 3 ECHR.

In addition, in two decisions dated 12 October 2022, the CALL ruled that the Immigration Office had violated the principle of due diligence in the light of Article 3 ECHR, given that the Immigration Office's decision refers to a 'readmission'. In contrast, it is clearly a takeover, with the current situation in Italy apparently implying that access to the international protection procedure is problematic for asylum seekers when it involves a takeover.²⁵⁷ Indeed, in these cases, there is a risk of being considered an irregular migrant, and therefore a risk of receiving a deportation order.

Croatia: In 2022, some decisions of the Immigration Office to transfer an asylum applicant with a specific vulnerability to Croatia were suspended by the CALL, because no individualised guarantees concerning the possibility to reintroduce an asylum application had been demanded beforehand.²⁵⁸ Further exposition of these matters can be found under the heading "[Individualised guarantees](#)".

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 following an explicit and/or implicit withdrawal. If an asylum seeker has left Belgium before the first interview, he or she will have his or her asylum procedure terminated.²⁵⁹ When this asylum seeker is sent back to Belgium following a Dublin procedure and lodges an asylum application again, the CGRS is legally obliged to deem it admissible.²⁶⁰ Nevertheless, depending on what stage of the asylum procedure they were at before leaving, these asylum seekers can be considered subsequent applicants and therefore left without shelter until the admissibility decision is officially taken.²⁶¹

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](#)).²⁶² Because of the reception crisis, single male Dublin returnees are denied access to the reception network without receiving an individually motivated decision. They can register themselves on a waiting list, after which they will be invited to a reception place on a later date (for more information about the impact of the reception crisis on the right to reception, see [Criteria and Restrictions to Access Reception Conditions](#)).

²⁵⁶ CALL, Decision No 272 323, 5 May 2022.

²⁵⁷ CALL, Decision No 278 667, 12 October 2022; CALL, Decision No 278 668, 12 October 2022; CALL, Decision No 278 106, 29 September 2022; CALL, Decision No 278 108, 29 September 2022; CALL, Decision No 279 783, 7 November 2022; CALL, Decision No 280 105, 14 November 2022; CALL, Decision No 280 106, 14 November 2022; CALL, Decision No 281 086, 29 November 2022; CALL, Decision No 281 327, 5 December 2022; CALL, Decision No 281 547, 7 December 2022; CALL, Decision No 281 730, 13 December 2022.

²⁵⁹ Article 57/6/5.

²⁶⁰ Article 57/6/2(1) Aliens Act.

²⁶¹ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 175-180.

²⁶² Myria, *Contact meeting*, 21 June 2016, available at: <http://bit.ly/2k3obi9>, para 9.

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;²⁶³
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 decide on inadmissibility within 15 working days. Shorter time limits of 10 working days are foreseen for subsequent applications or even 2 working days for subsequent applications in detention.

In 2022, the CGRS took 4,253 inadmissibility decisions.²⁶⁴

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

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

A regular interview for the lodging of the asylum application takes place at the Immigration Office.²⁶⁵ 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.²⁶⁶

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.²⁶⁷

²⁶³ Note that this ground is not foreseen in Article 33(2) recast Asylum Procedures Directive.

²⁶⁴ CGRS, Asylum statistics 2022, available in Dutch at <https://bit.ly/40JgEqF> and in French at: <https://bit.ly/3MpATp8>.

²⁶⁵ Article 51/10 Aliens Act.

²⁶⁶ Articles 10, 16 and 18 Royal Decree on Immigration Office Procedure.

²⁶⁷ Article 57/5-ter(2) Aliens Act.

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?
- | | | |
|----------------------------|--|---|
| ❖ 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 |

An appeal against an inadmissibility decision must be lodged within 10 days, or 5 days in the case of a subsequent application by an applicant being detained in a specific place in view of their removal from the territory (a place as described in art. 74/8 and 74/9 of the Aliens act).²⁶⁸ The appeal has an automatic suspensive effect, except for some cases concerning [Subsequent Applications](#).²⁶⁹

The CALL shall decide on the application within 2 months,²⁷⁰ under “full judicial review” (*plein contentieux*).

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

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

In first instance procedures leading to inadmissibility decisions as well as in the appeal procedures, the general provisions on the right and access to free legal assistance apply. 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](#)). During some admissibility procedures – like for example the procedure following a subsequent application for international protection – applicants often do not have the right to reception in a centre and stay at a private address (for example with family, friends or solidary citizens). This situation makes it more difficult to qualify for free legal assistance (see [Regular procedure: Second line legal assistance](#)). In practice, much fewer procedural interventions by lawyers, in appeals or otherwise, take place in these specific cases.

²⁶⁸ Article 39/57(1)(3) Aliens Act.

²⁶⁹ Article 39/70 Aliens Act.

²⁷⁰ Article 39/76(3)(3) Aliens Act.

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Where is the border procedure mostly carried out? Air border Land border Sea border
3. Can an application made at the border be examined in substance during a border procedure? Yes No
4. 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
5. Is the asylum seeker considered to have entered the national territory during the border procedure? Yes No

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 territory's control, 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. They will be notified of a decision of refusal of entry to the territory and “*refoulement*” by the Immigration Office (“Annex 11-ter”).²⁷¹ 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.²⁷² The “decision of *refoulement*” is suspended until the CGRS decides. The “decision of *refoulement*” is also suspended during the time limit to appeal and the whole appeal procedure itself.²⁷³

The CGRS shall examine whether the application:²⁷⁴

- ❖ Is inadmissible; or
- ❖ Cannot be accelerated under the grounds set out in the [Accelerated Procedure](#).²⁷⁵

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 detained in a closed centre at the border. The law provides that a person cannot be detained at the border for the sole reason that he or she has applied for international protection.²⁷⁶ 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](#)).

²⁷¹ Article 72 Aliens Decree; Article 52/3(2) Aliens Act. Remarkably, in French the word “*refoulement*” is used (“*terugdrijving*” in Dutch), though it does not concern a violation of the *non-refoulement* principle, since the persons concerned have been allowed to introduce an asylum application and have it examined.

²⁷² Articles 50-ter and 50 Aliens Act.

²⁷³ Article 39/70 Aliens Act.

²⁷⁴ Article 57/6/4 Aliens Act.

²⁷⁵ Except for the ground relating to the failure of the applicant to apply for asylum as soon as possible.

²⁷⁶ Article 74/5(1)(2) Aliens Act.

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.²⁷⁷ Asylum seekers who apply for asylum at the border are systematically detained without a 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 are legally still considered border detention centres.²⁷⁸

If 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 carrier's responsibility.²⁷⁹ 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.²⁸⁰ This was a 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.²⁸¹ If the CGRS has not taken a decision within four weeks, the asylum seeker is admitted to the territory.²⁸² This does not automatically mean that the asylum seeker will be set free. If a ground for detention is present, he or she can be detained ‘on the territory’ under another detention title.

For the removal of rejected asylum seekers at the border, the 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.²⁸³ In many cases, the point of departure (and return) is not the country of origin. The CGRS does not examine potential persecution or serious harm risks in countries other than the applicant's country of origin. Not all issues arising under Article 3 ECHR in the country where the person is (forcibly) returned will therefore be scrutinised. This is the case in particular 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 2022, 580 asylum applications were made at the border.²⁸⁴

²⁷⁷ 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.

²⁷⁸ Article 74/9 Aliens Act.

²⁷⁹ 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>.

²⁸⁰ And it will be too late to appeal against it in an effective way, as also the ECtHR has ruled in *Singh v. Belgium*.

²⁸¹ Article 57/6(2)(1) Aliens Act.

²⁸² Articles 57/6/4 and 74/5(4)(5) Aliens Act.

²⁸³ Article 74/4 Aliens Act.

²⁸⁴ Information provided by the Immigration Office, April 2023.

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 to register the asylum application and after the asylum application seeker has filled in the CGRS questionnaire.

However, as the border procedure concerns asylum applications made from detention and thereby treated as a priority, the interview by the CGRS takes place much faster after asylum seekers' arrival and in the closed centre. This implies 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 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 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.²⁸⁵

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

The appeal at the border is the same as in the regular procedure, except for the much shorter time limits that need to be respected. The time period within which any appeal to the CALL must be lodged while in border detention (including for families in an open housing unit) is only 10 days, or even 5 days in some cases, such as a second or further order to leave the territory, instead of 30 calendar days in the regular procedure.²⁸⁶

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

²⁸⁵ Article 48/9(1) Aliens Act.

²⁸⁶ Article 39/57 Aliens Act.

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
6. 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
7. Does free legal assistance cover
 Representation in courts
 Legal advice

In the border procedure, asylum seekers are entitled to free legal aid. In administrative detention, staff have a crucial 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 the 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 is 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 an appointment is made during weekends since no social service duty is provided at that time. It is an additional challenge to meet applicable deadlines and represents an obstacle to effective access to legal assistance.²⁸⁷

In principle, the same system described under the regular procedure applies to appointing a "pro-Deo" lawyer. However, most bureaus of legal assistance assign junior trainee lawyers for these types of cases, which means that lawyers who do not have adequate experience handle, on some occasions, highly technical cases. The contact between asylum seekers and their assigned lawyers 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 not to visit them before the interview to prepare their clients. When the CGRS issues a negative first-instance decision, 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 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 case. Still, the necessary control and training to effectively guarantee quality legal assistance seems lacking.²⁸⁸

²⁸⁷ UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, <https://bit.ly/35G2h9s>, 34.

²⁸⁸ 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.

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:²⁸⁹

- 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 improbable 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 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.²⁹⁰ When the application is treated under the accelerated procedure on the aforementioned grounds, it may pronounce the application as manifestly unfounded.²⁹¹ This affects the order to leave the territory, which will be valid between 0-7 days instead of 30 days.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

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

Exactly the same legal provisions apply to the personal interview in the accelerated procedures, including the ones dealing with the admissibility of the application, as to the one in the [Regular Procedure: Personal Interview](#). The only difference provided for is that in case of detention, the interview takes place in the detention centre where the applicant is being held, but this has no impact on the way the interview takes place as such.²⁹² Also an interpreter is present during these interviews. The CGRS conducts interviews through videoconference in the closed detention centres. Since 19 September 2022, the modalities of this way of conducting remote interviews are officially laid down in a Royal Decree (see [Regular procedure: personal interview](#)).

²⁸⁹ Article 57/6/1(1) Aliens Act.

²⁹⁰ *Ibid.*

²⁹¹ Article 57/6/1(2) Aliens Act.

²⁹² Article 13 Royal Decree on CGRS Procedure.

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

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

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

An appeal in the accelerated procedure must be lodged within 10 days, and has suspensive effect.²⁹³

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?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
--	---	--	-----------------------------
8. 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
--	---	--	-----------------------------
9. Does free legal assistance cover

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

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

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> For certain categories	<input type="checkbox"/> No
--	---	---	-----------------------------

 - ❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> 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.²⁹⁴ 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

²⁹³ Article 39/57(1)(2) Aliens Act.

²⁹⁴ Article 1(12) Aliens Act

other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.”²⁹⁵ However, there is no definition of what the term vulnerability entails.

1.1. Screening of vulnerability

Both the Immigration Office and the CGRS have arrangements in place for the identification of vulnerable groups. The Immigration Office has 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.²⁹⁶

The Immigration Office uses a registration form in which it is indicated if a person is a (unaccompanied) 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.²⁹⁷ 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, often used in practice to indicate urgent needs, e.g. medical needs. The registration process will be faster for asylum seekers, and certain reception centres, such as emergency centres, will not be assigned to them.

Similarly, at the CGRS level, there are few specific provisions regarding the screening, processing and assessing of vulnerabilities of asylum seekers. There is a general obligation to consider the asylum seeker's individual situation and personal circumstances, particularly the acts of persecution or serious harm already undergone, which could be regarded as a specific vulnerability.²⁹⁸ In case of a gender-related claim, one can oppose being interviewed by a protection officer from the other sex or with the assistance of an interpreter from the other sex.²⁹⁹ Whether unaccompanied or accompanied, children should be interviewed in appropriate circumstances, and their best interests should be decisive in the examination of the asylum application.³⁰⁰

Unaccompanied children applying for asylum are handed 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 guardians during interviews. In contrast, 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.³⁰¹

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 EUAA module on Gender, Gender Identity & Sexual Orientation helps ensure that gender-related applications for international protection are adequately addressed. Gender-related asylum applications include claims based on sexual

²⁹⁵ Article 36 Reception Act.

²⁹⁶ 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.

²⁹⁷ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

²⁹⁸ Article 27 Royal Decree on CGRS Procedure.

²⁹⁹ Article 15 Royal Decree on CGRS Procedure.

³⁰⁰ 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>.

³⁰¹ Article 57/1(3) Aliens Act.

orientation, gender identity or sexual characteristics (LGBTI), fear of undergoing Female genital mutilation (FGM), honour crimes, forced marriages, domestic violence, sexual violence,³⁰²

- ❖ 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 EUAA training module on Interviewing Children.³⁰³

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 to raise awareness and provide guidance on issues related to gender-based violence, physical and sexual violence, as well as female genital mutilation and discrimination against transgender people.³⁰⁴

1.2. Age assessment of unaccompanied children

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

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.³⁰⁵

During the reception crisis in December 2021 (see [Constraints to the right to shelter](#)), Fedasil and the Immigration Office briefly conducted a screening of minors waiting in line at the arrival centre based on physical appearances. If a young man waiting in line did not look like a minor, he was sent to the line of single men resulting in a denial of reception. This practice being in clear violation of the legal framework, it was promptly stopped after an intervention from the Flemish Children’s Rights Commissioner.³⁰⁶

Also, in the context of the reception crisis, no age assessments were conducted between 16 October and 13 December 2022. According to the Guardianship Service, asking minors without access to reception to undergo an age assessment was not justified. As a result, these minors were not given access to the reception network and could not dispute the doubt about their minority. In the second week of January 2023, Caritas International Belgium reported that 24 of these minors were gone missing (see also

Age assessment in Belgium consists of scans of a person’s teeth, wrist and clavicle. These scans determine the developmental stages of a person’s bones and teeth. Thus, when the applicant’s age is unknown, it is estimated by comparing their development stage to that of persons in the reference study population.³⁰⁷ Following critiques around the accuracy of the medical test to establish the age of non-Western children by order of Physicians,³⁰⁸ a margin of error of 2 years is considered. This means that only a self-declared child tested to be 20 years of age or above will be registered as an adult.

³⁰² Information provided by the CGRS, 21 December 2022.

³⁰³ Information provided by the CGRS, 24 August 2017.

³⁰⁴ EASO, *Annual Report on the Situation of Asylum in the European Union 2018*, available at: <https://bit.ly/2UV3yGj>. No updates on more recent trainings were provided.

³⁰⁵ Article 7 UAM Guardianship Act.

³⁰⁶ Flemish Children’s Rights Commissioner, *Standpunt Opvangcrisis: dringend oplossingen voor niet-begeleide minderjarige vreemdelingen*, available in Dutch at: <https://bit.ly/3AOJc68>.

³⁰⁷ Myria, *Contact Meeting September: answer provided by Guardianship Service*, 15 September 2021, available in French and Dutch at: <https://bit.ly/3AMqXOR>.

³⁰⁸ 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>.

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 medical examination results 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, so 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.³⁰⁹

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.³¹⁰ Despite these judgements, it still occurs that the Guardianship Service does not automatically use the lowest age as the one binding for the decision. If this happens, the Council of State suspends the decision.³¹¹

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 a 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.³¹² The Guardianship Service stated it would no longer disregard the declared age of a minor, even if estimates as higher or lower than the margin of error. However, the Guardianship Service indicated that the difference between the declared age and the minimum age indicated by the margin of error needs to be reasonable. If a minor is declared 13, and the age assessment suggests that the minor is 17, this is not considered a reasonable difference. In such a case, the Guardianship Service might still use the age indicated by the age assessment.³¹³

On 9 December 2019, the Council of State issued a decision relevant to the contested age assessment procedure.³¹⁴ The case concerned a Guinean national who claimed to be a minor. The Belgian Guardianship Service subsequently took him into care as an unaccompanied minor. The Immigration Office later expressed doubts about the applicant's age due to his physical appearance and ordered a medical examination, which concluded the applicant's age 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. 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 the doubt should therefore have been applied in this decision.

The Council of State noted that the overall result is relevant in age assessment decisions. This decision must be consistent and understandable in light of the different tests carried out. The Council highlighted, *inter alia*, that an age determination below 18 was not excluded from the present examinations of the applicant's hands and wrists. It was thus unclear how the estimated age of 26.7 was determined. It, therefore, found the motivation of the decision to be inadequate and annulled the contested decision. The Council of State confirmed this judgment in a more recent arrest on 9 November 2021.³¹⁵

At the end of 2021, the Belgian government announced the creation of an expert committee tasked with evaluating the medical methods used during the age assessment and ensuring all the hospitals conducting these medical methods use the same methodology.³¹⁶ The committee will look into:

³⁰⁹ Platform Kinderen op de vlucht, *Leefijdsschatting van NBMV in vraag: probleemstelling, analyse en aanbevelingen*, September 2017, available in Dutch at: <http://bit.ly/2GyEJsd>.

³¹⁰ 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.

³¹¹ Council of State, Decision No 252072, 9 November 2021, available in French at: <https://bit.ly/3ueqhqP>; Decision No 251.629, 28 September 2021, available in French at: <https://bit.ly/3HmfoA6>.

³¹² Council of State, Decision No 242.623, 11 October 2018, available in French at: <https://bit.ly/2FQBcl0>; Decision No 244.052, 28 March 2019, available in French at: <https://bit.ly/348X1R0>.

³¹³ Myria, *Contact Meeting*, 20 February 2019, available in French at: <https://bit.ly/34qPoFA>.

³¹⁴ Council of State, Decision No 246.340, 9 December 2019, available in French at: <https://bit.ly/2Rycbor>.

³¹⁵ Council of State, Decision No 252.072, 9 November 2021, available in French at: <https://bit.ly/3Kgpfdp>.

³¹⁶ Policy note on asylum and migration, 3 November 2021, available in French: <https://bit.ly/3rKjJH4>.

- External circumstances influencing chronological age;
- Recurring critiques on the medical methods in use;
- Recurring critiques on the scientific reference groups used to develop these medical methods;
- Improving the manner how the results are described in the age assessment decision;
- Improving quality control;
- Practical implications of the above findings.

The expert committee will not look into alternative, holistic methods to assess age. In 2022, the expert committee published 17 proposals on optimising the methods used during age assessment and how to come to a uniform age assessment procedure.³¹⁷

In 2022, 6,434 unaccompanied children were signalled, compared to 4,881 in 2021. In 2022, 84% of the signalisation concerned boys, compared to 15% girls. The top 5 nationalities (among the signalisation) were:

Signalisation of unaccompanied children: 2022	
Country	Number
Afghanistan	2,497
Ukraine	1,252
Eritrea	418
Morocco	349
Syria	342

Source: Guardianship Service³¹⁸

In 3,063 cases (almost half of the signalisations), a doubt was expressed about the minority of the declared minor. In 2,697 cases, an age assessment was conducted. Of these assessments, 1,788 age assessments found the declared minor to be over 18 years old.³¹⁹

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

At the start of the asylum procedure, asylum seekers have to fill in a questionnaire determining any specific procedural needs.³²⁰ 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.³²¹

The identification of a special procedural need is usually done through information in the administrative file, or the special procedural need is noticed during the applicant's first interview at the Immigration Office.

³¹⁷ De Tobel, J. & Thevissen, P., Adviesraad medische leeftijdsonderzoeken, 30 juni 2022.

³¹⁸ Statistics of the Guardianship Service of 2022, available in Dutch and French at: <https://bit.ly/3KgpLIE>, p. 4.

³¹⁹ Statistics of the Guardianship Service of 2022, available in Dutch and French at: <https://bit.ly/3KgpLIE>, p. 8.

³²⁰ Article 48/9(1) Aliens Act.

³²¹ Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available in Dutch at <https://bit.ly/2S7NtO5>, 25.

Moreover, the applicant may submit a report from a psychologist, psychiatrist or other doctor attesting to their needs later. This usually concerns psychological problems resulting from 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, an applicant's anxiety attacks, psychological problems and various physical injuries were mentioned in a letter from the medical service of a pre-reception arrangement in Brussels and in a medical report from Fedasil. However, the Immigration Office judged these were insufficient to demonstrate that the applicant was not fit to conduct an interview. The CGRS confirmed that it did not notice any particular needs during the interview and stated the medical attestations were not recent enough to prove current problems. Similarly, the CALL did not consider the medical attestations in its judgement.³²²

While certain applicants mention the reasons to be considered the need for special procedural needs during interviews, this cannot be expected of all applicants. Many do not know how the procedure will continue, what questions will be asked, and what needs may arise. It is, therefore, crucial that adequate measures are adopted from the outset 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* recommend procedural needs based on a medical examination. However, this is not mandatory,³²³ and the Immigration Office does not provide statistical information on if and how often 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 their request.³²⁴ However, this does not 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 is not appealable.³²⁵

The CGRS indicated that the evaluation of procedural needs is an ongoing process and tries to determine procedural needs as soon as possible and offer special supporting measures if needed. Throughout the entire procedure, the applicant can make special procedural needs known. This means that (i) a first evaluation will take place when the file is transferred to the CGRS, (ii) a second assessment will be 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.³²⁶

Furthermore, according to the law, reception centres should evaluate if special reception needs apply and 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 consents.³²⁷

Specific procedural needs that have been observed in practice include the need to conduct the interview in rooms at ground level in cases where the applicant has a physical disability,³²⁸ to organise several breaks during the interview, to postpone 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 with the opportunity to take a break at any time during the

³²² CALL, Decision No 217.807, 28 February 2019.

³²³ Article 48/9(2) Aliens Act.

³²⁴ Article 48/9(3) Aliens Act.

³²⁵ Article 48/9(4) Aliens Act.

³²⁶ Myria, *Contact meeting*, 18 April 2018, available in Dutch at: <https://bit.ly/2sIMaXC>, para. 56; information confirmed by the CGRS in December 2022.

³²⁷ Article 22(1/1) Aliens Act.

³²⁸ CALL, Decision No 214.454, 20 December 2018; CALL Decision No 215.972, 30 January 2019; CALL, Decision No 213 350, 30 November 2018.

interview. The assistance of an interpreter during a personal interview has also been described in some decisions as a special procedural need. In practice, however, this is not the case since one is entitled to an interpreter during every asylum procedure described in Article 51/4 of the Aliens Act.

The above examples demonstrate that the CGRS makes efforts to meet specific special procedural needs. However, certain limits have been noted in practice. As an example, in the case of a minor who had reached the age of 18 during the asylum procedure, special assistance was no longer attributed to him.³²⁹

The law on Guardianship of unaccompanied minors contains general provisions on the protection of unaccompanied minors and 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 of unaccompanied children so that the necessary arrangements can be made.³³⁰ For unaccompanied minors, the specific procedural needs mainly consist of a guardian's assistance, an interview conducted by a protection officer trained in child protection and the fact that the CGRS considers the age and level of maturity when evaluating the applicant's declarations.³³¹

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.³³² 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 under 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 child's best interest.

During the COVID-19 pandemic, the CGRS interviews with children were no longer conducted in child-friendly spaces but in large rooms with Plexiglas separation screens.³³³ From 13 June 2022 onwards, the CGRS removed all plexiglass separation screens and rules concerning social distancing.³³⁴

In gender-related asylum claims, the official of the Immigration Office must check if the asylum seeker opposes being assigned a protection officer of the other sex.³³⁵ 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.³³⁶

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.³³⁷

Since August 2018, the government has opened family units within the closed centres in which several families were detained, despite the practice having previously been suspended after the ECtHR

³²⁹ CALL, Decision No 217807, 28 February 2019.

³³⁰ Program Law (I) (art. 479), 24 December 2002 - Title XIII – Chapter VI : Guardianship of unaccompanied minors

³³¹ 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.

³³² 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>.

³³³ FRA, Migration: Key fundamental rights concerns, quarterly bulletins, available at: <https://bit.ly/43GbXjk>, 24.

³³⁴ CGRS, Relaxation of Covid measures, 10 May 2022, <https://rebrand.ly/213dfer>

³³⁵ Article 9 Royal Decree on Immigration Office Procedure.

³³⁶ 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.

³³⁷ Article 48/9(5) Aliens Act.

condemned Belgium.³³⁸ The current government has agreed that it can no longer detain children in closed centres, as a matter of principle. New, alternative measures will be developed to avoid abusing this measure to make a return impossible.³³⁹

Although unaccompanied children are not detained, they are not exempted from the accelerated procedure in the law. However, the accelerated procedure is not applied to unaccompanied children.³⁴⁰

3. Use of medical reports

Indicators: Use of Medical Reports

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

The Aliens Act provides the possibility for the CGRS to request a medical report relating to indications of acts of torture or serious harm suffered in the past if the CGRS thinks this is relevant to the case. It can request such a medical examination as soon as possible by a doctor assigned by the CGRS. In the medical report, a clear difference should be made between objective observations and those based on the declarations of the applicant. The report can only be sent to the CGRS with the applicant's consent.³⁴¹ However, refusal to undergo a medical examination shall not prevent the CGRS from deciding on the asylum application.³⁴² The CGRS has stated that it has not yet used this possibility.³⁴³

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 of providing such a report on his or her initiative and expenses. In this case, the medical report should be sent to the CGRS as soon as possible, and the CGRS can request advice concerning the report from a doctor they appointed.³⁴⁴

The CGRS should evaluate the report together with all the other elements of the case.³⁴⁵

It is not yet clear how this 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

Until 2015, the CGRS counted a "Psy Unit", 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. The purpose of the psychologist's intervention was clearly not to confirm or contradict some aspects of the asylum application. Regardless, the Unit was closed in 2015 due to a lack of resources and the necessity for the CGRS to focus on other priorities.

³³⁸ ECtHR, *Muskhadzhiyeva v. Belgium*, Application No 41442/07, Judgment of 19 January 2010.

³³⁹ Chamber of Representatives, *Policy Note on asylum and migration, 4 November 2020, available in Dutch and French, available at: <https://bit.ly/3sJdgMd>*, 34.

³⁴⁰ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 290.

³⁴¹ Article 48/8(1) Aliens Act.

³⁴² Article 48/8(3) Aliens Act.

³⁴³ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 300.

³⁴⁴ Article 48/8(2) Aliens Act.

³⁴⁵ Article 48/8(4) Aliens Act.

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 considered in determining the protection needs.

If an asylum seeker has psychological problems that impede them to have a normal interview or an interview at all, the CGRS expects the asylum seeker and/or their lawyer to provide a medical attestation. There is not yet a standardised procedure for this kind of case, but the CGRS evaluates on a case-by-case basis if an interview is possible or if special arrangements need to be made.³⁴⁶ In such cases, the applicant will be asked - through the intermediary of his lawyer - to answer specific questions in writing to provide the CGRS with all the elements necessary to process 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 adapting the fact-finding methodology to the seriousness of 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.³⁴⁷

In a judgment of 22 October 2020, the CALL annulled a decision of the CGRS in a case concerning a woman with serious psychological problems. Based on the psychological reports provided by the applicant and mentioning inter alia symptoms of posttraumatic stress disorder, the CGRS had decided she had particular procedural needs. During the personal interview, the woman frequently said she felt unwell and wanted a break. Each time, a break was allowed. However, the interview lasted 6 hours, whereas the internal charter of the CGRS prescribes a personal interview of 4 hours, in exceptional cases, to be prolonged with a maximum of 30 minutes. The CALL judged that given the psychological vulnerability of the woman, a personal interview of 6 hours was inadequate to assess the credibility of her story correctly.³⁴⁸

3.2. Medical evidence of past persecution or serious harm

To date, medical reports demonstrating physical harm as evidence of past persecution or inhuman treatment have been mostly put aside by the CGRS, arguing that they cannot determine the exact cause of the harm, their perpetrator or the reasons behind it.³⁴⁹ However, in some rare cases, the CALL requested the CGRS to examine further the circumstances surrounding the physical harm experienced by an asylum seeker. In the presence of physical scars, for example, the burden of proof is reversed, and the CGRS is obliged to look further into the causes of persecution or serious harm.³⁵⁰

In March 2019, the Council of State annulled a judgment of the CALL because it had not sufficiently considered 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

³⁴⁶ Myria, *Contact meeting*, 18 January 2017, available at: <http://bit.ly/2kx93eZ>, para 25.

³⁴⁷ CALL, Decision No 222091, 28 May 2019.

³⁴⁸ CALL, Decision No 242762, 22 October 2020.

³⁴⁹ 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.

³⁵⁰ Article 48/7 Aliens Act.

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.³⁵¹

Furthermore, there is an overall exception when it comes to the risks of female genital mutilation. In such cases, the asylum seeker must 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. A new medical attestation must be provided to the CGRS every year to keep the protection status.

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.

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.³⁵² This application for protection based on medical reasons has been removed from the asylum procedure and replaced with a separate procedure that entails fewer 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 having to consider medical elements put forward during the asylum procedure, even if they could be relevant to the asylum application.

In *M'Bodj and Abdida*,³⁵³ 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 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.³⁵⁴ 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.³⁵⁵

³⁵¹ Council of State, Judgment No 244 033, 26 March 2019, available in French at: <https://bit.ly/2uWoO57>.

³⁵² Article 9-ter Aliens Act.

³⁵³ 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.

³⁵⁴ CALL, Decision No 168 897, 1 June 2016; Constitutional Court, Decision No 13/016, 27 January 2016.

³⁵⁵ Article 479 Title XIII, Chapter VI of Programme Law of 24 December 2002 (UAM Guardianship Law).

Once identified as a child, a guardian will be assigned to the child applicant. The guardian represents their pupil in legal acts and is responsible for ensuring 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 to 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. During an ongoing asylum procedure, it is legally possible to cumulate the specific procedures directed at finding a durable solution for unaccompanied children (family reunification, return or right to reside in Belgium).³⁵⁶ 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.³⁵⁷ It should be noted, however, that a pending asylum procedure in practice could cause other procedures for finding a durable solution to be temporarily suspended until a final decision is taken on the asylum application, since, in that case Belgian authorities are not allowed to contact the authorities of the country of origin to assess whether return or family reunification is possible.

The guardian has to attend the different interviews at the 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 an unfavourable decision, the guardian should explain appeal possibilities and request the child to provide arguments. They should also contact the lawyer to prepare the appeal and the social worker in the reception centre to prepare for possible consequences of the decision on the child's right to reception.³⁵⁸

If necessary, a provisional guardian can be appointed immediately upon notice to the Guardianship Service; for instance, when an unaccompanied child is detained, the Guardianship Service's directing manager or deputy shall take on guardianship.³⁵⁹

On 1 December 2022, there were 3,498 guardianships, of which 2,335 were new guardianships since the start of 2022. One guardian can take on several guardianships. On 13 January 2023, 643 guardians were active for the Guardianship Service, out of which:

- ❖ 509 guardians on a voluntary basis (79,16%, covering 33,72% of the pupils)
- ❖ 91 professional guardians on a self-employed basis (14,15%, covering 39,53% of the pupils)
- ❖ 18 professional guardians registered as a private company (2,80%, covering 12,39% of the pupils)
- ❖ 25 professional guardians in the context of a work contract (3,89%, covering 14,36% of the pupils)³⁶⁰

Due to a shortage of guardians, around 560 unaccompanied minors were on a waiting list in the beginning of 2022, the average waiting time amounts up to 4 months. In October 2022, 1,700 minors were waiting for the appointment of a guardian, the average waiting time amounting to 4 months in Brussels, Wallonia and East-Flanders and even 8 months in the Flemish region Limburg. This is problematic since the appointment of a guardian is required before the minor can undertake certain essential things such as getting access to legal representation and financial aid ("Groeipakket") and subscribing to a school. The Minister of Justice announced that he wanted to train an additional 60 full-time guardians as a response

³⁵⁶ Article 61/15 Aliens Act.

³⁵⁷ Article 479(9)(12) UAM Guardianship Law.

³⁵⁸ 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>.

³⁵⁹ Article 479(6) UAM Guardianship Law.

³⁶⁰ Statistics of the Guardianship Service of 2022, available in Dutch and French at: <https://bit.ly/3KgpLIE>.

to this shortage.³⁶¹ The Guardianship service indicated that selection processes for new voluntary and professional guardians are ongoing but that it is difficult to find appropriate candidates.³⁶²

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.³⁶³ 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, which prioritises Dublin files.³⁶⁴

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 qualifies as a beneficiary of international protection.³⁶⁵ The claim is deemed admissible because the previous application was terminated based on implicit withdrawal.³⁶⁶

The CGRS should take this decision within 10 working days after receiving the application from the Immigration Office. If the person is in detention, this decision should be taken within 2 working days.³⁶⁷ If the CGRS declares the application admissible, it examines the merits under the **Accelerated Procedure**. The final decision should be made within 15 working days.³⁶⁸ In the past years, significant delays in these procedures were noted in practice.³⁶⁹ The CGRS indicates it cannot decide within this strict legal deadline but stresses that treating subsequent applications is a priority.³⁷⁰

If the subsequent application is dismissed as inadmissible, the CGRS should determine whether the applicant's removal would lead to direct or indirect *refoulement*.³⁷¹ Recent case law of the CALL concerning Afghan applicants confirmed this.³⁷²

Evaluating new elements is strictly applied in practice according to multiple actors and lawyers.

³⁶¹ Vrt Nws, Minister Van Quickenborne wants 60 extra guardians for unaccompanied minors to shorten long waiting list, 22 March 2022, <http://bit.ly/3MIOA8C>.

³⁶² Myria, Contact meeting 19 October 2022, available in French and Dutch at: <https://bit.ly/3ZBF6d7>, 50.

³⁶³ Article 51/8 Aliens Act.

³⁶⁴ Myria, *Contact meeting* of 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, para 26.

³⁶⁵ Article 51/8 Aliens Act.

³⁶⁶ *Ibid*, citing Article 57/6/5(1)-(5) Aliens Act.

³⁶⁷ Article 57/6(3) Aliens Act.

³⁶⁸ Article 57/6/1(1) Aliens Act.

³⁶⁹ Myria, *Contact meeting* 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 11.

³⁷⁰ Myria, *Contact meeting* 15 June 2022, available in Dutch and French at: <https://bit.ly/3ZHDEVL>.

³⁷¹ Article 57/6/2(2) Aliens Act.

³⁷² CALL, *Specific questions concerning Afghanistan*, 20 October 2022, available in Dutch and French at: <http://bit.ly/3UjUECF>.

An appeal to the CALL against an inadmissibility decision should be made within 10 days, or 5 days when the applicant is in detention.³⁷³ The appeal has an automatic suspensive effect, except where:³⁷⁴

- 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 concerning first asylum applications. However, in practice, some asylum seekers or lawyers have experienced difficulties obtaining “pro-Deo” assignments because the Bureau for legal assistance requires 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:³⁷⁵

- 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*.

In principle, all applicants for international protection, including subsequent applicants, have the right to access reception conditions during the examination of their case. However, the Reception Act allows the possibility to refuse reception to subsequent applicants until their asylum application is deemed admissible by the CGRS. Although the Reception Act explicitly states that decisions which limit or withdraw the right to reception should be in line with the principle of proportionality, individually motivated and based on the particular situation of the person concerned, Fedasil almost systematically refuses to assign a reception place to subsequent applicants until their asylum application is declared admissible by the CGRS (see [Right to reception: subsequent applications](#)).

A total of 4,652 applicants lodged subsequent applications in 2022:

Subsequent applicants by 5 main countries of origin: 2022	
Country	Number
Afghanistan	394
Iran	341
Palestine	302
Syria	274
Georgia	186
Other countries	3,155
Total	4,652

Source: CGRS, Asylum Statistics 2022.

³⁷³ Article 39/57 Aliens Act.

³⁷⁴ Article 39/70 Aliens Act.

³⁷⁵ Article 57/6/2(3) Aliens Act.

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](#).³⁷⁶

According to the law, countries can be considered safe if the rule of law in a democratic system and the prevailing political circumstances allow concluding 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 the principle of non-*refoulement* and the availability of an effective remedy against violations of these rights and principles.³⁷⁷

After receiving detailed advice from the CGRS, the government approves the list of safe countries of origin upon the proposal of the Secretary of State for Migration and Asylum and the Minister of Foreign Affairs. The list must be reviewed annually and can be adjusted.³⁷⁸ The Royal Decree of 14 January 2022 on Safe Countries of Origin reconfirmed the list of safe countries of origin adopted in 2017: **Albania, Bosnia-Herzegovina, Northern-Macedonia, Kosovo, Serbia, Montenegro, India and Georgia**.³⁷⁹

To refute the presumption of the safety of his or her country of origin, the applicant must present serious reasons explaining why the country cannot be considered safe in their situation. It remains unclear how far this burden of proof is any different than the one resting on asylum seekers throughout the procedure.

In 2021, a total of 1,769 persons from safe countries of origin applied for asylum. The breakdown per nationality was as follows (no figures were provided for 2022):

Country	2017	2018	2019	2020	2021
Kosovo	320	242	194	70	164
Albania	882	668	680	447	588
FYROM / North Macedonia	251	194	190	89	177
India	52	81	46	18	16
Bosnia-Herzegovina	44	23	45	34	72
Montenegro	5	8	20	5	9
Serbia	232	198	220	134	150
Georgia	468	695	563	266	593
Total	2,254	2,109	1,958	1,063	1,769

Source: CGRS.

³⁷⁶ Article 57/6/1(1)(b) Aliens Act.

³⁷⁷ Article 57/6/1(3) Aliens Act.

³⁷⁸ Article 57/6/1 Aliens Act.

³⁷⁹ Royal Decree of 14 January 2022, available in French at: <https://bit.ly/35P6b5N>.

2. Safe third country

Following the reform that entered into force on 22 March 2018, the Aliens Act contains the “safe third country” concept³⁸⁰ as a ground for inadmissibility.³⁸¹ The CGRS has already stated that it will only apply this concept exceptionally and that there will not be a list of safe third countries. In 2021, this concept was used in 13 cases, primarily for people having received international protection status in Switzerland.³⁸² No such figures were provided for 2022.

2.1. Safety criteria

A country may be considered as a safe third country where the following principles apply:³⁸³

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

2.2. Connection criteria

A third country can only be regarded as a safe third country if the applicant has such a relationship with the third country based on which it can reasonably be expected of him or her to return to that country and to have access thereto.³⁸⁴ The existence of a connection should be assessed based on “all relevant facts and circumstances, which may include the nature, duration and circumstances of previous stay”.³⁸⁵

The Explanatory Memorandum to the Law of 21 November 2017 gives examples of links, such as a previous stay in a third country (e.g. a long visit) or a family bond. The Explanatory Memorandum also states that for 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 “access” element should already be examined when applying the safe third country concept. “For reasons of efficiency”, the legislator opted to consider this additional condition when examining whether a particular third country can be considered 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.

³⁸⁰ Article 57/6/6 Aliens Act.

³⁸¹ Article 57/6(3)(2) Aliens Act.

³⁸² Myria, Contact meeting 19 January 2022, available in French and Dutch at: <https://bit.ly/3sy9SFN>, 37.

³⁸³ Article 57/6/6(1) Aliens Act.

³⁸⁴ Article 57/6/6(2) Aliens Act.

³⁸⁵ *Ibid.*

This first country of asylum concept has been mainly applied to refuse asylum applications from Tibetans having lived in India before coming to Belgium. However, 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.³⁸⁶ 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.³⁸⁷

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

In 2021 the application of the first country of asylum led to the inadmissibility of the asylum application in 11 cases, 10 of those concerning Tibetans, having India as the first country of asylum and one concerning a person having a status other than the international protection status, in Greece.³⁸⁸ No such figures were provided for 2022.

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
10. Is tailored information provided to unaccompanied children? Yes No

1.1. Content of information

The Royal Decree on Immigration Office Procedure provides an information brochure to be handed to the asylum seeker when 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.³⁸⁹

³⁸⁶ See e.g. CALL, Decision No 129 911, 23 September 2014; No 123 682, 8 May 2014.

³⁸⁷ Myria, *Contact meeting*, 19 April 2016, available at: <http://bit.ly/2jGUHTW>, para 28.

³⁸⁸ Myria, *Contact meeting* 19 January 2022, available in French and Dutch at: <https://bit.ly/3sy9SFN>, 37.

³⁸⁹ Articles 2-3 Royal Decree on Immigration Office Procedure.

1.2. Information provision tools

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 is distributed at the dispatching desk of Fedasil, where people are designated to a reception accommodation place.³⁹⁰ Asylum seekers also receive an extensive brochure on the day they make the application.

In October 2019, Fedasil further launched the 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. Eight main topics are addressed: asylum and procedure, accommodation, living in Belgium, return, work, unaccompanied minors, health and learning. The website can only be reached if one is in Belgium.

In March 2021, the CGRS launched the website www.asyluminbelgium.be, providing information - tailored to the needs of asylum seekers - on the asylum procedure in Belgium in nine languages. It aims to reach as many asylum seekers as possible and inform them correctly about their rights and obligations during the asylum procedure. All texts are audio-supported so that an asylum seeker who is unable or less able to read has access to all the information. The website also presents four videos, through which the viewer can follow the itinerary of Zana, a refugee, who testifies about her itinerary from the beginning of her asylum application until the moment she receives a decision. This video testimony helps asylum seekers in an accessible way to visualize the different stages they will go through.

Besides this, some specific leaflets are also published and made available. The brochure ‘Women, girls and Asylum in Belgium’ was created 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. The CGRS also created brochures explaining the asylum procedure for unaccompanied and accompanied minors.³⁹¹ Leaflets with specific information are also available for asylum 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.³⁹²

Moreover, the CGRS has published several brochures on different aspects of the asylum procedure. A code of conduct for interpreters and translators and a so-called charter on interview practices serves as the CGRS protection officers’ code of conduct (see [Regular Procedure: Personal Interview](#)). All these publications are freely available on the CGRS website.³⁹³

A team from Vluchtelingenwerk Vlaanderen (‘Startpunt’) is present every morning at the gate of the Arrival centre to provide asylum seekers waiting in line with information about the asylum procedure and their rights. They distribute brochures with legal and practical information on various topics – such as the asylum procedure, the Dublin procedure and practical tips for people who are refused reception – which is translated into 14 languages.³⁹⁴

³⁹⁰ 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>.

³⁹¹ CGRS, Guide for unaccompanied minors who apply for asylum in Belgium; Guide for accompanied minors in the asylum procedure in Belgium, available at: <http://bit.ly/2kvQCpP>.

³⁹² The leaflets can be consulted at: <http://bit.ly/2l019Xb>.

³⁹³ CGRS, *Publications*, available at: <http://bit.ly/2kvQCpP>.

³⁹⁴ Flyers available in English at: <https://bit.ly/3NAuDJu>.

A procedural guide by Ciré was updated in 2019, and available in French.³⁹⁵

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

Individuals applying for asylum at the border are placed in detention, which affects their possibility to access to NGO's and UNHCR.

Asylum seekers on the territory have easy access to NGOs. 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.³⁹⁶

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.³⁹⁷ However, there is no structured approach to this so it depends on the reception centre. Currently, no information regarding such arrangements is available.

In any case, UNHCR's role during the asylum procedure should be highlighted. 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.³⁹⁸ 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.³⁹⁹

³⁹⁵ Ciré, *Guide de la procédure d'asile*, 2019, available in French at: <https://bit.ly/2tvuPFF>.

³⁹⁶ 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.

³⁹⁷ Article 33 Reception Act.

³⁹⁸ Article 57/23 bis Aliens Act.

³⁹⁹ *Ibid.*

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?⁴⁰⁰ 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 14 January 2022 (see [Safe country of origin](#)).

In 2022, the CGRS also prioritised the cases of people with certain profiles coming from certain countries of origin with a relatively high protection rate. In 2022, it concerned persons with specific profiles coming from, for example, Syria, Afghanistan, Yemen, Burundi, and Ethiopia. Not all cases from applicants from these countries of origin are treated with priority; the profiles for which this prioritised procedure is applied are selected through an internal screening procedure. This practice will be maintained in 2023.⁴⁰¹

Burundi: In a judgment of 22 December 2022, the CALL, in a chamber composed of 3 judges, stated that the mere fact of having applied for asylum in Belgium constitutes a sufficient reason to prove a well-founded fear of persecution in Burundi. The CALL considered that country of origin information shows that the Burundi regime considers this category of persons as opponents.⁴⁰² The CGRS has introduced a ‘cassation appeal’ before the Council of State (see [Onward appeal to the Council of State](#)) against the judgment of the CALL, stating that it does not agree with the legal motivation and that the judgment would have the undesirable consequence that all people with the Burundi nationality would almost automatically receive a status of international protection in Belgium. It announced that it will continue to examine Burundi applications on an individual basis.⁴⁰³

Afghanistan: After the takeover of power by the Taliban in August 2021, the CGRS decided in mid-August to temporarily and partially suspend decisions on Afghan applications for international protection.⁴⁰⁴ If possible, refugee status was still recognised. The following decisions were suspended:

- Decisions about subsidiary protection;
- Decisions about the non-admissibility of a subsequent application, if the new elements provided by the applicant solely relied on the changed general situation in Afghanistan;
- Refusal decisions.

⁴⁰⁰ Whether under the “safe country of origin” concept or otherwise.

⁴⁰¹ Myria, Contact meeting 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, 18.

⁴⁰² CALL 22 December 2022, nr. 282.473, available in French via <https://bit.ly/3zOgi6o>.

4. 19. Il découle de ce qui précède que si les sources consultées pour la rédaction du COI Focus du 28 février 2022 n’ont relevé jusqu’à présent aucun cas documenté de ressortissants burundais, demandeurs de protection internationale ou non retournés au Burundi en provenance de la Belgique et ayant été persécuté de ce seul fait, il n’en apparaît pas moins clairement que les sources, s’étant prononcées plus spécifiquement sur les Burundais ayant introduit une demande de protection internationale en Belgique, considèrent que le seul fait d’avoir séjourné en Belgique en qualité de demandeur d’asile est de nature à rendre une personne suspecte de sympathies pour l’opposition, aux yeux des autorités burundaises. Il ressort tout aussi clairement des informations résumées plus haut que le fait d’être suspect de sympathie pour l’opposition au régime en place à Bujumbura suffit à faire courir à l’intéressé un risque sérieux d’être persécuté du fait de ses opinions politiques ou des opinions politiques qui lui sont imputées. Il s’ensuit que, dans le contexte qui prévaut actuellement au Burundi, la seule circonstance que la requérante a séjourné en Belgique où elle a demandé à bénéficier de la protection internationale, suffit à justifier dans son chef une crainte avec raison d’être persécutée du fait des opinions politiques qui lui seraient imputées.

⁴⁰³ Myria, Contact meeting 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, 20-21.

⁴⁰⁴ CGRA, ‘Afghanistan Policy’, 6 January 2022, available in English on: <https://bit.ly/3lyzWpg>.

As of 24 May 2022, after updating the COI report and following some judgments of the CALL in cases concerning Afghanistan, the CGRS has fully resumed decision-making in Afghan cases.⁴⁰⁵ Overall, the CGRS indicates that the situation for many Afghans has clearly deteriorated. As a result, various “profiles at risk” can “count on refugee status”. Among these are journalists, human rights activists, political opponents and critics of the Taliban regime, people occupying certain functions under the previous government, staff members of the previous foreign military troops or foreign organisations, certain minorities, members of the LGBT community and other people opposing the conservative religious norms and values fostered by the Taliban rules, isolated minors or women not supported by a family network, family members of specific profiles at risk.⁴⁰⁶

Concerning the need for subsidiary protection, the CGRS states that the level of indiscriminate violence has significantly decreased since the Taliban takeover. It highlighted that there still is violence in the country but that most attacks are acts of targeted violence. As a result, the CGRS evaluated that there is no longer a real risk of falling victim to indiscriminate violence in Afghanistan. Therefore, subsidiary protection status will no longer be granted based on the security situation.⁴⁰⁷

This new policy was reflected in the protection rates of 2022: 43,9% of Afghan applicants received the refugee status (compared to 29,6% in 2021), whereas only 0,2% (compared to 16,7% in 2021) received the subsidiary protection status.

In several judgments of 12 and 13 October 2022, the CALL, in chambers composed of 3 judges, has examined certain issues that arise in the treatment of international protection applications by Afghan nationals.⁴⁰⁸

As for the subsidiary protection status based on article 48/4, §2, c) of the Aliens Act (indiscriminate violence), the CALL has confirmed the view of the CGRS on the significant decrease of the level of indiscriminate violence since the Taliban takeover leading to the conclusion that not all Afghan nationals risk, merely based on to their presence there, a threat to their life or person due to indiscriminate violence. However, regional risks persist, and the CALL considers that it is up to the applicant to indicate how their personal circumstances increase the risk for them individually.⁴⁰⁹

The CALL also considered that the socio-economic situation in Afghanistan does not constitute an ‘inhuman treatment’ in the sense of article 48/4, §2, b) of the Aliens Act. In this sense, the inhuman treatment must be caused by an intentional act or omission by an actor directed against the applicant. Although the socio-economic situation in Afghanistan has deteriorated since the takeover of power by the Taliban, this is not merely the consequence of this takeover but of a complex crisis for which not one specific actor is responsible. However, the CALL stressed that the current socio-economic situation could constitute a violation of article 3 ECHR and should be investigated in the context of issuing a return decision.⁴¹⁰

Concerning the risk of persecution for Afghans who fear being considered as ‘Westernised’ by the Taliban regime, the CALL has stressed that although applications of this group demand a careful approach, not all Afghans returning from Europe have adopted Western norms and values or would be considered as ‘westernised’ in Afghanistan. It is up to the applicant to prove that they have internalised Western values and norms or characteristics or behaviours in such a way that it cannot be expected of them to abandon

⁴⁰⁵ CGRA, ‘Afghan applications’, 24 May 2022, available in English: <https://bit.ly/3GAVJyh>.

⁴⁰⁶ CGRA, ‘Afghanistan: New Policy’, 2 March 2022, available in English: <https://bit.ly/35H5ple>.

⁴⁰⁷ CGRA, ‘Afghanistan: New Policy’, 2 March 2022, available in English: <https://bit.ly/35H5ple>.

⁴⁰⁸ For a resume of these judgments in Dutch and French, see the website of the CALL, ‘Specific issues Afghanistan’, 20 October 2022, <https://bit.ly/3UbUECF>.

⁴⁰⁹ CALL 12 October 2022, nr. 278 654, available in Dutch on: <https://bit.ly/407Weqd>; CALL 13 October 2022, nr. 278 701, available in Dutch on: <https://bit.ly/3oaUj7m>.

⁴¹⁰ CALL 12 October 2022, nr. 278 654, available in Dutch on: <https://bit.ly/407Weqd>; CALL 13 October 2022, nr. 278 701, available in Dutch on: <https://bit.ly/3oaUj7m>.

these. Applicants in these situations cannot be considered as constituting a 'certain social group' in the sense of article 48/3, § 4, d) of the Aliens Act but can be granted refugee status based on their political or religious convictions. In two judgments rendered in January 2023, the CALL has further specified in which cases someone can be considered as 'Westernised'.⁴¹¹

For Afghan applicants belonging to the Hazara minority, the CALL has confirmed the view of the CGRS that the Taliban regime does not systemically persecute Hazaras. However, belonging to the Hazara minority can constitute an additional risk of being the victim of sectarian violence and societal discrimination. Combined with other risk factors (e.g., elements of westernisation originating from a region with high ISKP presence, ...), persons belonging to the Hazara minority can be considered to have a well-founded fear of persecution because of their (perceived) political or religious convictions.⁴¹²

In a report published in October 2022, the organisation Nansen analysed the new policy of the CGRS in the context of Afghan applications for international protection. The organisation criticised some aspects of the new approach, such as the fact that not all Afghan applicants have been invited for a (new) interview after the takeover of power by the Taliban and that the examination of the need for subsidiary protection is not based on precise and up-to-date information from various sources.⁴¹³

Palestinians originating from Gaza: the treatment of requests for international protection from Palestinians from Gaza has been subject to many changes in the past years. For a long time, Palestinians from Gaza were almost always granted protection in Belgium. However, in December 2018, the CGRS announced a policy change following an increase in the number of asylum applications from Gazan Palestinians,⁴¹⁴ who were targeted by several dissuasion campaigns.⁴¹⁵

The treatment of the request depends primarily on whether the applicant is registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereafter UNRWA). Requests from those not registered with the UNRWA are treated just like any other request for international protection, using the standard criteria and procedure from articles 48/3 and 48/4 of the Aliens Act.

In principle, Palestinians from Gaza who are registered with the UNRWA fall under the exclusion clause of article 1D of the Geneva Convention. However, the CALL accepts that UNRWA cannot protect those whose individual safety is threatened following severe persecution and thus grants refugee status to people in such conditions.⁴¹⁶ For other UNRWA-registered Palestinian applicants from Gaza, the CGRS only grants international protection if they demonstrate that the protection from UNRWA does not suffice.

In November 2019, the CALL ruled that the UNRWA was still operational despite financial difficulties and that the security situation in Gaza was generally precarious but did not amount to systematic persecution or inhumane living conditions. Only in individual cases with exceptional circumstances could Gazan Palestinians with UNRWA support still be eligible for international protection in Belgium.⁴¹⁷

⁴¹¹ CALL 12 October 2022, nr. 278 653 (recognition of the refugee status), available in Dutch on <http://bit.ly/3zQHj9h>; CALL 13 October 2022, nr. 278 699 (annulment of the CGRS decision), available in Dutch on <https://bit.ly/3GDmD8v>; CALL 13 October 2022, nr. 278 701 (rejection), available in Dutch on: <https://bit.ly/3oaUj7m>; CALL 16 January 2023, nr. 283 214 (annulment of the CGRS decision), available in Dutch on <https://bit.ly/3zUzmAa>; CALL 19 January 2023, nr. 283 647 (recognition of the refugee status), available in Dutch on <https://bit.ly/3KuEiQY>.

⁴¹² CALL 13 October 2022, nr. 278 700 (recognition of the refugee status), available in Dutch on <https://bit.ly/43pt0WR>; CALL 28 March 2023, nr. 286 771.

⁴¹³ Nansen, 'Asylum – Afghanistan : quality of the examination of the need for international protection', 18 October 2022, available in Dutch on <https://bit.ly/3GDwFGH>.

⁴¹⁴ CGRS Communication from 5 December 2018, available [here](#) on the website of the CGRS. Last access 13 January 2021.

⁴¹⁵ 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>.

⁴¹⁶ See for example the judgments No 235 357; 235 359; 235 360 of 20 April 2020, where the CALL reformed the decisions of the CGRS and granted the refugee status to Palestinians from Gaza who demonstrated severe persecution threatening their individual safety.

⁴¹⁷ CALL, Decisions No 28889; 228888; 228946 and 228949; 18 and 19 November 2019.

Since July 2020, however, the CALL has annulled several decisions by the CGRS, ruling that the information on UNRWA it used in assessing asylum applications from Gazan Palestinians was outdated. After an update of the country information by the CGRS at the beginning of 2021, the CALL rendered several decisions in the course of February and March 2021 granting refugee status to UNRWA-registered applicants from Gaza, stating that the difficulties UNRWA was facing at that moment made the protection and assistance it is supposed to offer ineffective.⁴¹⁸ In the following months, the CGRS systematically revoked its decisions in cases from UNRWA-registered applicants from Gaza pending before the CALL, often right before the hearing. Consequently, the cases were not decided on the merits and were remitted to the CGRS, before which they are still pending. At the beginning of June, the CGRS temporarily suspended the treatment of cases of UNRWA-registered applicants from Gaza due to the unclear and rapidly changing situation in Gaza.⁴¹⁹ It counted on a swift improvement of the financial situation of UNRWA. As this was not the case, the CGRS lifted the suspension in mid-July and resumed decision-making, starting with the cases in which it had revoked the earlier refusal decision with an appeal pending before the CALL. The CGRS indicated that the possibility of obtaining assistance from UNRWA would be assessed on an individual basis and the granting of refugee status would depend on personal circumstances.⁴²⁰ In practice, UNRWA-registered applicants from Gaza were granted protection in many cases in the second half of 2021.⁴²¹ However, the CGRS also indicated that “for cases in which refugee status is granted due to the lack of assistance from the UNRWA (given its current difficult situation), it may be possible that refugee status is ended if in the future (e.g. within a year), it is established that the assistance or the financial situation of the UNRWA is guaranteed again on a permanent basis.”⁴²² In January 2023, the CGRS announced it would change the policy towards UNRWA-registered Palestinian applicants, using a more individualised approach. It considers that after having analysed the situation, the almost systematic granting of international protection on the mere basis of origin of these applicants is no longer justified. Moreover, the CGRS has established that certain persons that had received a protection status, have since then returned to their region of origin (e.g., Gaza). The CGRS prepares a review of their case, which could lead to the cessation or withdrawal of their protection status.⁴²³

El Salvador: for years, people fleeing El Salvador almost automatically received asylum in Belgium. Given the omnipresent gang violence, intimidation and high death rates in the country, the CGRS and CALL accepted that Salvadorians generally were in need of international protection. In October 2019, the CGRS announced a policy change on its website following increased arrivals from El Salvador. The CGRS stated this could result from the reigning perception that Salvadorians automatically receive international protection in Belgium, which would no(t) (longer) be the case.⁴²⁴ The result is that, whereas until mid-2019, more than 90% of requests for international protection were granted to Salvadorians, now less than 10% of applicants receive protection.

On 5 November 2020, the CALL aligned its case law with the CGRS policy in three judgments rendered in United Chambers.⁴²⁵ The CALL acknowledged that government protection in El Salvador is not always available or effective but is nevertheless not absent either. Therefore, the standard of proof to demonstrate the lack of efficient government protection is low but should nonetheless be provided in every individual case. Furthermore, it ruled that the situation in El Salvador – though precarious and riddled with targeted

⁴¹⁸ For example: CALL, Decision No 249 780, 24 February 2021; Decision No 249 955, 25 February 2021.

⁴¹⁹ CGRS communication on 4 June 2021, available [here](#) on the CGRS website. Last access 18 January 2022.

⁴²⁰ CGRS communication “The processing of applications filed by Palestinians (update)” on 13 July 2021, available [here](#) on the CGRS website. Last access 18 January 2022.

⁴²¹ CGRS communication “Asylum statistics 2021” on 10 January 2022, available [here](#) on the CGRS website. Last access 18 January 2022.

⁴²² CGRS communication “The processing of applications filed by Palestinians (update)” on 13 July 2021, available [here](#) on the CGRS website. Last access 18 January 2022.

⁴²³ Myria, ‘Contact Meeting’, 25 January 2023, p. 48, available in Dutch and French at: <https://bit.ly/3JKpIWk>, p. 22.

⁴²⁴ CGRS Communication from 10 October 2019, available [here](#) on the CGRS website. Last access 21 January 2021.

⁴²⁵ CALL judgments No 243 676; 243 704 and 243 705 of 5 November 2020.

violence – is not one of “indiscriminate violence” as defined in art. 15 (c) of the Qualification Directive as a condition to granting subsidiary protection. Concerning an individual fear for persecution or serious harm by the organised criminal groups, the CALL ruled that (1) there is no general risk for all Salvadorians returning after having abandoned the country and (2) a fear of extortion upon return is, in itself, not sufficiently grave to grant the applicant protection in Belgium. Specific individual circumstances must be evaluated on a case-by-case basis for a positive decision to be issued. In three judgements rendered on 25 January 2021, the CALL further refined its case law for what concerns cases in which the applicants had been the victim of extortion accompanied by death threats by the gangs. This raised the question as to possible repercussions towards the applicants upon return. The CALL found that the available country information did not allow to sufficiently assess the precise risk incurred by Salvadorians upon return after having left because of extortion by the gangs. It annulled the decisions taken by the CGRS, ordering further research on this matter.⁴²⁶

Ukraine: Not long after the start of the conflict in Ukraine, the first Ukrainian refugees reached the gates of the already overwhelmed arrival centre ‘Klein Kasteeltje’. On 28 February 2022, between 300 and 400 applicants for international protection were standing in line to apply for asylum. Since the reception crisis is still ongoing and the reception network could not handle all new arrivals, the centre went back not to let single men access, thus preventing them from being able to apply for international protection. The situation remained similarly precarious in the following days. As of 2 March 2022, Ukrainian applicants were handed out a document informing them about the possible creation of a separate statute and procedure for them. They were recommended to come back the week after.

Following the activation of the European Temporary Protection Directive through the Council of the European Union decision of 4 March 2022, Ukrainian refugees can register for the granting of temporary protection status. More information about this status, the procedure and the content of the temporary protection is provided in the section on ‘[temporary protection](#)’.

Ukrainian nationals who do not fall within the scope of temporary protection, can apply for international protection following the general international protection procedure. However, the CGRA announced on 28 February 2022 that it would freeze the treatment of requests for international protection introduced by Ukrainian citizens. This means no decisions are taken, and no personal interviews are organised. In January 2023, this was still the case, and the CGRS announced the suspension of these applications would endure as long as the temporary protection directive is applied.⁴²⁷

⁴²⁶ CALL judgments No 248 102; 248 104 and 248 105 of 25 January 2021, available at: <https://bit.ly/34HECL7>.
⁴²⁷ Myria, ‘Contact Meeting’, 25 January 2023, p. 48, available in Dutch and French at: <https://bit.ly/3JKpIWk>, 22.

Short overview of the reception system

Reception starts at the arrival centre of Fedasil, the agency responsible for the reception of applicants for international protection and certain other categories of people. In the arrival centre, Fedasil makes a first social and medical screening of the applicants and verifies whether they are entitled to and interested in reception. If so, they are accommodated in the arrival centre until a reception place adapted to their situation is found. Fedasil will then allocate them a reception place where the asylum seeker will benefit from material assistance (i.e. accommodation, meals, clothing, medical, social and psychological assistance, a daily allowance – pocket money – and access to legal assistance and services such as interpreting and training). If the asylum seekers decide not to be accommodated by Fedasil, they are not entitled to these forms of material assistance, except for medical assistance.

Belgium has over 33,000 reception places in total.⁴²⁸ The network comprises collective and individual reception structures. It consists of a 'first phase' where applicants for international protection are accommodated for the first days/weeks of their procedure. After this short period, applicants are transferred to a more definitive place in the second phase of the reception network. This phase has collective and individual reception places. At the time of writing, the first phase had 2,843 places, and the second phase had 30,469 places.⁴²⁹ Collective reception consists of reception centres managed by Fedasil, the Belgian Red Cross or other partners. Individual reception comprises housing managed by the Public Social Welfare Centre ('local reception initiatives') or NGOs. The current reception model, the implementation of which started in 2016, generally assigns people to collective reception centres. Only asylum seekers with specific vulnerabilities or reception needs are directly transferred to specialised NGO reception structures or individual structures.⁴³⁰

The reception centres are 'open', meaning the residents can come and go.

The right to reception ends once the procedure for international protection is finished. In the event of a positive decision, refugees (or beneficiaries of subsidiary protection) receive a residence permit and may start to look for their own accommodation. They are entitled to remain at the reception structure for an additional two months to allow them to find suitable accommodation. They may request assistance from a Public Social Welfare Centre.

Following a negative decision, the applicant receives an order to leave the territory. Those whose negative decisions are confirmed by the CALL are invited to go to one of the four Fedasil centres with 'open return places', where possibilities for voluntary return are discussed. In case applicants refuse to cooperate with their voluntary return, the Immigration Office is allowed to initiate a procedure of forced return, including the transfer of the person concerned to a closed centre. Fedasil does not manage the latter centres but the Immigration Office.

⁴²⁸ Statistics frequently provided by Fedasil at: www.fedasil.be/en/statistics. On 1 March 2023, the reception network consisted of 34.020 places.

⁴²⁹ Ibidem

⁴³⁰ Myria, *Contact meeting*, 21 June 2016, available at: <http://bit.ly/2k3obi9>.

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? Yes No

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.⁴³¹

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 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. 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 theory, no material reception conditions, with the exception of medical care, are due to a person with sufficient financial resources.⁴³² Expenses that have been provided in the context of reception can also be recovered in such cases.⁴³³ Nevertheless, no assessment of these financial resources or the actual risk of destitution of the person concerned occurs at the moment of the intake. In practice, the withdrawal of material aid is only rarely applied since Fedasil does not have the capacity to check the financial resources a person has.

The Aliens Act provides that “registration” and “lodging” are two different steps in the asylum procedure.⁴³⁴ The Reception Act, however, now clearly provides that an asylum seeker has the right to shelter from the moment they make the asylum application, and not only from the moment the asylum application is registered,⁴³⁵ in line with the recast Reception Conditions Directive.

In December 2018, an ‘arrival centre’ was established at the open reception centre ‘Klein Kasteeltje’/‘Petit Château’ located in the city centre of Brussels, where all asylum applications have to be made and registered and where applicants access the reception system. This means that both the Immigration Office and Fedasil are present at the arrival centre: the Immigration Office registers the asylum applications, and Fedasil screens the newly arrived asylum seekers to provide them with information on their right to reception conditions and access to the reception system for those in need. The arrival centre is also where

⁴³¹ Article 3 Reception Act.

⁴³² Article 35/2 Reception Act.

⁴³³ Article 35/1 Reception Act.

⁴³⁴ Article 50/1 Aliens Act.

⁴³⁵ Article 6(1) Reception Act.

asylum seekers who were already in the reception system but need to be reassigned to another centre – for example, because they were temporarily excluded from the reception system due to sanctions – need to present themselves and where a new reception centre is designated.

Impact of the reception crisis on the arrival centre: Due to security reasons, the registration centre has been moved from 'Klein Kasteeltje' to the offices of the Immigration Office on 29 August 2022.⁴³⁶ Since that date, applicants for international protection have to register at the Pachecolaan 44. Fedasil is not present in this registration centre. This means that applicants for international protection who do not receive access to the reception network are not seen by Fedasil and are asked by the Immigration Office to register on a waiting list. Those who do receive access to the reception network on the day of the application are transferred to 'Klein Kasteeltje' or another reception centre in the first phase. Applicants for international protection who are not immediately given access to the reception network can be invited to receive a place at a later date. These applicants are asked to present themselves at the 'Klein Kasteeltje'.

Applicants who receive shelter are first accommodated in the arrival centre or another centre in the first phase for at least 3 days. Here they undergo a medical screening where they can get vaccinated (optional) and have to undergo a tuberculosis test (compulsory). Fedasil assesses any specific reception needs that might arise (e.g. medical needs) and designates a reception centre in the second phase for the rest of the procedure.⁴³⁷ The document of designation by Fedasil is called "Code 207". The length of stay in the arrival centre depends on how quickly Fedasil finds an adapted place in the reception network and how many requests for international protection are made in one day. There are currently around 800 places in the arrival centre (about 600 regular places and about 200 buffer capacity).⁴³⁸

Asylum seekers who stay at private addresses will only be entitled to medical care. Their right to have the assistance of a pro bono lawyer may also be affected if they live with someone who has sufficient means. These applicants can always opt for material aid again if their asylum procedure is pending.

Constraints to the right to shelter

2018-2019: a shortage of places and a limit on the number of applications for international protection per day

The arrival centre 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 set a limit to the number of asylum applications that could be submitted per day, which was ruled to contradict national and international law by the Council of State.⁴³⁹ After this judgement, all asylum seekers were thus accommodated on the day they applied for international protection.

2020: limitation of reception for persons with an expired Dublin decision and an online registration form for the international protection procedure

In January 2020, the government issued new instructions on the 'Modalities relating to the right to material assistance of applicants for international protection with an Annex 26quater or a protection status in another Member State'.⁴⁴⁰ This instruction limited the material reception to medical assistance for two categories of applicants:

⁴³⁶ The Brussels Times, *Temporary solution proposed for migrant crisis at reception centre*, 24 August 2022, available in English at: <https://bit.ly/3iw02SG>.

⁴³⁷ Fedasil, 'In a reception centre', <http://bit.ly/3SkOkrm>.

⁴³⁸ Fedasil, *Opvangnetwerk voor asielzoekers in België*, available in Dutch at: <https://bit.ly/2O7iAtn> and Myria, *Contact meeting*, 20 January 2021, available in French at: <https://bit.ly/3sE592s>, 27.

⁴³⁹ CE, Decision No 243 306, 20 December 2018

⁴⁴⁰ Fedasil, 'Modaliteiten betreffende het recht op materiële hulp van verzoekers om internationale bescherming met een bijlage 26quater of een andere lidstaat', 3 January 2020, available in Dutch at: <https://bit.ly/3lmIFWU>.

- ❖ Applicants with a decision that designates another EU Member State as responsible for the asylum procedure based on 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 [Right to reception: Applicants with a protection status in another EU Member State](#)).

This new policy was adopted due to the overcrowding of the reception system and the increase of applications for international protection made by these two categories of applicants.

After several national, Flemish and French-speaking NGOs had introduced an appeal to the Council of State aiming for the suspension and the annulment of the Fedasil instructions, Fedasil withdrew the instructions of 3 January 2020 in September 2020, right before the hearing before the Council of State was scheduled.⁴⁴¹ Both categories of asylum seekers have thus since regained their full right to material assistance, including reception, during their asylum procedure.

2020: COVID-19 pandemic and online registration system

In the context of the COVID-19 pandemic, a significant number of applicants for international protection had no access to the reception system between March and October 2020. This was primarily due to the introduction of the online registration system for applications for international protection introduced by the Immigration Office (see [Registration of the asylum application](#)). Since applicants for international protection are only entitled to material assistance from the moment they make their application for international protection, and during that period, some applicants for international protection had to wait multiple weeks before they were able to make their application, they had no access to the reception system during this waiting period.⁴⁴² In addition, since the dispatching service of Fedasil in the arrival centre was closed from 17 March 2020 onwards, applicants who needed to re-integrate into the reception system (e.g. because they had left their reception place or after having received a decision that their subsequent application for international protection was declared admissible) were also not entitled to accessing the reception system.⁴⁴³

In August 2020, several NGOs denounced the Belgian state in front of the Brussels Court of first instance, thereby requesting a suspension of the online registration system. On 5 October 2020, the court condemned the Belgian state, stating that completing the online registration was equal to 'the formal lodging of a request for international protection' and should give the immediate right to reception conditions.⁴⁴⁴ The Belgian state was given 30 days to change the registration system to ensure the immediate access of applicants to the reception system. As a result, the Immigration Office suspended the online registration system and resumed the previous system of physical, spontaneous registrations on 3 November 2020.

⁴⁴¹ Myria, *Contact meeting*, 16 September 2020, available in Dutch at: <https://bit.ly/3SpsP94>, § 720.

⁴⁴² Vrt News, *Asylum seekers wait on the streets for weeks before being able to register: "Barely 1 in 3 gets the chance"*, 8 May 2020, available in Dutch at: <http://bit.ly/3t38o3D>.

⁴⁴³ Myria, *Contact meeting*, 6 May 2020, available in French at: <https://bit.ly/3sE592s>, 27.

⁴⁴⁴ ECRE, *Belgium: Electronic Registration System Blocking Access to Material Reception Declared Unlawful*, 9 October 2020, available at: <https://bit.ly/33VHO5t>; The Bulletin, *Court condemns Belgium's failure to receive asylum seekers*, available at: <https://bit.ly/33BVkeB>.

2021 – 2023: reception crisis: systematic denial of reception for male applicants for international protection and incidental denial of reception for families and minors

In September 2021, Fedasil announced that the reception network was under pressure, with the occupancy rate on 9 September 2021 being at 96% (the saturation capacity being 94%).⁴⁴⁵ Fedasil referred to several external factors limiting the number of available places.⁴⁴⁶ At the beginning of the reception crisis, some single men still gained access to the reception network. Since March of 2022 and until the time of writing, single men are systematically excluded from reception on their registration day. The Secretary of State for Asylum and Migration has confirmed this on numerous occasions.⁴⁴⁷ In practice, they can only obtain reception after going to court. When getting a court decision, the average waiting time for receiving reception is at least 3 months at the time of writing.⁴⁴⁸ The chances of obtaining shelter are small if a male applicant does not go to court. The reception crisis also severely impacted access to the asylum procedure in 2022 (see [Registration of the asylum application](#)).

Civil society organisations claim that the long-term mismanagement of the reception network has to be regarded as a main cause of the shortage, mainly because centres have been systematically closed and staff dismissed in periods of lower occupation rates. Despite the will expressed by the Secretary of State in 2020 to develop a stable reception system,⁴⁴⁹ no timely action was taken to prevent the resurgence of another situation of overoccupancy of the reception system. Fedasil personnel has organised several strikes in the course of 2021 en 2022 to denounce the lack of reception capacity and their working conditions.⁴⁵⁰

The limited access to the reception network is caused by a limited number of available places in the reception network. If more applicants for international protection are present at the registration centre, Fedasil decides to give accommodation to the 'most vulnerable' applicants for international protection.⁴⁵¹ In descending order of vulnerability, these are the most common categories:

- Unaccompanied minors and single women
- Families with children
- Families without children
- Single men

As a result, between October 2021 and March 2022, not all single men could access the reception network.⁴⁵² Since March 2022, access to the reception network has been systematically denied to single men applying for international protection, as confirmed by the Secretary of State for Asylum and Migration.⁴⁵³ Homeless shelters in the city of Brussels are complete, and the applicants have no other

⁴⁴⁵ Myria, *Contact meeting*, 15 September 2021, available in French and Dutch at: <https://bit.ly/3fITdhe>, 45.

⁴⁴⁶ Fedasil, 'Additional reception places needed', 16 November 2021, <http://bit.ly/3FAKdIZ>; according to Fedasil these factors were the covid 19-pandemic, the floods in southern part of Belgium in 2021 and the evacuation of Afghan nationals after the fall of Kabul.

⁴⁴⁷ Latest example: Chamber of Representatives, CRIV 55 PLEN 235, 16 March 2023, p. 18, available in Dutch and French at: <https://bit.ly/3LvFMwD>.

⁴⁴⁸ Myria, 'Contact meeting', 23 November 2022, p. 30, available in French and Dutch: <https://bit.ly/3Lxwccu>.

⁴⁴⁹ Chamber of Representatives, Doc 1580/014, *Policy Note on asylum and migration*, 04 November 2020, available in Dutch/French at: <https://bit.ly/3c9hy9z>

⁴⁵⁰ The Bulletin, 'Staff at Petit-Château stage 24-hour strike due to overcrowding', 18 October 2021, available at: <https://bit.ly/3CpXf2V>; The Brussels Time, 'Asylum centre in Brussels goes on strike on Monday', 16 October 2021, available at: <https://bit.ly/3tPzs8O>; Bruzz, 'Nieuwe staking bij Klein Kasteeltje', 26 October 2021, available at: <https://bit.ly/3Kslqzk>; De Standaard, 'Asielopvang sukkelt van de ene crisis naar de andere', 9 December 2021, available at: <https://bit.ly/3pNkWGgA>; VRT Nws, 'Asylum workers demonstrate for more reception places', 9 December 2021, available at: <https://bit.ly/3l28DD3>.

⁴⁵¹ Fedasil, '4.000 reception places created in 2022', 20 January 2023, available at: <http://bit.ly/3JVzZz7>.

⁴⁵² ECRE, 'Belgium: Asylum Seekers (Once Again) Left Destitute', 29 October 2021, available at: <https://bit.ly/3hT2HC3>; ECRE, 'Belgium: Accommodation Shortage Leaves Men in the Cold, Court Insists on Reception Conditions, Charities Launch Judicial Challenge, Media Access Curtailed', 3 December 2021, available at: <https://bit.ly/3wzNHS3>; The Brussels Times, 'A crisis foretold: Belgium's system for asylum seekers is overwhelmed', 18 November 2021, available at: <https://bit.ly/3tAog0W>; Infomigrants, 'Belgium: Hundreds of asylum seekers on the street', 10 December 2021, available at: <https://bit.ly/3MxGJCJ>.

⁴⁵³ Chamber of Representatives, CRIV 55 PLEN 235, 16 March 2023, p. 18, available in Dutch and French at: <https://bit.ly/3LvFMwD>.

option than to sleep rough, returning to the arrival centre every day hoping to get access to a reception place. Families with children and unaccompanied minors were prioritised in searching for a reception place and gained access to the reception network on most days.

However, in October 2022, there were some days on which Fedasil could not provide shelter to families with children.⁴⁵⁴ Fedasil did not monitor the number of families left destitute. Due to an increase in the number of unaccompanied minors for international protection in the second half of 2022, the reception network for minors was saturated. As a result, Fedasil could not provide accommodation to all unaccompanied minors on the day of their application for international protection.⁴⁵⁵ In practice, self-proclaimed male minors above 16 did not receive accommodation on the day of their application. The screening of which minor received a reception place was done on the basis of physical characteristics in front of the registration centre.⁴⁵⁶ Initially, this group without reception could choose to undergo an age assessment. If their minority was proven, they were given a reception place. On 26 October 2023, the Guardianship Service no longer conducted age assessments for this group. According to the Service, the situation was “untenable for the hospitals and the Guardianship Service” since the age assessment test had to be conducted in “demeaning circumstances”.⁴⁵⁷ As a result, the self-proclaimed minor without reception could not contest the doubt on their minority. This in turn prolonged the non-reception of the self-proclaimed minor. In December the occupancy rate of the reception network for minors and the number of minor applicants for international protection decreased again. This allowed Fedasil to once again provide reception to all unaccompanied minors on the day of their application. On 15 January 2023, Fedasil stated that 294 unaccompanied minors were not given reception on the day of their application. 70 self-proclaimed minors were found to be above 18 years of age after an age assessment and were not given reception. 202 unaccompanied minors were given reception after undergoing an age assessment or after a certain period of time. 22 unaccompanied minors were gone missing.⁴⁵⁸ On 9 January 2023, Caritas International announced that 24 unaccompanied minors were officially reported missing.⁴⁵⁹

Applicants without access to the reception network are not given an individually motivated decision.⁴⁶⁰ They are merely informed about the shortage of places, and instructed to register themselves on a waiting list.⁴⁶¹ Registration on this waiting list does not guarantee a reception place within a predefined time limit. In addition, if someone from a ‘more vulnerable’ category has to register on this waiting list, this person is given priority. Once someone can be given a reception place, this person is invited to present himself at ‘Klein Kasteeltje’. Fedasil indicated it can invite 25 persons from this waiting list on a daily basis.⁴⁶² The number of persons invited is based on the amount of available places on a given day.⁴⁶³

Applicants without access to the reception network have to sleep rough for multiple weeks. This has resulted in several squats in Brussels, inhabited by asylum seekers. Between October 2022 and February of 2023 there was a squat of around 1000 persons in ‘Rue de Palais’. The situation soon became precarious, due to unsafe living conditions and the spread of infectious diseases.⁴⁶⁴ As a result, the Federal government and the region of Brussels decided to evacuate this squat in February. After the evacuation of the residents in the squat, Fedasil indicated that it provided shelter to 840 registered asylum

⁴⁵⁴ Brussels Times, ‘Belgium’s reception crisis: Over 100 families and children on the streets tonight’, 3 November 2022, available at: <http://bit.ly/42npsEb>.

⁴⁵⁵ Myria, ‘Contact Meeting’, 23 November 2022, p. 30, available in Dutch and French at: <https://bit.ly/3Lxwccu>.

⁴⁵⁶ Ibidem, p. 31.

⁴⁵⁷ Ibidem, p. 42.

⁴⁵⁸ Myria, ‘Contact Meeting’, 25 January 2023, p. 48, available in Dutch and French at: <https://bit.ly/3JKpIWk>.

⁴⁵⁹ Brussels Times, ‘Belgian Reception Crisis: 24 underage asylum seekers officially missing’, 11 January 2023, available at: <http://bit.ly/3YU6pOK>.

⁴⁶⁰ Chamber of Representatives, Nicole de Moor, CRIV 55 COM 1010, 1 March 2023, p. 26, available in Dutch and French at: <https://bit.ly/3JmL4rn>.

⁴⁶¹ The waiting list can be accessed online at: <http://bit.ly/3LzAlr0>.

⁴⁶² Myria, ‘Contact Meeting’, 25 January 2023, page 40, available in Dutch and French at: <https://bit.ly/3JKpIWk>.

⁴⁶³ Fedasil, ‘Inbeslagname goederen bij Fedasil’, 20 January 2023, available in Dutch at: <https://bit.ly/3jnTRAj>.

⁴⁶⁴ VRT NWS, ‘Infectious diseases rife at Schaarbeek squat housing around 800 asylum seekers’, 9 December 2022, available at: <http://bit.ly/3zwD6HF>.

seekers who were living in the squat.⁴⁶⁵ Between March and April 2023 two other buildings were squatted by asylum seekers.⁴⁶⁶ They were quickly evacuated and accommodated in shelter for homeless and destitute persons. Fedasil announced that it would accommodate these persons within the reception network as soon as possible. Since the summer of 2022, destitute asylum seekers were also living in 20 tents near the Arrival Centre in the 'Canal Zone'. After the evacuation of the 'Rue de Palais' squat, other destitute asylum seekers searched shelter in tents at the Arrival Centre as well.⁴⁶⁷ As a result, the number of tents increased to 110 with an estimated 250 persons.⁴⁶⁸ In the beginning of March 2023, the mayor of Molenbeek decided to evacuate this makeshift camp.⁴⁶⁹ 80 registered asylum seekers with a right to shelter were immediately given shelter by Fedasil. A remaining group of 55 asylum seekers were brought to temporary shelter for destitute and homeless persons. Fedasil announced that it would accommodate these persons within the reception network as soon as possible. Apart from these squats, there have been several smaller squats in the city of Brussels.⁴⁷⁰ Civil society organisation Samusocial counted 2000 persons in Brussels squats in 13 buildings.⁴⁷¹

Medical organisations have denounced the dire medical situation for destitute asylum seekers on multiple occasions. On 12 October 2022 Doctors Without Borders Belgium opened a medical unit at the registration centre. After one month, they conducted more than 500 medical consultations. 94% of the patients were male, of which 90% were sleeping rough. The organisation counted 40 cases of cutaneous diphtheria and 99 cases of scabies, it gave 20 prescriptions to resume medical care for chronic non-transmittable illnesses like diabetes, epilepsy and hypertension.⁴⁷² In the winter of 2022, Doctors of the World issued a press release warning for the risk of hypothermia for destitute asylum seekers.⁴⁷³

Collective legal proceedings

Since the beginning of the reception crisis in October 2021, several NGOs have asked the Federal government to find solutions. Although possibilities of opening new reception places were urgently examined and several new reception centres – some structural, some emergency shelters – were announced to open shortly, these processes took several weeks, often due to the unwillingness of local administrations to admit the opening of a centre on their territory.⁴⁷⁴ The Secretary of State was unwilling to provide emergency shelter in empty hotel rooms, stating this might provoke a pull factor.⁴⁷⁵ Although several new places opened in 2021 and 2022, these were insufficient for all applicants in need of shelter.⁴⁷⁶

⁴⁶⁵ VRT NWS, 'Schaarbeek asylum seeker squat to be sealed on Wednesday', 13 February 2023, available at: <http://bit.ly/40JqPvF>.

⁴⁶⁶ VRT NWS, 'Video: Asylum seekers occupy future National Crisis Centre HQ', 13 March 2023, available at: <http://bit.ly/3MegVO8>.

⁴⁶⁷ VRT NWS, '150 asylum seekers from Paleizenstraat squat spend the night on the street', 16 February 2023, available at: <http://bit.ly/3nNSGMD>.

⁴⁶⁸ Doctors without Borders, 'Opvangcrisis: Artsen Zonder Grenzen hekelt chaos aan Klein Kasteeltje', available in Dutch at: <http://bit.ly/3zv1UzY>.

⁴⁶⁹ VRT NWS, 'Video: Brussels asylum seeker tent camp cleared', 7 March 2023, available at: <http://bit.ly/3mbFTmM>.

⁴⁷⁰ De Standaard, 'Wij doen het werk van de overheid zonder de middelen van de overheid', 28 January 2023, available in Dutch at: <http://bit.ly/3zz0Hru>.

⁴⁷¹ Het Nieuwsblad, 'Samusocial telt tot 2.000 mensen in Brusselse kraakpanden', 28 February 2023, available in Dutch at: <http://bit.ly/3Uht9Tu>.

⁴⁷² Doctors without Borders, '1 maand medische interventie aan Pacheco-registratiecentrum: cijfers, tendenzen en aanbevelingen', available in Dutch at: <http://bit.ly/3KAZfv1>.

⁴⁷³ Doctors of the World, 'Belgique, personnes en marge de la société', 13 December 2022, available in French at: <http://bit.ly/3GkXH5z>.

⁴⁷⁴ De Standaard, *Noodopvang in Glaaien kan morgen openen*, 2 December 2021, available at: <https://bit.ly/3vOlrcV>; De Tijd, *Mahdi krijgt voorlopig geen grip op opvangcrisis*, 28 October 2021, available at: <https://bit.ly/3CrX0Jn>

⁴⁷⁵ Twitter, Sammy Mahdi, 17 November 2021, available at: <https://bit.ly/35KjLaL>; Knack, *Socialistische en groene Kamerleden verhogen druk op Sammy Mahdi in opvangcrisis*, 24 November 2021, available at: <https://bit.ly/3MzbR4B>.

⁴⁷⁶ The Brussels Time, 'Closed Hotel Mercure in Evere becomes reception center for asylum seekers', 9 December 2021, available at: <https://bit.ly/3vRM81n>; Bruzz, *Gesloten Hotel Mercure in Evere wordt*

On 18 November 2021, several organisations (Vluchtelingenwerk Vlaanderen, CIRÉ, Médecins sans Frontières, Médecins du Monde, NANSEN vzw, ADDE, Ligue des Droits Humains, SAAMO and the Order of French and German speaking bar associations (OBFG)) declared the Belgian State and Fedasil in default at the Brussels court of first instance. In a judgment of 19 January 2022, the court condemned the Belgian State and Fedasil for not ensuring access to the asylum procedure and to reception conditions and ordered both parties to ensure the respect of these fundamental rights, imposing a €5000 penalty payment for the respective parties for each day during the following 6 months on which at least one person did not receive access to the asylum procedure (penalty for the Belgian State) or to the reception system (penalty for Fedasil).⁴⁷⁷ Although the situation had improved slightly since the opening of new places in December 2021 and the opening of an emergency night shelter in January 2022,⁴⁷⁸ the court deemed the state of the reception system too unstable to guarantee access to the asylum procedure and to reception conditions for all applicants in the near future. The court also explicitly stated that the waiting list used by Fedasil is unlawful.

After this judgement, single men were still being denied access to the reception network, and the waiting list was still used. On 24 January 2022 – only 5 days after the Court of First Instance ruled against the Belgian State and Fedasil – the government launched a ‘five-point action plan’ to counter the ‘growing problem of asylum seekers crossing Belgium’.⁴⁷⁹ One of the pillars of this action plan consisted in giving priority to ‘new’ asylum seekers, who had not yet applied for or/and received asylum in another EU member state. Male applicants with a Eurodac hit indicating they had already applied for or received international protection in another country, were denied access to the reception network and were told to send an e-mail to Fedasil in order to be put on the waiting list.⁴⁸⁰ Between the 24th of January and 23rd of March of 2022, 813 applicants with a Eurodac hit were excluded from reception.⁴⁸¹

As a result, the group of 10 NGO's filed a new appeal at the court of first instance, requesting an increase of the penalty payment from €5000 to €10.000 for each day that the judgement would not be respected. In a judgement of 25 March 2023, the Court condemned Fedasil again, thereby increasing the penalty payment to €10.000. The court repeated that Fedasil is bound by the European Reception Directive to provide accommodation to all first-time applicants for international protection, regardless of external factors influencing the availability of places. It specifically stated that it is unlawful to automatically exclude applicants for international protection with a Eurodac hit or with a protection status in another EU member state. Fedasil introduced an appeal against this judgement of 25 March at the Court of Appeal. This led to a new judgement on 13 October 2022. The Court of Appeal discarded Fedasil's arguments and upheld the judgement of the 25 March. It also lifted the period of 6 months during which the penalty fees could be claimed. It argued that Fedasil did not provide a concrete action plan to solve the reception crisis. The court went further and stated that Fedasil ‘deliberately and manifestly disregards the judgement of the 19 January 2022’. Therefore, the penalty fees can be claimed for every working day that Fedasil does not respect the judgment of 24 January 2022, until the Court of First instance has delivered a judgement on the merits of the case. This is to be expected in the course of 2023.

⁴⁷⁷ *opvangplaats asielzoekers*, 9 December 2021, available at: <https://bit.ly/3KuFUZh>; Bruzz, *Opvangcentrum voor 40 asielzoekers opent in Elsene*, 24 December 2021, available at: <https://bit.ly/3hU3JNW>.

⁴⁷⁸ Brussels Court of First Instance, Judgment nr. 2021/164/C of 19 January 2021, available in French at <https://bit.ly/363Nqvk>; The Brussels Time, ‘Court condemns Belgium for asylum crisis, the situation remains precarious’, 21 January 2022, available at: <https://bit.ly/3H2kTUo>.

⁴⁷⁹ VRT Nws, ‘Asielzoekers kunnen voor nachtopvang terecht in voormalig ziekenhuis’, 4 January 2022, available at: <https://bit.ly/3CuJpfF>.

⁴⁸⁰ Website Secretary of State Sammy Mahdi, ‘Sammy Mahdi sharpens approach of asylum seekers who already applied in another country’, 24 January 2022, available in French at <https://bit.ly/35Jk3Pb>; Bruzz, ‘Sammy Mahdi sharpens approach of asylum seekers who already applied in another country’, 24 January 2022, available in Dutch at: <https://bit.ly/3HT2vxb>; RTBF, ‘Belgium sharpens approach of asylum seekers who already applied in another country’, 24 January 2022, available in French at: <https://bit.ly/3i015WQ>.

⁴⁸¹ Chamber of Representatives, Sammy Mahdi, ‘CRIV 55 COM 672’, 26 January 2022, p.17 available in Dutch and French at: <https://bit.ly/3TnqQIU>.

⁴⁸¹ Myria, ‘Contact Meeting, 23 March 2022, available in Dutch and French at: <https://bit.ly/3lthNTX>.

Despite these judgements, Fedasil has continued to violate the right to reception up until the time of writing.⁴⁸² This has been confirmed by Fedasil in several official communications.⁴⁸³ Fedasil has not paid the penalty fees that are due, hereby violating legal judgements.⁴⁸⁴ The 10 NGOs have tried to demand the payment of the penalty fees, so far with no success. Legal procedures on the payment of these penalties are currently pending.

On 13 December 2022, Dunja Mijatovic, the Commissioner for Human Rights for the Council of Europe sent a letter to the Belgian secretary of state for asylum and migration, Nicole de Moor.⁴⁸⁵ She expressed her concern about the deteriorating reception crisis in Belgium. She noted that the government's measures so far “do not appear to be sufficient to address the complexity and magnitude of the existing needs”. She also noted “significant delays in enforcing” the decisions of the Brussels Labour Court. In her response, de Moor provided an overview of the measures taken by the Belgian government to tackle the reception crisis.⁴⁸⁶ She further stated: “I regret that there have been periods in which my services were not able to provide a reception place to all asylum applicants the same day of filing for international protection. [...] Not all of the court decisions could be implemented immediately. This is by no means a political decision, but a sheer material impossibility”.

Individual legal proceedings

A first line legal helpdesk was set up by the Bureau of legal aid of Brussels, volunteer lawyers and law students and the NGO Vluchtelingenwerk Vlaanderen, providing legal information to applicants for international protection without access to a reception place and linking them to lawyers for further legal support.⁴⁸⁷ In many of these cases, a ‘unilateral request’ (non-contradictory procedure in extreme urgency) was lodged before the presidents of the Labour courts, to claim the right to reception. In many of these cases, labour court presidents have accorded the right to reception to the applicants, condemning Fedasil and requesting it to give them immediate access to a reception place. If Fedasil does not provide immediate access, it should pay a fine of €100 to €250 per working day it fails to respect the judgement. Applicants who present themselves at the arrival centre after having received a positive judgement from the Labour court, do not get immediate access to a reception place: they are asked to make an appointment with the Fedasil dispatching service by e-mail. In the beginning of the reception crisis, applicants in this situation were given an appointment for accommodation within a week. At the time of writing, the average waiting time increased to between 4 and 5 months according to Fedasil. Fedasil now has a waiting list of 2400 applicants with a court decision, who should be given immediate access to reception.⁴⁸⁸ Fedasil does not pay any fine for these persons, hereby not respecting the judgement of the labour court. This practice has been confirmed on several occasions by the Secretary of State for Asylum and Migration and Fedasil.⁴⁸⁹ If Fedasil does not pay the fines to an individual, the

⁴⁸² The Brussels Times, ‘Despite 6,000 convictions, Belgium still refuses to tackle reception crisis’, 23 January 2023, available at: <https://bit.ly/3YQ7hEM>.

⁴⁸³ Fedasil, ‘4.000 reception places created in 2022’, 20 January 2023, available at: <http://bit.ly/3JVzZz7>; Fedasil, ‘A reception network still under pressure’, 24 November 2022, available at: <http://bit.ly/3LAgNbr>; Fedasil, ‘Review 2021: Reception – Resettlement – Voluntary Return’, July 2022, p. 8, available at: <https://bit.ly/40j55G4>; Fedasil, ‘A reception network under pressure’, 25 July 2022, available at: <http://bit.ly/42vuwGA>; Fedasil, ‘Entrance arrival centre’, 8 December 2021n, available at: <http://bit.ly/3FHFYVQ>; Fedasil, ‘Additional Reception Places Needed’, 16 November 2021, available at: <http://bit.ly/3FAKdLZ>.

⁴⁸⁴ Fedasil, ‘Inbeslagname goederen bij Fedasil’, 20 January 2023, available in Dutch at: <https://bit.ly/3yWVbyy>.

⁴⁸⁵ Dunja Mijatovic, ‘Letter to Belgium concerning reception of applicants for international protection’, CommHR/DM/sf 040-2022’, 13 December 2023, available at: <https://bit.ly/3Kz8RGi>.

⁴⁸⁶ Nicole de Moor, ‘Concerning: reception of applicants for international protection’, CAB/NdM/NR/, 16 December 2022, available at: <https://bit.ly/3KzaO5C>.

⁴⁸⁷ Tijd voor Mensenrechten, ‘The Belgian reception crisis: pushing for a solution’, 17 March 2023, <https://bit.ly/42VVcjQ>.

⁴⁸⁸ Myria, ‘Contact Meeting’, 25 January 2023, p. 31, available in Dutch and French at: <https://bit.ly/3JKpIWk>.

⁴⁸⁹ For example: Chamber of Representatives, Nicole de Moor, CRIV 55 COM 1001, 15 February 2023, p. 38, available in Dutch and French at: <https://bit.ly/3Lwh5QK>; Chamber of Representatives, Nicole de Moor, CRIV 55 COM 1010, 1 March 2023, p. 26, available in Dutch and French at: <https://bit.ly/3JmL4rn> and Fedasil, ‘Sasies de biens à Fedasil’, 20 January 2023, available in French at: <http://bit.ly/3UaAgBE>.

claimant can proceed to the enforcement judge in order to claim goods as a compensation for these fines. These goods are then sold at a public auction. The income from this auction is transferred to the claimant. In 2 cases, individual applicants succeeded in obtaining goods owned by Fedasil.⁴⁹⁰ As a reaction to this event, the Secretary of State for Asylum & Migration stated that it is a matter of ‘common sense’ not to pay the fines and to prevent claiming these goods.⁴⁹¹

Fedasil has been condemned by Belgian labour courts 8600 times in 2022.⁴⁹² Until 15 March 2023, Fedasil has been condemned by Belgian labour courts 812 times in 2023.⁴⁹³ The total amount of fines that are due is estimated to be above 100 million euros. In 3 individual cases, applicants for protection went to the enforcement judge to enforce the payment of 315.000 euros in total.⁴⁹⁴ The amount of cases brought before the Brussels Labour Court, led this court to publish a press release in May of 2022. It stated that in normal years it treats -on average - 38 cases against Fedasil. At the time of the press release, the number of cases brought before the Brussels Labour Court reached 1007. The Court exposed how it does not receive any information about the waiting list from Fedasil. As a result, it is impossible for the Court to estimate when an applicant on this list will receive shelter. In several judgments, the Court ruled that this waiting list violates the Belgian Reception Law. The Court further exposes that Fedasil does not put forward any legal arguments in support of its defence and limits itself to invoking the saturation of its network. According to the Court, this raises the question of whether there is even a dispute, given the absence of any challenge by Fedasil.⁴⁹⁵

In a ruling of 13 June 2022, the Brussels Labour Court communicated an individual case against Fedasil to the public prosecutor's office.⁴⁹⁶ In its communication the Court explained “that Fedasil appears to have a deliberate, concerted and persistent practice of not granting the right to reception to applicants for international protection who are clearly entitled to it”. The Court asked the public prosecutor to start an investigation on the claim that there “seems to have been put in place a system by persons holding public authority with a view to not granting the right to reception guaranteed by the Reception Law”. This could be a possible violation of Belgian penal law, prohibiting measures contrary to the law concerted by a public authority. On 24 June 2022 the public prosecutor closed the investigation, indicating that there was no violation.⁴⁹⁷

In a ruling of 28 March 2023, the Brussels Labour Court fined Fedasil for €2.500 to be paid as a ‘civil penalty’, because of “clear procedural abuse”.⁴⁹⁸ The court states in the judgement that Fedasil showcases a deliberate and manifest violation of the Reception Law, hereby not executing its legal mission. In this case, Fedasil fails to provide adequate legal justification for the violation of the Reception Law. Continuing, the Court states that an aggravating circumstance is disruption of the public service of justice: “this disruption is very significant in view of the number of cases and the urgency with which they have to be dealt with, profoundly affecting the functioning of the French-speaking labour court of Brussels, to the detriment of this court and, ultimately, of all its litigants”.

⁴⁹⁰ The Brussels Times, Depsite 6000 convictions, Belgium still refuses to tackle reception crisis, 23 January 2023, available at: <https://bit.ly/3YQ7hEM>.

⁴⁹¹ VRT NWS, ‘Dwangsommen blijven staatssecretaris De Moor (CD&V) in de nek hijgen’, 1 February 2023, available in Dutch at: <http://bit.ly/4145Kvp>.

⁴⁹² Information provided by Fedasil in March 2023

⁴⁹³ Nicole de Moor, Chamber of Representatives, CRIV 55 COM 1044, available in Dutch at: <https://bit.ly/3Uckhmz>, 24.

⁴⁹⁴ Nicole de Moor, Chamber of Representatives, CRIV 55 COM 990, available in Dutch and French at: <https://bit.ly/43615Lu>, 3-4.

⁴⁹⁵ Francophone Labour Court of Brussels, ‘Communiqué de presse – Contentieux Fedasil’, 24 May 2022, available in French at: <http://bit.ly/3Gf7VEA>.

⁴⁹⁶ Francophone Labour Court of Brussels, 22/1343/K, 13 June 2022, available in French at: <https://bit.ly/3MANYfF>.

⁴⁹⁷ Openbaar Ministerie, ‘Communiqué de Presse – Bruxelles’, 24 June 2022, available in French at: <http://bit.ly/3KgamyG>.

⁴⁹⁸ Francophone Labour Court of Brussels, 2022/CB/15, 28 March 2023.

In order to enforce domestic judgements, some applicants introduced a request for interim measures at the European Court of Human Rights. The first interim measures concerning reception conditions in Belgium were granted in the case of *Camara v. Belgium* on 31 October 2022.⁴⁹⁹ The Court decided to enjoin the Belgian State to enforce the Brussels French language Labour Court's order and provide the applicant with accommodation and material assistance to meet his basic needs. At the time of writing, the Court granted interim measures in approximately 1.132 cases.⁵⁰⁰

In December 2021, the EUAA and Belgium signed their first operating plan, focusing on increasing reception capacity and improving reception quality, in the short and medium term.⁵⁰¹ An amendment was signed in May 2022 following the full-scale invasion of Ukraine and subsequent displacement, adding a third pillar of enhancing the Belgian authorities' capacity to implement the TPD effectively.⁵⁰² A second amendment was signed in November 2022, extending the operational support throughout 2023.⁵⁰³

Throughout 2022, the EUAA deployed 21 different experts in Belgium,⁵⁰⁴ mostly external experts (17). Most of them were junior asylum information provision experts (11), along with 4 roving team members, 2 intermediate reception child protection experts, 2 junior reception child protection experts and 2 senior social workers.⁵⁰⁵

As of 20 December 2022, a total of 20 EUAA experts were deployed in Belgium, out of which 11 were junior asylum information provision experts, 3 roving team members, 2 intermediate reception child protection experts, 2 junior reception child protection experts and 2 senior social workers.⁵⁰⁶

Reception support

In 2022, the EUAA provided Belgian national reception authorities with 150 containers, including 91 for accommodation use and 59 for other reception use.⁵⁰⁷ These containers were installed in emergency shelter in Berlaar, an old military site. In March of 2023, the government announced that it will install an additional 600 container units provided by the EUAA to house 750 persons in emergency shelter. At the time of writing, the precise location for these additional containers is unknown.

Assistance to migrants with no right to reception conditions

Since 2017, many migrants, mostly originating from Sudan, Ethiopia and Eritrea, are sleeping in the North district of Brussels in the public space such as the park opposite the (former) Immigration Office building. Many of them refuse to apply for asylum and are therefore not entitled to accommodation under the Reception Act. Many 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. According to NGOs, they refuse to apply for asylum because of feelings of mistrust towards a government that has abandoned them. In February 2019, MSF demonstrated in a report that the mental health of these migrants 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

⁴⁹⁹ ECHR, *Camara v. Belgium*, no. 49255/22, 31 October 2022, available at: <https://bit.ly/3lfMJ1i>.

⁵⁰⁰ Similar cases are: ECHR, *Al Shujaa and others v. Belgium*, no. 52208/22, 13 December 2022, available at: <https://bit.ly/3XMztqQ> and ECHR, *Msallem and 147 others v. Belgium*, no. 48987/22, 15 November 2022, available at: <https://bit.ly/3SiFEIrlr>.

⁵⁰¹ EUAA, 'Belgium: EASO launches operation to support reception authorities', 16 December 2021, available at: <http://bit.ly/3ZSYoud>.

⁵⁰² EUAA, *Operational Plan 2022 agreed by the European Union Agency for Asylum and Belgium, amendment 1*, May 2022, available at: <https://bit.ly/3YAc0cL>, annex 1.

⁵⁰³ EUAA, *Operational Plan 2022-2023 agreed by the European Union Agency for Asylum and Belgium, amendment 1*, November 2022, available at: <https://bit.ly/3Jp4FZo>.

⁵⁰⁴ EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.

⁵⁰⁵ Information provided by the EUAA, 28 February 2023.

⁵⁰⁶ Information provided by the EUAA, 28 February 2023.

⁵⁰⁷ Information provided by the EUAA, 28 February 2023.

opportunities and support.⁵⁰⁸ These problems also prevent them from accessing the asylum procedure or trying to obtain another legal status.⁵⁰⁹

At the end of September 2017, several NGOs including Ciré, Artsen zonder Grenzen, Plateforme des citoyens and Médecins du Monde set up a Humanitarian Hub for these migrants, where they receive medical and psychological help, legal advice, clothes, and family tracing assistance. This hub, formerly located near the Northern train station in Brussels, is currently located at the Brussels port and continues to provide aid.⁵¹⁰ The Red Cross has opened a day centre next to the humanitarian hub where these migrants can stay during the day, take a shower and have a meal at noon and in the evenings. Some NGO's are present to provide information about the asylum system in Belgium. Through their new 'Reach Out' project, a team of Fedasil is also informing migrants without a residence permit about their rights and options in terms of asylum and return.⁵¹¹

In the summer of 2022, the Humanitarian Hub saw a significant increase in the number of meals distributed on a daily basis. This was primarily due to the reception crisis and the high number of applicants for international protection living on the streets of Brussels.⁵¹²

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.⁵¹³ This is unless Fedasil is informed that they have a pending or granted request for a prolongation of reception.⁵¹⁴ Between the moment of the subsequent application and the admissibility decision by the CGRS, asylum seekers who are refused reception nevertheless have the right to medical assistance from Fedasil and to free legal representation. Once the CGRS has deemed the application admissible, the right to access reception is reactivated. Asylum seekers must then present themselves to the dispatching desk to be allocated a reception place.

If 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 concerning 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.⁵¹⁵ In practice, however, Fedasil systematically refuses to assign a reception place to subsequent applicants until their asylum application is declared admissible by the CGRS. On multiple occasions, labour Courts have ordered Fedasil to motivate such decisions individually and consider all case elements.⁵¹⁶ As a result, subsequent applicants often obtain reception after

⁵⁰⁸ 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>.

⁵⁰⁹ *Migrants in transit in Belgium*, February 2019, available in Dutch at: <https://bit.ly/3lfOxHC>.

⁵¹⁰ Bruzz, *Humanitarian hub for migrants opens in Port Avenue*, available in Dutch at: <http://bit.ly/3t4ZO4E>.

⁵¹¹ Fedasil, *Raising awareness among undocumented migrants*, 25 March 2021, available at: <https://bit.ly/37ivldJ>.

⁵¹² Médecins Du Monde, 'Le Hub Humanitaire, depuis 5 ans, centre d'accueil et d'orientation pour personnes migrantes en errance', 22 September 2022, available in French at : <http://bit.ly/3JuXRbv>.

⁵¹³ Article 4(1)(3) Reception Act.

⁵¹⁴ 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>.

⁵¹⁵ Constitutional Court, Decision No 95/2014, 30 June 2014.

⁵¹⁶ Labour Court of Brussels, Decision No 21/538/K, 31 August 2021, available in French at: <https://bit.ly/37kYDIH>; Labour Court of Brussels, Decision No 17/1762/A, 8 February 2018; Labour Court of Brussels, Decision of 17 February 2015, available in French at: <http://bit.ly/1Q3cOBn>; Labour Court of

challenging such decisions in front of the courts. However, applicants who do not manage to contact a lawyer are left without access to reception. The Federal Mediator has been steadily receiving complaints in the last years, including from families with minor children, having been refused reception after lodging a subsequent application for international protection. In several cases, Fedasil has reviewed its decision after intervention by the Federal Mediator and has granted the applicants reception.⁵¹⁷

1.3. Right to reception: Dublin procedure

Applicants registered as asylum seekers in another Member State

Right to reception until the moment of the effective transfer

During the examination of the Dublin procedure by the Immigration Office, asylum seekers are entitled to a reception place. If an annex 26quater (negative Dublin transfer decision with order to leave the territory) is issued, the right to material assistance is terminated as soon as the delay in leaving the territory, has expired, or as soon as the travel documents are delivered (in case the asylum seeker confirms his/her willingness to collaborate with the transfer but cannot obtain the necessary travel documents within the delay to leave the territory for reasons beyond his or her own will).⁵¹⁸ Fedasil considers this practice in line with the *Cimade and Gisti* judgement of the CJEU.⁵¹⁹ 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 the transfer decision itself, unless it gives clear instructions as to when and where the asylum seeker has to present him or herself for this.⁵²⁰ In the judgment *V.M. v Belgium* issued in July 2015, 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.⁵²¹

Currently, asylum applicants subject to a Dublin transfer decision (annex 26quater) who are residing in the reception network are asked to go to an 'open return centre'. If they do not wish to go this centre, their right to reception will be suspended (see "[Return track](#)" and [assignment to an open return centre](#)).⁵²²

After the maximum period allowed by the Dublin Regulation to transfer the asylum seeker to the responsible Member State has passed (6 months in principle, possibly extended to maximum 18 months), Belgium becomes 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](#)).

2020: Temporary restrictions on the right to shelter for applicants with an 'expired Dublin'

Brussels, Decision No 16/1384/A, 14 November 2016; Labour Court of Bruges, Decision No 16/8K, 11 October 2016.

⁵¹⁷ Federal Mediator, Annual Report 2019, available at: <https://bit.ly/3u2VaFi>

⁵¹⁸ 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.

⁵¹⁹ 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.

⁵²⁰ 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>.

⁵²¹ 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>.

⁵²² 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.

In 2020, applicants with an expired Dublin could no longer gain immediate access to the reception network (see [Right to shelter and assignment to a centre](#)).

Reception crisis 2021-2022: no access to reception for male applicants for international protection with a 'Dublin-hit'

In the context of the reception crisis that started in October 2021, the reception rights of applicants with a 'Dublin-hit' were again restricted. Since 24 January 2022, applicants for whom, at the moment of registering their asylum application, a EURODAC hit indicated they had already applied for or received international protection in another country, were being denied access to the reception network and told to send an e-mail to Fedasil in order to be put on a waiting list.⁵²³ Since March of 2022, all single men - regardless of a 'Dublin-hit' are excluded from the reception network (see [Constraints to the right to shelter](#)). Since they did not receive a formal refusal decision of reception, these applicants cannot automatically challenge this decision before the labour court. Lawyers thus had first to send an e-mail to Fedasil to notify their client's individual application for reception and give Fedasil a 24h delay to reply, before being able to file a unilateral request. Labour court presidents have not always granted reception to applicants in the Dublin procedure. According to the Courts, these applicants could have accessed reception conditions in the responsible EU member state. Therefore, leaving this state for Belgium is a 'self-inflicted' situation of precariousness. This refusal of reception by Fedasil and the Labour Court seems to contrast with the Cimade and Gisti judgement from the European Court of Justice, which ruled that applicants in a Dublin procedure have a right to shelter until the moment of their effective transfer. At the time of writing, applicants in the Dublin procedure still faced these difficulties (see [Constraints to the right to shelter](#)).

2022: Dublin reception centre in Zaventem

In the summer of 2022, the Immigration Office opened a new 'Dublin reception centre' in Zaventem. This centre is a regular open centre, meaning that its residents are free to leave if they wish to do so. The aim of this centre is to fast track the Dublin procedure for a specific target group. In doing so, the state secretary for asylum and migration hopes to ease the pressure on the reception network.⁵²⁴ Applicants who have previously applied for international protection in another member state can be designated to this reception centre. Applicants who have previously applied for international protection in Hungary, Bulgaria and Greece are not designated to this reception centre.⁵²⁵ Applicants who are designated to this centre can refuse this designation, after which their right to reception will be suspended.

Applicants in the centre in Zaventem are interviewed after 2-3 working days and will on that occasion be informed about the Dublin procedure and the possibility of a voluntary return to the responsible member state. After this interview, the Belgian Dublin Unit will proceed with the regular Dublin procedure. Once the responsible member state has agreed to take back the applicant, the Immigration Office will deliver an annex 26quater (Dublin decision) and will proceed with the voluntary return of the applicant. If the applicant does not collaborate with this voluntary return, the Immigration Office can detain the applicant and organise a forced return. In 2022 the average stay in this centre was 30 days, and 151 voluntary returns were already organised from the centre.⁵²⁶ In 2023 (until 9 March) the average stay was 33 days, and 129 voluntary returns were organised from the centre.⁵²⁷

Dublin Returnees

Asylum seekers sent back to Belgium following a Dublin procedure are often considered subsequent applicants (see [Situation of Dublin Returnees](#)). Consequently, they often only get shelter after their asylum

⁵²³ MO Magazine, 'Ongoing reception crisis in asylum policy, while humans are concerned', 17 February 2022, available in Dutch at: <https://bit.ly/3lZhaYQ>.

⁵²⁴ The Brussels Times, Defence Ministry opens 750 places in military barracks for asylum seekers, 9 July 2022, available at: <http://bit.ly/3klYAmK>.

⁵²⁵ Myria, Contact Meeting, 21 September 2022, available at: <https://bit.ly/3Za40zZ>, 13.

⁵²⁶ Myria, Contact Meeting, 25 January 2023, available at: <https://bit.ly/3JKpIWk>, 10-11.

⁵²⁷ Myria, Contact Meeting, 15 March 2023, not yet available online.

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.⁵²⁸ Nonetheless, these asylum seekers often are still considered as subsequent applicants and therefore are without shelter until this decision is officially taken.

In the context of the reception crisis, male Dublin Returnees are systematically excluded from the reception network. Similarly to other male applicants for international protection, they have to lodge an appeal at the labour court in order to obtain shelter. The average waiting time to obtain shelter this way is 4 to 5 months at the time of writing (see [Constraints to the right to shelter](#)). In the meantime, applicants do not have any other solution than to sleep rough, on the streets or in occupied buildings.

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

On the basis of a Fedasil instruction (see [Constraints to the right to shelter](#)), beneficiaries of protection in another EU Member State were no longer provided accommodation in Belgium from 7 January 2020 onwards. To that end, the Immigration Office introduced a new questionnaire that each applicant for international protection has to complete 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. In addition to the questionnaire, the Immigration Office checks through EURODAC whether applicants have already received protection. If, based on the applicant’s declarations or on EURODAC’s results, it appears that the applicant has been granted international protection elsewhere, Fedasil could 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).

As was the case for applicants excluded from the reception system after the expiry of the Dublin transfer period (see [Right to reception: Dublin procedure](#)), appeals against these exclusion decisions were brought before the presidents of the Labour tribunals (urgent procedure) in individual cases. After the Belgian government issued strict confinement orders in the middle of March due to the outbreak of COVID-19, Labour tribunals ordered Fedasil to accommodate these persons, stating that as applicants for international protection, they should be provided with reception by Fedasil and the reasons of national health and security making the matter extremely urgent.⁵²⁹

After withdrawing the instructions of 3 January 2020 in September 2020, applicants with a protection status in another EU member state regained their full right to material assistance, including reception, during their asylum procedure.

2021-2022: Impact of the reception crisis

In the context of the reception crisis that started in October 2021, the reception rights of applicants with a protection status in another EU Member State are again limited. Between 24 January 2022 and March 2022, applicants for who, at the moment of registering their asylum application, a EURODAC hit indicates that they have already applied for or received international protection in another country are being denied access to the reception network and told to send an e-mail to Fedasil to be put on a waiting list.⁵³⁰ Since March 2022, single male applicants for international protection -regardless of protection status in another

⁵²⁸ Article 57/6/2 Aliens Act.

⁵²⁹ For example, Labour Tribunal of Brussels, 30 March 2020, N° 20/105/K.

⁵³⁰ MO Magazine, ‘Ongoing reception crisis in asylum policy, while humans are concerned’, 17 February 2022, available in Dutch at: <https://bit.ly/3IZhaYQ>.

member state- are systematically excluded from the reception network (see [Constraints to the right to shelter](#)).

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

The law foresees a so-called “return track” for asylum seekers.⁵³¹ This is a framework for individual counselling on return set up by Fedasil, which promotes voluntary return to avoid forced returns.⁵³²

The return track starts with informal counselling, followed by a more formal phase. The informal phase provides information on possibilities of voluntary return and starts from the moment the asylum application is 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 was initiated;
- an asylum procedure of a family member that is still pending.

If 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.

In November 2019, Fedasil published instructions specifically addressed to persons who cannot be accommodated in open return centres due to medical reasons which would render the accommodation inadequate.⁵³³ 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 the reception of the concerned person will depend on his or her medical situation and cooperation.

(2) The Immigration Office takes a negative decision based on 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 to prolong 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. Their return should be organised there, instead of in the open return centre.

⁵³¹ Article 6/1 Reception Act.

⁵³² 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.

⁵³³ Fedasil, *Instructions on Return assistance – medical exceptions for open return places*, November 2019, available in French at: <http://bit.ly/3baE7qJ>.

Unaccompanied minors subject to a negative decision are not transferred to an open return centre until adulthood. Then they can apply for a place in an open return centre.

Regularly, decisions of transfer to an open return place are challenged before the Labour courts by applicants having received an annex 26quater, especially when an appeal against this annex has been brought before the CALL. According to Belgian law, this latter appeal possibility does not have an automatic suspensive effect (see [Appeal](#)). As a consequence, notwithstanding the introduction of this appeal, a return procedure is initiated at the open return place. Lawyers have argued that this return procedure violates the applicants' right to an effective appeal and other fundamental rights. In 2020, Belgian judges referred to the CJEU for a preliminary ruling in several cases to clarify this question of an effective appeal in the context of a Dublin transfer decision.⁵³⁴ In two orders on request for a preliminary ruling of 26 March 2021, the CJUE has decided that the transfer to an open return place, where the Dublin transfer is being prepared, does not violate the right to an effective appeal, as long as the information provided to the applicants in the context of the return tracks does not put undue pressure on the applicants to abandon their procedural rights.⁵³⁵ Some labour courts have nevertheless decided that the return track in open return places violates other fundamental rights – such as the inviolability of the home, article 3 and 5 ECHR, the right to legal assistance as guaranteed in article 23(3) Directive 2013/32/EU and article 6 ECHR – and puts applicants under undue psychological pressure. Therefore, labour courts ruled that Fedasil should allow the applicants to remain in their former reception centre for the duration of the appeal procedure before the CALL.⁵³⁶

1.6. End of the right to reception

The right to material reception ends when:⁵³⁷

- ❖ 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 do not 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 non-suspensive 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 26quater” (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. If 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.⁵³⁸ The time limit of the order to leave the territory will vary between 0 and 30 days (see [Procedures](#)).⁵³⁹

⁵³⁴ Labour Court Liège, 10 February 2020, N° 2020/CL/3; Labour Tribunal Brabant-Wallon (div. Wavre), 24 July 2020 and CJUE, 22 January 2021, N° C-335/20, available at <http://bit.ly/2PRitCD>.

⁵³⁵ CJUE, order of 26 March 2021, N° C-134/21, available in English at: <https://bit.ly/3KtZB3u>; CJUE, order of 26 March 2021, N° C-92/21, available in English at: <https://bit.ly/35MDR43>.

⁵³⁶ An overview of the development of this jurisprudence is available in Dutch at: <https://bit.ly/3I1abx8>. See also: Labour Court Liège, 19 April 2021, N° 21/12/K, available in Dutch: <https://bit.ly/3CxlZd>.

⁵³⁷ Article 6 Reception Act.

⁵³⁸ Article 52/3 Aliens Act; Article 6 Reception Act.

⁵³⁹ Article 74/14 Aliens Act.

Until the expiry of the deadline of the order to leave the territory, every asylum seeker (whether he or she collaborates with voluntary return or not) is entitled to full material reception conditions. The order to leave the territory can be prolonged only if the person collaborates with his or her return.⁵⁴⁰ 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 is unwilling to return voluntarily.⁵⁴¹

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;
- ❖ when the person cannot 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.⁵⁴²

Fedasil has adopted internal instructions about these possibilities and how to end the accommodation in the reception structures in practice.⁵⁴³

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.⁵⁴⁴ These 2 months should the person look for another place to live and transit to financial help of the PCSW if necessary. People 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 leaving the collective structure within 10 working days. In the last case, they will receive food cheques for one month. The deadline of two months can be extended.⁵⁴⁵ In general, prolonging one month is common; in exceptional cases - e.g., finishing the school year from April onwards or having a signed lease that starts after a month – prolongation can be granted for more than a month. A first, and exceptionally second prolongation can be granted on the basis of the steps taken by the persons to secure their own housing. A third prolongation request can exceptionally be granted for reasons linked to human dignity. This is not specified in the Reception act but Fedasil has adopted internal instructions allowing such rules to be put in place.⁵⁴⁶

⁵⁴⁰ Article 6/1 Reception Act and Article 52/3 Aliens Act.

⁵⁴¹ Myria, *Contact Meeting*, September 2019, available in Dutch at: <https://bit.ly/32Bz939>

⁵⁴² Article 7 Reception Act.

⁵⁴³ Fedasil, Instructions on the termination and the prolongation of the material reception conditions, 15 October 2013.

⁵⁴⁴ 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.

⁵⁴⁵ Ibid.

⁵⁴⁶ 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 2022:
 - ❖ Accommodated single adult, incl. food €180-212
 - ❖ Accommodated single adult, without food €244-280

These cash amounts are given in the individual reception structures of the LRI. Collective centres provide most assistance in kind.

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 legal representation, access to training, a voluntary return programme, and a small daily allowance (so-called pocket money). Nevertheless, as discussed below, the help can be partially delivered in cash, as is the case in the Local Reception Initiatives (LRI). The Federal Agency coordinates the whole reception structure for the Reception of Asylum Seekers, Fedasil. Fedasil regularly issues internal instructions on implementing 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.⁵⁴⁷ For example, this could be the case when the asylum seeker wants to live with their partner who already has a legal stay in Belgium. However, this is only exceptional and can only be the case after the explicit permission of Fedasil. To obtain this permission, the asylum seeker should ask for an abrogation of the designated reception place ("Code 207").⁵⁴⁸

In the context of the reception crisis, destitute applicants for international protection start appeal procedures at Labour Courts based on the violation of the right to reception. In some cases, destitute applicants have asked the Labour Court to suspend this code 207. In several judgements, the Court condemned Fedasil and forced them in first instance to provide a reception place. If the reception place is not provided, the Court orders the suspension of the code 207 in second instance. With this suspension, the destitute applicant can go to the PCSW and apply for financial aid. In practice, it still remains difficult for someone with a suspended code 207 to obtain this financial aid as most PCSW's require a fixed residency.

2.2. Collective or individual?

The reception model, of which the implementation started in 2016, generally assigns people to collective reception centres. Only asylum seekers with very specific vulnerabilities or reception needs are directly assigned to specialised NGO reception structures or LRI.⁵⁴⁹ In collective centres, most conditions are delivered in-kind.

For the assignment to a specific centre, Fedasil should legally consider the centre's occupation rate, the asylum seeker's family situation, 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 always be 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

⁵⁴⁷ Article 3 Reception Act.

⁵⁴⁸ Article 13 Reception Act.

⁵⁴⁹ Regeerakkoord, 9 October 2014, available at: <http://bit.ly/2k2yJfn>. See also Myria, *Contact meeting*, 21 June 2016, available at: <http://bit.ly/2k3obi9>.

location of reception, based on these criteria. Currently, the possibilities to change centre on the asylum seeker's request are limited to the situations enlisted by Fedasil in its internal instructions (see below [Transfers to suitable reception](#)).

According to the law, all asylum seekers can apply to be transferred to an individual accommodation structure after 6 months in a collective centre.⁵⁵⁰ Where the person's asylum application has already been refused at first instance procedure by the CGRS, the transfer will be refused or postponed. However, due to the high occupancy rate of the reception system, transfer applications of applicants whose procedure is still ongoing cannot systematically be answered favourably either.⁵⁵¹ This means that asylum seekers stay much longer in collective structures (see [Conditions in Reception Facilities](#)).

Specific rules concerning transfer to individual reception structures apply to the following categories:

- ❖ 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 the following countries had a high chance of recognition:⁵⁵²
 - Burundi
 - Eritrea
 - Yemen
 - Syria
 - Libya

- ❖ Persons staying in collective structures when granted a legal stay of more than 3 months, for example, the refugee, will be presented the choice between moving to an individual reception structure for 2 months or leaving the collective structure within 10 working days. In this case, they will receive meal vouchers for one month.⁵⁵³

The Court of Auditors (*Rekenhof / Cour des comptes*) conducted a financial and qualitative audit of the functioning of Fedasil in 2017.⁵⁵⁴ 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 to the well-being and psychological health of the individuals concerned but also for the management and personnel of centres, as it causes tensions and conflicts. The Court of Auditors also found that reception in collective centres is more expensive than individual accommodation, although many more individual accommodation places were empty at the time of the report. It recommended that the government consider other 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.

NGOs have requested for an evaluation of the current reception model. An evaluation of the reception model was planned in 2021 but due to the sanitary situation related to COVID-19 and the reception crisis, these plans were not yet made concrete.⁵⁵⁵

Fedasil shelters refugees who were resettled for 6 to 8 weeks in a collective reception centre. Afterwards, they will go to an LRI for 6 months maximum. This delay can be prolonged for 2 additional months. During

⁵⁵⁰ Article 12 Reception Act.

⁵⁵¹ Information provided by Fedasil.

⁵⁵² Fedasil, Instruction concerning transfers from collective reception to a Local reception Initiative (LRI) – designation of asylum seekers with a high rate of recognition - update, 9 November 2021, available in Dutch at: <https://bit.ly/3vUGADb>.

⁵⁵³ Meal vouchers are vouchers that can be used in almost any supermarket to buy food or food-related items. Employees (in all kinds of sectors) often receive meal vouchers as part of their salary as well.

⁵⁵⁴ Court of Auditors, *Opvang van asielzoekers*, October 2017.

⁵⁵⁵ Information provided by Fedasil, February 2022.

this period, the LRI will help them find their own place to live, which could be in the same commune of the LRI, or in another.⁵⁵⁶

2.3. Transfers to suitable reception facilities

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 assessment is made – at least every six months - during the entire stay of the asylum seeker in the reception system.⁵⁵⁷ The Reception Act allows changing an asylum seeker's reception place if the assigned place turns out to be not adapted to the individual needs.⁵⁵⁸

In two instructions, Fedasil enlisted specific criteria to be met before a transfer to another, more adapted place is made possible.⁵⁵⁹ The newly assigned place can be located in either a collective reception centre or an individual place. The request to benefit from transfer can be done either by the asylum seeker or by the reception facility in agreement with the asylum seeker, but the actual sending of the request always needs to be done by the reception facility.

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

- ❖ 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 nearby;
- ❖ 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 on 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:

- ❖ 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. The term “family member” can be broadened if the asylum seeker is categorised as vulnerable;
- ❖ 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;

⁵⁵⁶ 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.

⁵⁵⁷ Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

⁵⁵⁸ Article 22 Reception Act

⁵⁵⁹ Fedasil, *Instruction on the transfer to an adapted place for medical reasons*, 7 May 2018, available in Dutch at: <https://bit.ly/39gg7Ev>; Fedasil, *Instruction on the transfer to an adapted place for other reasons*, 7 May 2018, available in Dutch at: <https://bit.ly/2KP79oo>

- ❖ 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, which clearly impacts their psychological wellbeing.

Fedasil considers the asylum seeker's procedural situation when deciding on such requests. Decisions refusing a transfer can be challenged in front of the Labour Court within 3 months.

2.4. Financial allowances

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.⁵⁶⁰ In 2023 adults and all children from 12 years on who attend school receive 9.50€ a week, younger children and children 12 years of age or older who do not attend school receive 5.6€ a week, and unaccompanied children during the first phase of shelter (in the “observation and orientation centres”) receive 6.8€ a week.⁵⁶¹

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 2022, 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:⁵⁶²

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.⁵⁶³ The applicant would then obtain the full amount of the financial social welfare allowance, equally and in the same way as every national

⁵⁶⁰ Article 34 Reception Act.

⁵⁶¹ Information provided by Fedasil, February 2022.

⁵⁶² Extrapolated from the weekly amount, times 4: Information provided by Fedasil.

⁵⁶³ Article 11(4) Reception Act.

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 January 2023, a person receives following amounts per month:⁵⁶⁴

Monthly amounts of “social integration” for Belgian nationals	
Category	Monthly amount
Single adult	€1,214.13
Cohabitant	€ 809.42
Person with family at charge	€1,640.83

In its February 2014 judgment in *Saciri*,⁵⁶⁵ 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. The 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.

Nevertheless, since several years, Fedasil has not referred to the PCSW because of a lack of reception capacity. In the context of the reception crisis in 2021 and 2022, the Council of Ministers has discussed this option several times, but it has not been approved politically. As a result of the reception crisis, some destitute applicants have obtained a referral to the PCSW by going to the Labour Courts (see [Material or Financial Aid?](#)).

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 – in the case of material aid – 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 rooms;⁵⁶⁶
- ❖ A ministerial decree on common house rules in reception centres.⁵⁶⁷

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 for minors' observation and orientation centres.

⁵⁶⁴ VVSG, Social Integration Amount, 2023, available at: <http://bit.ly/3Kv13pv>.

⁵⁶⁵ CJEU, Case C-79/13 Federaal agentschap voor de opvang van asielzoekers (Fedasil) v Selver Saciri and OCMW Diest, Judgment of 27 February 2014.

⁵⁶⁶ Royal Decree on the system and operating rules in reception centres and the modalities for checking rooms, 2 September 2018.

⁵⁶⁷ Ministerial Decree on house rules in reception centres, 21 September 2018.

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).

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 for applying these sanctions can be found in a Royal Decree.⁵⁶⁸

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.⁵⁶⁹ This measure was taken against 164 persons in 2022, for an average duration of 18 days.⁵⁷⁰

The law makes it possible to withdraw reception permanently.⁵⁷¹ 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. Eight applicants were permanently excluded from reception in 2022.⁵⁷²

Sanctions are issued by the centre's managing director and have to be motivated. The person who received the sanction has to be heard before 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.⁵⁷³ As with every other administrative or judicial procedure, the asylum seeker is entitled to legal assistance, free of charge if he or she has no sufficient financial means. In all of these cases, the reception conditions will be reinstated as soon as the sanction – mostly temporary– has elapsed. During 2022, 35 appeal procedures against exclusions decisions taken by Fedasil were introduced before Labour tribunals.⁵⁷⁴

The sanctions that exclude the asylum seeker from the reception facilities (one month or permanently) must 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

⁵⁶⁸ Royal Decree of 15 May 2014 on the procedures for disciplinary action, sanctions and complaints of residents in reception centres.

⁵⁶⁹ Article 45(8) Reception Act.

⁵⁷⁰ Information provided by Fedasil, March 2023.

⁵⁷¹ Article 45(9) Reception Act.

⁵⁷² Information provided by Fedasil, March 2023.

⁵⁷³ Article 47 Reception Act.

⁵⁷⁴ Information provided by Fedasil, March 2023.

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.⁵⁷⁵ In 2022, only one requests for reconsideration of the exclusion from the reception facilities were made. The request led to a decrease in the number of days of the exclusion.⁵⁷⁶

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 number of situations in which reception facilities can be withdrawn or reduced and that exclusion as a sanction is not one of them. UNHCR recommended that attention should be given to Article 20(5) of the Directive, which guarantees an individual, impartial and objective decision that considers the person's particular situation (e.g., 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 explicitly mentions the possibilities to ensure dignified living conditions and to describe clearly in which situations this sanction applies.⁵⁷⁷

The Council of State also advised that there should be an explicit guarantee in the law on how to ensure dignified living conditions for those excluded from the reception facilities.⁵⁷⁸

The options 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. The applicant can also contact Fedasil again if dignified living conditions cannot be guaranteed.

In March 2018 the Labour Court of Brussels referred preliminary questions to the CJEU 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 about unaccompanied children.⁵⁷⁹ The case concerned an unaccompanied minor who was refused the right to an accommodation for 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 continuously and without interruption. They should grant access to material reception conditions in an organised manner and under their 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 applicant's dignity.⁵⁸⁰

⁵⁷⁵ Article 45 Reception Act.

⁵⁷⁶ Information provided by Fedasil, March 2023.

⁵⁷⁷ 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 : <https://bit.ly/3tZArSX>.

⁵⁷⁸ Council of State, Opinion 59/196/4, 27 April 2016, available at: <http://bit.ly/2kVBgvT>.

⁵⁷⁹ Labour Court Brussel No 2017/AB/277, 22 March 2018, available at: <https://bit.ly/2Thk6dM>.

⁵⁸⁰ CJEU, Case C-233/18 *Haqbin*, Judgment of 12 November 2019.

Based on this CJUE decision, the Brussels Labour Court declared Fedasil at default on 7 October 2021, condemning the Agency to moral damages of 1€ for having excluded Haqbin from reception conditions, in violation of the Reception Directive.⁵⁸¹

Notwithstanding the jurisprudence of the CJUE and the Brussels Labour Court, Fedasil continues to apply temporary and indefinite exclusion as sanctions for certain situations of violent behaviour (164 temporary and 8 definitive exclusions in 2022)⁵⁸². Fedasil has indicated that it is examining new measures, such as allowing night reception and issuing meal checks during the period of the exclusion sanction. However, due to urgent events such as the COVID-19 outbreak and the reception crisis, the envisaged partnerships with e.g., organisations providing night shelter have not yet been put in practice. In the meantime, Fedasil provides excluded applicants with a list of emergency shelters and informs them that, in case a dignified living standard cannot be ensured, they can request a reconsideration of the exclusion decision.⁵⁸³

3.2. Other grounds

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

1. Such a place has been abandoned by the asylum seeker. This applies in cases where the asylum seeker is absent for 3 consecutive days without prior notice or for more than 10 nights in one month (with or without prior notice). The asylum seeker has the right to ask for a new place but can be sanctioned. In the context of the reception crisis that started in 2021, this sanction is still applied: in 2022, 1593 persons were expelled from their centre due to absence without permission.⁵⁸⁴ However, asylum seekers who are thus excluded from their centre are not able to re-integrate the reception network due to a lack of places. Consequently, they have to register on the waiting list of Fedasil, which leads to a waiting time of several months before they are able to re-integrate the reception network.
2. The asylum seeker does not attend interviews or is unwilling to cooperate when asked for additional information in the asylum procedure. 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.⁵⁸⁵ If an asylum seeker does not 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 did not present 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 they regularise their situation and lodge an application at the Immigration Office. Once the annex 26 has been obtained, the applicant can request material reception again at the “Infopunt” of Fedasil.
3. The applicant makes a [Subsequent Application](#).

Article 4(3) of the Reception Act prescribes that 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 proportionality;
- ❖ to ensure access to medical care and a dignified standard of living.

⁵⁸¹ Labour Court Brussels N° 2017/AB/277, 7 October 2021, available in Dutch at: <https://bit.ly/3MGUwqA>.

⁵⁸² Information provided by Fedasil, March 2023.

⁵⁸³ Information provided by Fedasil, March 2023.

⁵⁸⁴ Information provided by Fedasil, March 2023.

⁵⁸⁵ 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.

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 having omitted to declare resources at the time of making the application.⁵⁸⁶ 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. 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.

3.3. Reduction or withdrawal of reception due to a professional income

The Reception Act allows reducing or withdrawing the reception of applicants with a professional income. The concept and means used for calculating financial resources and the part to be contributed are determined in a Royal Decree of 2011. The Royal Decree stipulates that 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.⁵⁸⁷ The applicant also has an obligation to inform the authorities. A control mechanism is provided for in the abovementioned Royal Decree. In 2022, one cross-examination was done with lists of people residing in the Fedasil reception network and the Crossroads Bank for Social Security, which allowed to identify residents who had worked in the period September 2021-september 2022.⁵⁸⁸

In November 2022, in the context of the reception crisis, Fedasil issued a new instruction concerning the forced and voluntary withdrawal of reception conditions for working applicants.⁵⁸⁹ The aim of this instruction being to free up spaces in the reception network, it ordered the compulsory withdrawal of reception conditions for applicants having a stable work contract (min. 6 months) providing an income higher than the minimal living wage. Applicants who meet these conditions receive a motivated decision indicating that they have to leave the reception centre within a month. It is possible to introduce an appeal at the labour court against this decision. In recent judgements, labour courts have annulled these decisions. In some cases, because the applicant did not meet the required minimum income. In other cases, the court found that the principle of proportionality was violated. The decision to withdraw the reception conditions have to be taken in proportion to the individual situation of the applicant concerned. In this particular case, the court pointed out that the applicant was lacking self-sufficiency and that the difficult search for adequate housing was not taken in consideration by Fedasil.

Around 350 applicants for international protection were given such a decision. In most cases, the departure term has been extended in order to give the applicants more time to look for housing. Given the housing crisis on the private housing market, it appeared to be very difficult to find housing within a month. Although the aim of the instruction was to target financially independent applicants so as not to overburden the public centres for social welfare (PCSW), the PCSW's receive many requests from this group of applicants looking for housing support.⁵⁹⁰ In 2022, 360 persons had their reception rights suspended on the basis that they have obtained sufficient means through their employment. 23 persons

⁵⁸⁶ Articles 35/1 and 35/2 Reception Act.

⁵⁸⁷ 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).

⁵⁸⁸ Information provided by Fedasil, March 2023.

⁵⁸⁹ Fedasil Instruction, *Forced and voluntary abrogation of the designated reception place (Code 207) on the basis of employment*, 10 November 2022, available in Dutch: <https://bit.ly/3QPZCTZ>.

⁵⁹⁰ Flemish Association for Cities and Communes (VVSG), *Update: Saturated reception network: forced and voluntary abrogation of the designated reception place (Code 207) on the basis of employment*, available in Dutch: <http://bit.ly/3ZRcBsG>.

opted for a voluntary suspension of reception rights on the basis of their employment. Fedasil received 647 contributions that amount to a total of €259 951.64.⁵⁹¹

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.⁵⁹²

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of collective reception centres:⁵⁹³ 109
2. Total number of places in the reception network: 34,020
3. Total number of places in the collective reception centres: 24,829
4. Total number of places in LRI: 5,220
5. Total number of places in open return places: 360
6. Type of accommodation most frequently used in a regular procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other
7. 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 in individual reception facilities i.e. a house, studio or flat,⁵⁹⁴ 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

⁵⁹¹ Information provided by Fedasil, March 2023. One person can do multiple contributions on a yearly basis.

⁵⁹² Article 4 Reception Act.

⁵⁹³ Information provided by Fedasil, March 2023 (numbers concern the amount of places at the end of 2022); Statistics Fedasil available at: <https://bit.ly/2Une7k6>.

⁵⁹⁴ Article 16, 62 and 64 Reception Act.

coordinating the voluntary return programs, the observation and orientation of unaccompanied children and the integration of reception facilities in the municipalities.⁵⁹⁵ 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.⁵⁹⁶ Currently, the partners for collective reception are Croix Rouge, Rode Kruis, AGAJ, AJW, Caritas International, Mutualité Socialiste, Privé and Samu Social.⁵⁹⁷ The communal PCSW are important partners for individual reception.

Over the course of 2015 – 2022 the reception network has undergone several changes. The number of available places has been very dynamic in this period and is interlinked with the number of applications for international protection in Belgium. After the peak of applicants for international protection in 2015, the capacity peaked at 33.659 places. In 2018, after a steady decrease in the number of international protection applicants, the capacity was reduced to 21.343. This decrease in places was mainly reached by closing emergency shelter and individual reception facilities. When applications for international protection reached a first peak again in 2019, the reception network had to increase its capacity again in a very short timeframe. The capacity being too limited, the immigration office was forced 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](#)). 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](#)).⁵⁹⁸

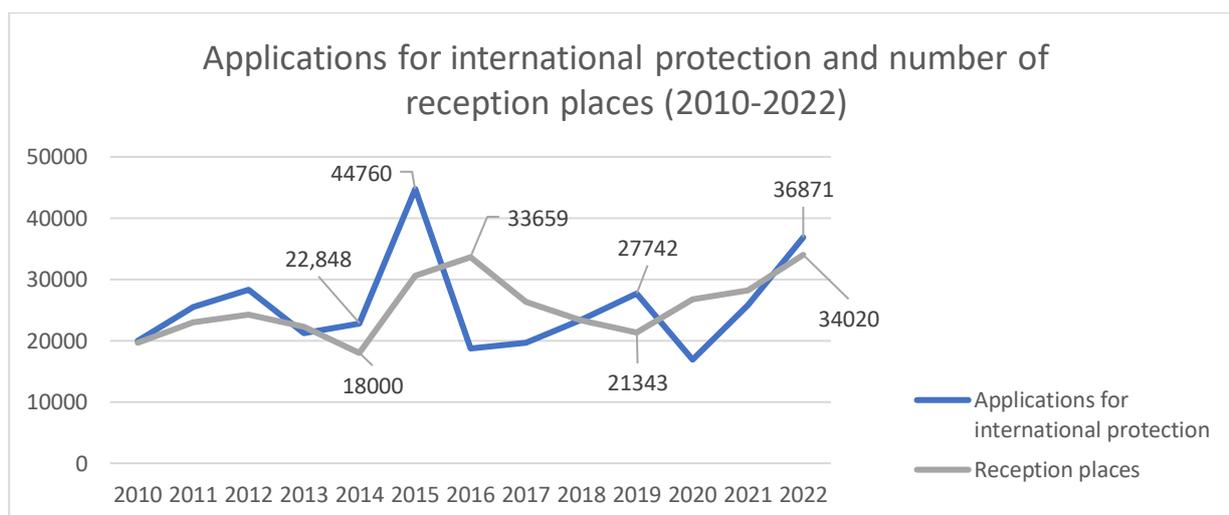


Figure X, applications for international protection and number of reception places in Belgium (2010 – 2022), based on data from CGRA and Fedasil.

Due to the constant change in capacity, local governments were subsequently asked to open a reception facility, close it and re-open it later. They denounced this ‘yoyo-policy’ in November of 2019, indicating that they were no longer willing to open new reception facilities. They demanded a more structural, long-term policy for the reception network that is able to absorb the fluctuating numbers of applications for

⁵⁹⁵ Article 56 Reception Act.

⁵⁹⁶ Article 62 Reception Act.

⁵⁹⁷ Information provided by Fedasil, January 2021.

⁵⁹⁸ 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>; can’t access this site. 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 at: <https://bit.ly/384yGry>.

international protection.⁵⁹⁹ In November 2020 the Secretary of State for migration issued a *Policy Note on asylum and migration*, establishing as a priority the development of a stable but flexible reception system, in order to meet the demands of the local governments.⁶⁰⁰

However, since September 2021, the reception network has been under enormous pressure, the occupancy rate being at 96% for months (the saturation capacity at 94%) (see [Constraints to the right to shelter](#)). Possibilities of opening new reception places were urgently examined by the Belgian government and Fedasil and several new reception centres – some structural, some emergency shelters opened in the course of the last months. However, these were insufficient to provide reception for all applicants needing shelter.⁶⁰¹ Difficulties are encountered especially due to the remaining unwillingness of local administrations to accept opening centres on their territory.⁶⁰²

In the period 2021 – 2023, the capacity of the reception network increased with 4,574 places. At the time of writing the reception network has a capacity of 34,020 places.⁶⁰³ For 2023 no big changes in capacity are expected, since some centres will close while other new centres will open. As a result, it is feared that the reception crisis will persist throughout the whole of 2023.

As of March 2023, the 109 main collective reception centres were mainly managed and organised by Fedasil, Croix Rouge and Rode Kruis.⁶⁰⁴

The PCSW and b NGO partners run the individual reception initiatives. On 1 March 2023, the PCSW had 4 873 places in LRI, while NGO partners currently have 552 places.

The entire reception system has a total of 34,020 places, out of which 95% were occupied on 1st of March 2023.⁶⁰⁵

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? 14,3 months in 2021
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

2.1. Shortage of places

Since September 2021 Fedasil can no longer provide a reception place for all applicants for international protection. The federal government increased the capacity of the reception network from 28,000 places to 34,020 places at the time of writing. Despite these efforts, single men are systematically denied access

⁵⁹⁹ VVSG, 'Lokale besturen zijn jojo-effect federaal opvangbeleid beu', available in Dutch at: <http://bit.ly/3mcud36>.

⁶⁰⁰ Chamber of Representatives, Doc 1580/014, *Policy Note on asylum and migration*, 04 November 2020, available in Dutch/French at: <https://bit.ly/3c9hy9z>

⁶⁰¹ The Brussels Time, *Closed Hotel Mercure in Evere becomes reception center for asylum seekers*, 9 December 2021, available at: <https://bit.ly/3vRM81n>; Bruzz, *Gesloten Hotel Mercure in Evere wordt opvangplaats asielzoekers*, 9 December 2021, <https://bit.ly/3KuFUZh>; Bruzz, *Opvangcentrum voor 40 asielzoekers opent in Elsene*, 24 December 2021, available at: <https://bit.ly/3hU3JNW>.

⁶⁰² De Standaard, *Noodopvang in Glaaien kan morgen openen*, 2 December 2021, available at: <https://bit.ly/3vOlrcV>; De Tijd, *Mahdi krijgt voorlopig geen grip op opvangcrisis*, 28 October 2021, available at: <https://bit.ly/3CrX0Jn>.

⁶⁰³ Fedasil, 'Statistics', monthly update, 1 March 2023, available at: <http://bit.ly/3rzB8kr>.

⁶⁰⁴ Ibidem.

⁶⁰⁵ Ibidem.

to the reception network. The reason for this is that Fedasil does not have sufficient available places, therefore it prioritises 'vulnerable' groups. Single men are considered to be the 'least vulnerable' group.⁶⁰⁶

There is no exact number of how many single male applicants were left destitute over the course of the reception crisis. However, there is a waiting list for applicants who have obtained a court decision condemning Fedasil. In 2022 3,888 persons registered on this waiting list, out of which 2,826 received an invitation for a reception place. 2,722 persons responded to this invitation and received a reception place. At the time of writing, 1200 persons are on this waiting list and the average waiting time is 4 months. In the winter of 2022, NGOs estimated that around 5000 applicants for asylum seekers had to sleep rough during the winter.⁶⁰⁷ In March of 2023, Fedasil could not provide accommodation to 624 male applicants for international protection.⁶⁰⁸

2.2. Average duration of stay

In 2021, the average length of stay of applicants for international protection in the reception system was 14.9 months.⁶⁰⁹

Most applicants stay a considerable part of this period, or all of it, in collective reception centres. The law provides for accommodation to be adapted to the individual situation of the asylum seeker,⁶¹⁰ but in practice places are primarily 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 [Forms and Levels of Material Reception Conditions](#)).

2.3. Overall conditions

The minimum material reception rights for asylum seekers are described in the Reception Act, mainly in a very general way.⁶¹¹ Fedasil puts them into 4 categories of aid:⁶¹²

- a. "Bed, bath, bread": the basic needs that is 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 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. 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 social and legal guidance standards, material assistance, infrastructure, contents and safety.

In 2015 Fedasil developed a framework to conduct quality audits based on these uniform standards. Setting minimum standards and an audit mechanism was difficult as different partners, such as the Red

⁶⁰⁶ Fedasil, '4000 places created in 2022', 20 January 2022, available at: <https://bit.ly/3JVzZz7>.

⁶⁰⁷ The Brussels Times, Fedasil faces almost 4,500 convictions for migrant reception crisis, 7 October 2022, available at: <http://bit.ly/3xLaJ7S>.

⁶⁰⁸ VRT NWS, 'Opvangcrisis blijft duren: ook in maart geen opvang voor meer dan 600 asielzoekers', available in Dutch at: <http://bit.ly/3KiGzyN>.

⁶⁰⁹ Information provided by Fedasil, February. The average is based on the duration of stay of all persons leaving the reception network in 2021 and is thus impacted by the temporary decision to stop Afghan asylum cases in 2021. There is no update provided about the average stay in 2022.

⁶¹⁰ Articles 11, 22, 28 and 36 Reception Act.

⁶¹¹ Articles 14-35 Reception Act.

⁶¹² Fedasil, *About the Reception Centres*, available at: <http://bit.ly/1IuvC6u>. This link is not available

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.⁶¹³

As of today, these audits are performed by Fedasil and there is still no independent and external monitoring system put in place. 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). In 2020, 30 audits were conducted. In 2021, 44 audits were conducted by Fedasil, both in collective reception facilities and in individual centres. In 2022, 43 audits were conducted by Fedasil, both in collective reception facilities and in individual centres.⁶¹⁴ The findings are not public and only communicated to the reception facility concerned.

A Royal Decree regulates the system and operating rules in reception centres as well as on the modalities for checking the rooms.⁶¹⁵ 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 allowing for private conversations.

The extensive closure and re-opening of reception places in the past years caused many problems throughout 2019. This included poor reception conditions as it mainly involved tents and containers as 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](#)).⁶¹⁶ Due to the reception crisis, the reception network has been at full capacity since September of 2021. No public documents are available about the impact of the reception crisis on the living conditions in the reception network.

In 2022 Fedasil conducted a study on its residents' wellbeing, comparing collective and individual reception facilities. The residents of the former type of reception express an overall negative perception of their wellbeing. Almost all residents do not succeed in satisfying their basic physical and mental needs. They experience a lack of privacy and, feel isolated and a lack of control over their day-to-day life. The overall conclusion is that collective reception facilities provide "a difficult environment". The residents of the individual reception facilities express an overall positive perception of their wellbeing. The residents obtain more freedom and autonomy in these facilities, which has a positive impact on their wellbeing. The study highlighted a risk of isolation in individual facilities. Residents who moved from collective to individual reception facilities experienced a positive change in their wellbeing.

Despite an increased wellbeing in individual reception facilities, the majority of reception places are in the form of collective reception facilities. At the time of writing, 16% of the reception places are individual reception facilities.

⁶¹³ Court of Auditors, *Opvang van asielzoekers*, October 2017, 47-48.

⁶¹⁴ Information provided by Fedasil, March 2023.

⁶¹⁵ Royal Decree on the system and operating rules in reception centres and the modalities for checking rooms, 2 September 2018.

⁶¹⁶ 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>.

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

Asylum seekers' access to the labour market is regulated by the Law of 9 May 2018⁶¹⁷ and the implementing Royal Decree of 2 September 2018.⁶¹⁸ 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. The right to work is mentioned directly on their temporary residence permit (orange card), so a separate work permit is no longer needed. The asylum seekers can work in the area he or she chooses.

Asylum seekers have the right to work until a decision is taken by the CGRS, or in case of an appeal, until the CALL has notified a negative decision. However, they are not allowed to work during the appeal procedure before the CALL if the procedure at the CGRS did not last longer than 4 months.⁶¹⁹ Asylum seekers who lodge a subsequent asylum application are 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 jobseekers 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 labour market discrimination.

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](#)).⁶²⁰

Impact of the reception crisis (2021 – 2023)

Single male applicants for international protection who do not receive accommodation, often face difficulties obtaining their temporary residence permit (orange card). Most local administrations require a fixed residency in order to obtain a temporary residence permit. Applicants without accommodation often

⁶¹⁷ 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>.

⁶¹⁸ Royal Decree of 2 September 2018, available in Dutch at: <http://bit.ly/3Kc36NH>

⁶¹⁹ Article 18, 3° and article 19,3° Royal Decree on Foreign Workers, 2 September 2018.

⁶²⁰ Articles 35/1 Reception Act and Royal Decree, 12 January 2011, on Material Assistance to Asylum Seekers residing in reception facilities and are employed (original amounts without indexation).

sleep rough, thereby they are unable to obtain a fixed residency. This in turn makes it impossible for them to apply for a temporary residence permit. This severely limits their access to the labour market in practice.

Self-employment

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

Volunteering

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 to increase their pocket money.⁶²¹

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” (“DASPA”, in the French speaking Community schools) and “reception classes” (“OKAN”, 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. During the school year of 2022-2023, hundreds of non-Dutch speaking children are on a waiting list to get access to the Flemish OKAN-classes. They might have to wait until September 2023 before they are able to get access to education. On the basis of numbers provided by some cities, approximately 550 students are on a waiting list and don't have access to education.⁶²² These numbers concern all non-Dutch speaking students and not only asylum-seeking children.

Transfers of families to another reception centre or to a so-called “open return place” after having received a negative decision might also entail a move to another (sometimes even linguistically different) part of the country, which can have a negative impact on the continuity in education for the children. In that respect, it is noteworthy to recall that courts have endeavoured to guarantee asylum-seeking children the right to education. In a ruling of 6 May 2014, for example, the Labour Court of Charleroi found that the transfer of a family to the family centre of the Holsbeek open 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.⁶²³

In reception centres for asylum seekers, all residents can participate in activities encouraging integration and knowledge of the host country. They have the right to attend professional training and education

⁶²¹ Article 34 Reception Act.

⁶²² Vrt Nws, ‘Hundredes of foreign speaking youngsters might wait until september to go to school’, available in Dutch at: <http://bit.ly/3zBBNHn>.

⁶²³ Labour Court of Charleroi, Judgment of 6 May 2014, available at: <http://bit.ly/1F5Hyqq>.

courses.⁶²⁴ 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. Additionally, they can enrol in adult 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?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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2. Do asylum seekers have adequate access to health care in practice?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
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3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
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4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
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The material aid an asylum seeker is entitled to includes the right to medical care necessary to live a life in human dignity.⁶²⁵ 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 they are also entitled to certain interventions that are considered to be necessary for such a life albeit not enlisted in the nomenclature.⁶²⁶ The reception crisis has severely limited the access to reception for single male applicants. As a result, the access to health care and the overall medical situation of destitute applicants are negatively impacted (see [Constraints to the right to shelter](#)).

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.⁶²⁷

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

Collective centres and individual shelters 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 in only 11 centres of Fedasil. This doctor may refer

⁶²⁴ Article 35 Reception Act.

⁶²⁵ Article 23 Reception Act.

⁶²⁶ Article 24 Reception Act and Royal Decree of 9 April 2007 on Medical Assistance.

⁶²⁷ 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.

asylum seekers to a specialist where necessary. The other reception centres rely on the system of working with external doctors.⁶²⁸ Most LRI also have agreements with local doctors and medical centres, but the costs are not refunded by Fedasil but by the federal Public Planning Service Social Integration (*Programmatorische Federale Overheidsdienst Maatschappelijke Integratie*). This service's decisions are based 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.⁶²⁹

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,⁶³⁰ 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 through an online form (*requisitorium*)⁶³¹ before going to a doctor.⁶³² 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.⁶³³

Once the asylum application has been refused and the reception rights have ended, the person concerned will only be entitled to emergency medical assistance, for which he or she must refer to the local PCSW.⁶³⁴

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. 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.

There are services specialised in the mental health of migrants, such as Solentra,⁶³⁵ 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. 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.⁶³⁶

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. In Flanders, there is a centre for the intensive assistance of asylum seekers with psychological and/or mild psychiatric problems (*Centrum voor Intensieve Begeleiding van Asielzoekers – CIBA*) in Sint-Niklaas. CIBA provides for an intensive trajectory of maximum 3 months and has 40 places, 5 of which are reserved for unaccompanied minors of 16 years old or over.⁶³⁷ In CARDA, there are 35 places for adults and families and no places for unaccompanied minors here. Neither CIBA nor CARDA have a waiting list in March 2023.⁶³⁸

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

⁶²⁸ Information provided by Fedasil, March 2023.

⁶²⁹ Court of Auditors, *Opvang van asielzoekers*, October 2017, 57-58; Information provided by VVSG, February 2018.

⁶³⁰ Article 45 Reception Act.

⁶³¹ Available in Dutch, French or English: <http://bit.ly/3MawuX7..>

⁶³² Information about this process provided by Fedasil: <http://bit.ly/4324cEb>.

⁶³³ Court of Auditors, *Opvang van asielzoekers*, October 2017, 58.

⁶³⁴ Articles 57 and 57ter/1 of the Organic Law of 8 July 1976 on the PCSW.

⁶³⁵ <https://www.solentra.be/en/>

⁶³⁶ Court of Auditors, *Opvang van asielzoekers*, October 2017, 55-56.

⁶³⁷ Brochure of the CIBA program available in Dutch via: <https://bit.ly/2Yillnz>

⁶³⁸ Information provided by Fedasil, March 2023.

organisation of health care in Belgium is unequal and not efficient. This leads to a difference in treatment of asylum seekers 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 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 transportation 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.⁶³⁹ Fedasil has analysed the different options put forward by the report and decided a coverage of asylum seekers by compulsory health insurance is the best solution. A project in that sense, funded by the European Recovery Fund, is being developed. In January 2023, a trial phase of 6 months has started, after which the implementation of this system on the level of hospitals and pharmacies is envisaged. Implementation of this system with other actors of the health sector will take place in a later stage of the project.⁶⁴⁰

Applicants for international protection are entitled to the same access to COVID-19 vaccines and testing as Belgian nationals. For applicants residing in reception centres, Fedasil put in place vaccination campaigns, leading to a vaccination rate of 62% in the reception network in September 2021 (compared to an overall vaccination rate in Flanders of 52% at the same moment).⁶⁴¹ PCR tests are reimbursed by Fedasil under the same conditions as reimbursement to Belgian nationals. Persons not residing in a reception centre but entitled to medical care can obtain reimbursement via the abovementioned *requisitorium*.⁶⁴²

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.⁶⁴³ This is a non-exhaustive list, but no other definition of vulnerability is 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

⁶³⁹ KCE, *Asylum seekers: options for more equal access to health care. A stakeholder survey*, 29 October 2019, available at: <https://bit.ly/2T8Ef3G>.

⁶⁴⁰ Information provided by Fedasil, March 2023.

⁶⁴¹ Myria, Contact meeting September 2021, available in Dutch and French at: <https://bit.ly/3kE0oD7>.

⁶⁴² Medimmigrant, ‘Covid-vaccination of people in precarious stay in Brussels’, available in Dutch and French on <https://bit.ly/3Kx2LNg>.

⁶⁴³ Article 36(1) Reception Act.

the Immigration Office uses a registration form in which they should indicate if a person is a (unaccompanied) 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 affected by psychological issues (for more information see [Guarantees for vulnerable groups](#)).

After the Dispatching Desk receives this information, they categorise the asylum seekers 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 and the Dispatching desk do not match completely, which is why most asylum seekers are assigned to a collective centre. Only in a few cases, mostly related to serious health problems, will they be directly assigned to individual housing provided by NGOs or LRI (see [Forms and levels of material reception conditions](#)).

In fact, the evaluation of dispatching mostly focuses on medical grounds. A medical worker of the Dispatching desk meets personally with the asylum seeker if the 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.⁶⁴⁴ The obtained medical information is then forwarded to the assigned reception centre. Regarding 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.⁶⁴⁵ 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.⁶⁴⁶ A finding of vulnerability may lead to a transfer to more adequate accommodation, if necessary.

In practice, a transfer is often impossible due to insufficient specialised places or 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.⁶⁴⁷ Since May 2018, 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.⁶⁴⁸ These include a lack of time, language and communication barriers, a lack of information handover, and training and experience related to vulnerable persons. The

⁶⁴⁴ Information provided by Fedasil, February 2018.

⁶⁴⁵ Article 22 Reception Act.

⁶⁴⁶ Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

⁶⁴⁷ Court of Auditors, *Opvang van asielzoekers*, October 2017, 63.

⁶⁴⁸ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

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 to assign an adapted reception place), the identification undertaken by social workers in the reception facilities is much more complex and multi-dimensional. Consequently, the second identification process diverges substantially amongst the different reception facilities, including regarding the different categories that are defined as vulnerable by the Immigration Office and the Dispatching desk.⁶⁴⁹

Fedasil cooperates 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.⁶⁵⁰

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 refugee status or subsidiary protection and who are experiencing problems (linked to their vulnerability) with finding their own house and leaving the shelter.

In 2022 Fedasil established the first special reception facility for LGBTQI+ applicants with a total of 14 places in two secret locations in Brussels.⁶⁵¹

There is also a certain number of specialised medical reception places or specific medical individual accommodation initiatives for:

- ❖ Persons with limited mobility, for example when they are in wheelchairs;

⁶⁴⁹ Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available at: <https://bit.ly/2S7NtO5>, 25.

⁶⁵⁰ Fedasil, Note on the FGM trajectory in the framework of the Gamsproject, steps and tasks for implementation within the federal centre, 20 September 2017; *GAMS, Traject VGV, available in Dutch at: https://bit.ly/2VGZTe7*

⁶⁵¹ EUAA, 'Asylum Report 2022, 28 June 2022, p. 265, available at: <http://bit.ly/3Mos532>.

- ❖ 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 whom it is necessary to have adapted conditions of reception due to medical reasons, such as special diet, a private toilet, and a private room.

Given that one room sometimes covers several medical places used by family members of the person with medical issues, not all specialised medical places are available for people with medical needs. Currently, there are 199 medical places in collective reception centres and 150 in individual reception places. This is insufficient to assign every person with special medical needs to an adapted reception place, especially if the need consists of small-scale reception place or rooms of 1 or 2 persons. There are sufficient adapted reception places for people with limited mobility.⁶⁵²

2.1. Reception of unaccompanied children

The reception of unaccompanied children follows three phases:

1. **Orientation and Observation Centres:** Unaccompanied children should in principle first be accommodated in specialised reception facilities: Orientation and Observation Centres (OOC). While in these centres, a decision should be made on which reception facility is most adapted to the specific child's needs.⁶⁵³ At the end of 2022, there were 611 places in OOCs.⁶⁵⁴ The Centres reached a 94% occupation rate, having been completely saturated for some time.⁶⁵⁵
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 2,242 places in collective reception centres⁶⁵⁶
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 332 places in individual reception facilities.⁶⁵⁷

There are specific places in Rixensart, which currently has 30 places for underage pregnant girls or young girls with children.

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**, **Oranje Huis** and **Samusocial**. There were 46 of these places available in February 2022.⁶⁵⁸

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, and has been on hold ever since.⁶⁵⁹ Unaccompanied children whose asylum procedure end with a negative decision could 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

⁶⁵² Information provided by Fedasil, March 2023.

⁶⁵³ Article 41 Reception Act; Royal Decree of 9 April 2007 on the centres for the orientation and observation of unaccompanied minors.

⁶⁵⁴ Information provided by Fedasil, March 2023.

⁶⁵⁵ Myria, *Contact meeting*, 19 January 2022, available in French and Dutch at: <https://bit.ly/3sy9SFN>, 51-52.

⁶⁵⁶ Information provided by Fedasil, March 2023.

⁶⁵⁷ Information provided by Fedasil, March 2023.

⁶⁵⁸ Information provided by Fedasil, March 2023.

⁶⁵⁹ Information provided by Fedasil, January 2020, confirmed in March 2023.

unaccompanied minors to focus on their future perspectives during a one-week residency in Arendonk). These centres helped them to take decisions for their future, e.g., regarding voluntary return and the situation in which they would be if they stay illegally. Due to the reception crisis, these two centres were used as ‘regular’ reception centres for unaccompanied minors.⁶⁶⁰

2.2. Reception of families

There are currently 78 places for vulnerable and pregnant women in Louvranges and some other places at the centre of Croix Rouge in Yvoir and Jette.⁶⁶¹

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.⁶⁶² These families are sheltered in “open return houses” organised by the Immigration Office. These houses are also used as an alternative for detention for families with children. The government agreed in March of 2023 that it would prohibit the detention of children, by inscribing it into the Belgian Aliens Law.⁶⁶³

2.3. Reception of victims of trafficking and persons affected by traumatic experiences

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 unaccompanied minors and another 40 places in the Rode Kruis **Ciba** centre, out of which 5 are places for minors above 16).⁶⁶⁴ There are currently no waiting lists for the Carda and Ciba centre.⁶⁶⁵ 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

There are a certain number of “medical places” (349 in March 2023: 199 in collective centres, 150 in individual reception places⁶⁶⁶) in the reception network adapted for people with specific medical needs and their family members. Given the fact that one room sometimes covers several medical places, which are used by family members of the person with medical issues, these places are not all available for people with medical needs. Currently, the number of medical places is insufficient to assign every person with special medical needs to an adapted reception place.⁶⁶⁷

⁶⁶⁰ Information provided by Fedasil, March 2023.

⁶⁶¹ Information provided by Fedasil, March 2023.

⁶⁶² 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.

⁶⁶³ Nicole de Moor, CRIV 55 COM 1044, Chamber of Representatives, available in Dutch at: <https://bit.ly/3Uckhmz>, 10.

⁶⁶⁴ Information provided by Fedasil, March 2023.

⁶⁶⁵ Information provided by Fedasil, March 2023.

⁶⁶⁶ Information provided by Fedasil, March 2023.

⁶⁶⁷ Information provided by Fedasil, March 2023.

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](#)).⁶⁶⁸ The brochure “Asylum in Belgium” currently distributed is available in ten different languages⁶⁶⁹ and in a DVD version. These brochures are being distributed in the reception facilities.

As for the specific rights and obligations concerning reception conditions, the asylum seeker also receives a copy of the house rules 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.⁶⁷⁰ 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. Fedasil launched an AMIF-founded project (‘Amica’) in collaboration with some universities, in the context of which 3 videos about the “Day 0” (day of registration of the asylum application and first access to the reception network in the arrival centre) were developed that were made available on the Fedasil website in the course of 2022. The website is to be accessible via QR-codes displayed in and around the arrival centre. Audio-tours in 14 different languages are available in the arrival centre, providing information about this “Day 0”.⁶⁷¹

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.⁶⁷² In practice, however, the number of interpreters available in many reception structures is insufficient.

Impact of the reception crisis (2021 – 2023)

Single male applicants for international protection who do not receive shelter, do not receive the above information. The Immigration Office informs them about the waiting list with a general information leaflet about the shortage of places.⁶⁷³ This leaflet contains a QR-code that directs applicants to the waiting list.

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.⁶⁷⁴ In practice most centres refer to the free assistance of lawyers, although some of them provide first line legal advice themselves as well. Consequently, 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

⁶⁶⁸ Article 14 Reception Act.

⁶⁶⁹ 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>.

⁶⁷⁰ Article 19 Reception Act.

⁶⁷¹ Myria, ‘Contact meeting’, 19 January 2022, p. 62 available in French and Dutch at: <https://bit.ly/3sy9SFN>.

⁶⁷² Article 15 Reception Act.

⁶⁷³ Myria, ‘Contact meeting’, 21 September 2023, p. 12, available in French and Dutch at: <https://bit.ly/3Za40zZ>.

⁶⁷⁴ Article 33 Reception Act.

and in the contact with his or her lawyers.⁶⁷⁵ 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.⁶⁷⁶

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 concerning reception based on nationality. The Reception Act does not exclude asylum seekers from safe countries of origin and EU citizens.

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.⁶⁷⁷ 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, 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](#)).

⁶⁷⁵ 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.

⁶⁷⁶ Article 21 Reception Act; Royal Decree on the system and operating rules in reception centres and the modalities for checking rooms, 2 September 2018.

⁶⁷⁷ Federal Ombudsman, *Annual Report 2013*, available at: <https://bit.ly/3ZHleEy>, 30-35.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of migrants detained in 2021:	2,992
2. Total number of asylum seekers detained in 2021:	372 ⁶⁷⁸
3. Number of asylum seekers in detention at the end of 2021:	17
4. Number of detention centres:	6
5. Total capacity of detention centres:	263 ⁶⁷⁹

During 2021, a total of 2,992 migrants were detained,⁶⁸⁰ of whom several categories of asylum seekers: asylum seekers who arrive at the border, who are still systematically detained before being allowed to enter the territory, and asylum seekers who are detained during their procedure or those asylum seekers based on the Dublin Regulation (see [Grounds for detention](#)). Of the total of 372 asylum seekers who were detained, 132 were detained based on the Dublin Regulation. In 2021, 10% of all migrants detained were asylum seekers who were detained at the border, less than 1% of all migrants detained were asylum seekers who have entered the territory. Migrants who are detained under the Dublin-III regulation are not considered asylum seekers in the statistics. They do appear as a separate category in the figures collected for repatriations. In 2021, 366 migrants were repatriated in light of the Dublin procedure. This represented 18% of the total number of repatriations that year (1,984).⁶⁸¹

Belgium has a total of 6 detention centres, commonly referred to as “closed centres”:⁶⁸² the **127bis** repatriation centre, to which the closed family units have been attached; the “**Caricole**” near Brussels Airport; and 4 “Centres for Illegal Aliens” - as the authorities define them - located in **Bruges** (CIB), in **Merksplas** near Antwerp (CIM), in **Vottem** near Liège (CIV) and in **Holsbeek** (near Leuven).⁶⁸³ 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 government decided on 14 May 2017 to maximise the number of places in existing detention facilities through what was baptised the “Master Plan”. In 2019, the open reception centre (**Holsbeek**) has thus been turned into a closed centre for 60 women. The government coalition, that was inaugurated on 1 October 2020, has confirmed the construction of additional places. With the construction of two additional detention centres in Zandvliet (144 places) and Jumet (200 places), the construction of a new centre in Jabbeke (112 places) as replacement for the centre in Bruges and the creation of a new quick-departure centre in Steenokkerzeel, the total detention capacity in Belgium will amount to 1,145 places in 2030.⁶⁸⁴ The Government announced that the building works for the departure centre in Steenokkerzeel are planned for spring 2024 and that the realisation of the three detention centres in Zandvliet, Jumet and Jabbeke is planned between 2027 and 2029.

Nevertheless, nearly six years after the announcement of the so called “Master Plan”, it is still not clear whether these centres will appear under the present Government. Additionally, the Government had

⁶⁷⁸ In 2021, 83 persons were released from detention after introducing an asylum application—information provided by the Immigration Office, February 2022.

⁶⁷⁹ Before the COVID-19 crisis, the total capacity of the detention centres was 635 places. Due to the sanitary measures taken in the centres, the capacity fluctuated in 2021 between 273 and 312 places. In February 2022, the detention capacity was estimated at 263 places.

⁶⁸⁰ Information provided by the Immigration Office, February 2022.

⁶⁸¹ DVZ, Terugkeer, available in Dutch at: <https://rb.gy/p63lrc>.

⁶⁸² For an overview, see Getting the Voice Out, ‘What are the detention centres in Belgium?’, available at: <http://bit.ly/1GxZAJd>.

⁶⁸³ In February 2022, the capacity in the detention centres is 40 in the 127bis repatriation centre, 45 in Caricole, 50 in Bruges, 69 in Merksplas, 35 in Vottem, and 24 in Holsbeek.

⁶⁸⁴ As the Secretary of State announced on his website, 22 March 2022, available in Dutch and French, available at: <https://bit.ly/35n68ht>.

announced the replacement of the centre in Bruges, as the condition of the current centre is deemed ‘very bad’.⁶⁸⁵ Just as the creation of the 2 new centres, the replacement of Bruges seems to be blocked by local administrative and urbanistic obstacles. In the meantime, the government has announced that a budget has been made available to address the most urgent renovations. More recently, a proposal to create a new short-stay departure centre in Steenokkerzeel (next to 127bis and Caricole) was made which, according to the government, would make removals more “humane, comfortable and safe” and promote better care for people who need to be repatriated swiftly.

In August 2018, the government opened five family units in the **127bis** repatriation centre, which in principle makes it possible to detain children (see [Detention of vulnerable applicants](#)).

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

The law contains grounds for detaining asylum seekers during the asylum procedure as set out by Article 8(3) of the recast Reception Conditions Directive.

1.1. Border detention

At the border, asylum seekers arriving without travel documents are automatically detained. The law states that a “foreigner cannot be maintained for the sole reason that he/she has submitted an application for international protection.”⁶⁸⁶

UNHCR is concerned that this is not sufficient to prevent arbitrary detention. It regretted that, contrary to Article 74/6 of the Aliens Act on detention on the territory, Article 74/5 of the Aliens Act 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 of the Aliens Act. This recommendation has not been taken into account.

In practice, standard motivations for the detention of asylum seekers at the border are being used, without properly considering their individual situation. This confirms the concerns on arbitrary detention formulated by UNHCR.⁶⁸⁷ In its fourth periodic report on Belgium, the UN Committee against torture also

⁶⁸⁵ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French, available at: <https://bit.ly/3sJdgMd>, 34.

⁶⁸⁶ Article 74/5(1) Aliens Act.

⁶⁸⁷ 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>.

formulated its concerns over the continued practice of systematic detention of asylum seekers at the border.⁶⁸⁸

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.⁶⁸⁹

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

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 that State has accepted their responsibility.⁶⁹⁰ 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 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,⁶⁹¹ 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 remained possible if other grounds were met.⁶⁹²

The objective criteria for determining a “risk of absconding” are set out in 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.

⁶⁸⁸ CAT, Observations finales concernant le quatrième rapport périodique de la Belgique, 22 July 2022, available in French at : <https://bit.ly/35rjMQQ>.

⁶⁸⁹ Article 74/6(1) Aliens Act.

⁶⁹⁰ Article 51/5 Aliens Act.

⁶⁹¹ CJEU, Case C-528/15 *Al Chodor*, Judgment of 15 March 2017.

⁶⁹² Information provided by the Immigration Office: Myria, *Contact meeting*, 21 June 2017, available at: <http://bit.ly/2BVIncU>.

Civil society organisations have argued that it concerns overly broad criteria for the determination of a risk of absconding.⁶⁹³ 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.

On 19 July 2019, Article 51/5/1 of the Aliens Act entered into force and implemented 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.⁶⁹⁴

In its judgment *M.A. v. Belgium* of 27 October 2020, the European Court of Human Rights (ECtHR) ruled that the Belgian government had violated Articles 3 and 13 of the European Convention on Human Rights (ECHR) by insufficiently examining the individual circumstances of a Sudanese citizen in unlawful residence prior to his repatriation and by ignoring the temporary repatriation order issued by the Court of First Instance. The repatriation that leads to the Belgian conviction took place on 13 October 2017. The Sudanese citizen had retracted an earlier asylum application declaring his mistrust in the Belgian authorities given that they had contacted the Sudanese authorities to conduct an identification-mission in Belgian detention centres and that he did not get representation by a lawyer. In order to prepare his repatriation, the man was interrogated in Arabic by this Sudanese identification mission during a meeting where, he declared, no lawyer, interpreter or even a civil servant from the Immigration Office was present. At a later stage, the man did engage a lawyer who filed a unilateral request to the Court of First Instance to suspend the repatriation at least until his request to be released would be judged by court. This request was granted on 12 October 2017. However, on the 13 October 2017, the man was moved to the airport anyway where he was requested by an Arabic speaking person to sign a declaration to return voluntarily and to withdraw all pending appeals, before entering the plane.⁶⁹⁵

When asked about the implications of this judgement for the Belgian practice, the previous Secretary of State for Asylum and Migration responded that the practice of implicit asylum applications had in the meantime already been introduced and that he would continue to support and expand the specialised Article 3 ECHR unit of the Immigration Office and ensure that every person concerned receives correct and comprehensible information about their rights and rapid access to a lawyer.⁶⁹⁶

The practice of ‘implicit asylum applications’ means that the authorities consider that an application has been “implicitly” lodged by people, who refuse to file for asylum, yet proclaim to fear return. Consideration of such an implicit asylum application can result in a ban on the expulsion to the country of origin. The practice of implicit asylum applications can in fact, be considered as a worrisome procedure, e.g., in those cases where the implicit asylum application is used to open a Dublin procedure, thus enabling them to detain the person concerned for the purpose of the Dublin transfer in accordance with the Dublin Regulation. The European commissioner for Migration already expressed doubts as regards the compliance of this practice with the recast Asylum Procedures Directive.⁶⁹⁷ Other issues that are raised

⁶⁹³ 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>. Link is not available.

⁶⁹⁴ Before this legal amendment, the Minister could not delegate such decisions to a staff member of the Immigration Office.

⁶⁹⁵ ECtHR, 27 October 2020, *M.A. v. Belgium*, available in French: <https://bit.ly/2KJRPcw>.

⁶⁹⁶ Information received by email from the cabinet of the State Secretary for Asylum and Migration

⁶⁹⁷ “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

concern the lack of legal basis for the practice and the risk of a superficial examination of the application for international protection and the invoked fear under Article 3 ECHR.⁶⁹⁸

This practice of "implicit asylum application" mainly concerned the specific target group of migrants in transit, who did not necessarily want to file a "formal" application for international protection in Belgium. While this category was the target of arrests and detention in 2019, from 2020 onwards, the government changed the policy of systematic detention previously applied to these profiles. As a result, this type of procedure was no longer observed.

As to the "article 3 ECHR check", note that in practice, a specific questionnaire, also known as "Paposhvilli" in the jargon of the authorities, was introduced in 2019. This questionnaire must be filled out, before any decision to detain can be taken. It is not always guaranteed that the foreigner will be able to answer the questionnaire in the best possible way, since he or she is not in the presence of a lawyer and interpreters may be lacking (see [Legal assistance at the moment of arrestation](#)).⁶⁹⁹

According to the Immigration Office, mid 2021, a specific cell with 3 legal experts was created within the Immigration Office in order to verify whether the detention and/or expulsion would violate article 3 and 8 ECHR.

The specific cell is charged with the following tasks:

- ❖ analysing the national and international case law on the justification of Articles 3 and 8 of the ECHR in expulsion decisions;
- ❖ review of the expulsion decisions of the foreigners detained in the detention centres. Such review is mainly based on the statements of the person concerned and the objective circumstances in the country of destination and the elements in the administrative file are taken into account;
- ❖ provide support in justifying expulsion decisions or with more general questions about Articles 3 and 8 ECHR and searching for information on the situation in a country;
- ❖ interviews with foreigners in detention centres either with a view to establishing their nationality in order to be able to assess the risk of violation of Article 3 in case of return, or with a view to obtaining additional information about the dangers invoked by the person concerned;
- ❖ organising trainings in order to raise awareness among the staff members of the Immigration Office of the importance of Articles 3 and 8 of the ECHR in their daily work. In this regard, a syllabus and training courses, which for example contain the legal requirements for the right to be heard, are available to them; and
- ❖ drawing up motivation keys to assist the services in making their decisions.

Figures provided by the Immigration Office show that in 2021, the special cell has analysed 1,131 files and has given its advice in 28 cases of which 7 concerned general questions and 21 were individual cases.⁷⁰⁰ Driven from their experience in contacting this so-called "article 3 cell" in some individual cases, the Move coalition (a coalition of NGOs accredited to visit the detention centres) finds that the unit is not easily reachable and the decision-making process in general lacks transparency.

acquis."; see: Letter from EU Commissioner for Migration Avramopoulos to Belgian Secretary of State Francken, 2 July 2017.

⁶⁹⁸ Myria, Analyse van het interim-verslag van de Commissie belast met de evaluatie van het beleid inzake de vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen (Commissie Bossuyt), October 2019, available in Dutch at: https://www.myria.be/files/Nota_Myria_-_Interimverslag_Commissie_Bossuyt.pdf 7-8; Myria, Nota over het eindverslag van de Commissie belast met de evaluatie van het beleid inzake de vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen (Commissie Bossuyt), November 2021, available in Dutch at: <https://bit.ly/3wRml8G> 12-13.

⁶⁹⁹ MOVE Coalition, Advies over een "Salduz"-wet voor vreemdelingen (parlementair document 55 2322/001), available in Dutch at: <https://rb.gy/97zzvo>, 7.

⁷⁰⁰ Immigration Office, Annual Rapport 2021, available in Dutch at: <https://bit.ly/3JESFn3>.

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
3. Number of migrants subject to alternative measures in 2021: 178⁷⁰¹

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. The current Secretary of State claims to prioritize the development of these less coercive measures.⁷⁰²

In 2018, the Government decided to create a commission (Commissie Bossuyt) to evaluate the return policy in Belgium. The final report of the commission was proposed in the parliament in 2020. In the report, the Commission Bossuyt also tests the various alternatives to detention that the Government has already put in place.

A first alternative to detention concerns the extension of the deadline for leaving the territory.⁷⁰³ The purpose of this extension is to allow the person to prepare for his departure. As a result, such an extension can only be granted if it is demonstrated that steps are being taken towards voluntary return, and that departure is feasible in a near future.⁷⁰⁴ Figures show that this measure was only requested 9 times in 2019.⁷⁰⁵ The measure is also subject to criticism. The criteria for granting the extension are not clear and fall under the discretionary power of the minister or his delegate.⁷⁰⁶ Another issue concerns the fact that the order to leave the territory does not mention the possibility to request an extension of the deadline for leaving the territory, this is only mentioned in the law itself.⁷⁰⁷ This possibility to postpone departure also fails to address the issue of unremovable people.

A second alternative was the payment of a deposit. According to the government, this measure has not proved to be an effective alternative to detention given that migrants do not have the financial means to pay the deposit. Furthermore, according to the government, such a measure would have as a

⁷⁰¹ Information provided by the Immigration Office, February 2022.

⁷⁰² *“Full implementation of the obligation under the European regulations to develop less coercive measures for detention effectively and apply them. To this end, the feasibility of the various possible alternatives to detention examined, building on already existing studies. These include return homes, regular administrative and/or police controls, house arrest, bail and electronic surveillance. It will be sought to develop and apply viable alternatives to detention that have an effective return result without creating an organised tolerance policy. These alternatives will be evaluated in a systematic manner in order to adjust them if necessary”*. Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French, available at: <https://bit.ly/3sJdgMd>, 35. This ambition was repeated in the Policy note of 2021; Chamber of Representatives, *Policy Note on asylum and migration*, 12 July 2022, available in Dutch and French, available at: <https://bit.ly/3dbyE9V>.

⁷⁰³ Art. 74/14 Aliens Act.

⁷⁰⁴ CALL, case n° 175.622 of 30th of September 2016.

⁷⁰⁵ Commissie Bossuyt, *Eindverslag van de Commissie voor de evaluatie van het beleid inzake vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen*, September 2020, available in Dutch at: <https://bit.ly/3RC5TTw>, 57.

⁷⁰⁶ Myria, *Nota over het eindverslag van de Commissie belast met de evaluatie van het beleid inzake de vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen (Commissie Bossuyt)*, November 2021, available in Dutch at: <https://bit.ly/3wRml8G>, 14.

⁷⁰⁷ *Ibid.*

consequence the extension of the deadline for leaving the territory since the administrative authorities cannot process the payment of the deposit in the normal 30-day period.⁷⁰⁸ It is not put in practice anymore.

A third alternative concerned a reporting duty. After receiving an invite for an interview, the families were required to appear before the Immigration Office. The measure was already discontinued after a few months by the government as it yielded no results toward removal. Figures provided by the government show that only 10% of the 150 families that were invited showed up for the interview. The measure was considered problematic in itself according to the government, the aim should be return, not coming to report that one is still in the country⁷⁰⁹, and is not put into practice anymore.

Specifically 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) of the Aliens Act and return homes (also called: 'FITT'). For families with minors, it first attempted to guide families to return from their private house. However, the coaching consists of one return interview due to limited personnel capacity. During the interview the residence file is examined, the willingness to return is assessed and any obstacles to return such as for example medical issues are discussed. Other problems that arise with the procedure are difficult cooperation with local governments and partners as well as the fact that the strict conditions of the agreement deter families rather than increasing their willingness to cooperate. Moreover, in practice the interview with the staff member of the Immigration Office often takes place at the town hall of the place where the private house is situated, which makes it impossible to identify possible changes in the behaviour of the families.⁷¹⁰ The measure being highly inefficient, it was no longer applied in practice.

Families with minors are detained in return homes, also called family units or FITT (see [Return houses](#)). In the strict sense, the return homes are considered an alternative form of detention because a detention decision is formally made for each family. In practice however, despite open facilities, families are subject to freedom restrictions (e.g. one adult must be present in the home at all times) and are, under the control of a so-called "return coach".⁷¹¹ Children are able to go to school and adults can go out if they get permission to do so.⁷¹² However a recent study conducted by NGO's concluded that some fundamental rights of children were not respected. The fact that children are removed from their usual living areas, do not always have access to school (above 12 years old, children are almost systematically deprived of access to school) or leisure activities is clearly contrary to the best interests of the child.⁷¹³

Because of the COVID-19 pandemic, the length of stay in the return houses in 2021 rose to an average of 173 days. In 2019, this was still 33,8 days and in 2020 47,35 days.⁷¹⁴ The majority of the families detained in return houses have made applications for international protection at the border (in 2021, 47 out of the 61 families).

The final report of the Commission Bossuyt states that the most effective alternative to detention seems to be the Individual Case Management Support (ICAM), where a return coach is appointed to provide intensive guidance for return. In 2021, 60 new civil servants were recruited for the Immigration Office to start working for the newly founded department of 'Alternatives to Detention'. They will be responsible to

⁷⁰⁸ Commissie Bossuyt, Eindverslag van de Commissie voor de evaluatie van het beleid inzake vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen, September 2020, available in Dutch at <https://bit.ly/3X2F7Vv>, 57.

⁷⁰⁹ *Ibid.*, 57-58.

⁷¹⁰ Myria, Nota over het eindverslag van de Commissie Commissie belast met de evaluatie van het beleid inzake de vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen (Commissie Bossuyt), November 2021, available in Dutch at: <https://bit.ly/3wRml8G>, 15.

⁷¹¹ 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.

⁷¹² Royal Decree on Closed Centres, amended in October 2014.

⁷¹³ Mineurs en exil – Report (in French), Les maisons de retour en Belgique, une alternative à la détention à part entière, efficace et respectueuse des droits de l'enfant?, January 2021, available at: <https://bit.ly/3qwWYqh>

⁷¹⁴ Annual Report Alien Office 2021.

man local provincial ICAM-offices. After receiving an order to leave the territory a migrant will be invited to a series of interviews, where his/her file would be explained to them and a trajectory towards return or other existing procedures would be organised (depending on the individual). Attendance is mandatory and failure to cooperate with return procedures or to show up may result in detention. In 2021, there were several cases of asylum-seekers in the Dublin procedure who were arrested after the first or second appointment with an ICAM coach. Since 2022, Dublin cases are, among other target-groups, the priorities of the ICAM coaches.⁷¹⁵

Despite all the proposed alternatives, neither the law nor the Royal Decree has yet been amended. This means that until now, no clear gradation of the different possible coercive measures is listed. It is yet too early to report on the concrete impact of these so called ICAM coaches, and whether or not this approach can be considered an effective alternative to detention. However, due to the mass influx of Ukrainians after the Russian invasion, most of the ICAM coaches were deployed in the registration centre at the Heysel to process the requests for temporary protection. As a result, the ICAM coaches could no longer follow up on their files for several months in 2022.⁷¹⁶

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.⁷¹⁷ 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](#)).⁷¹⁸ In 2021, most families that were detained in return houses are families that applied for asylum at the border.⁷¹⁹

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
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 - ❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
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⁷¹⁵ Information provided by the Cabinet of the Secretary of State Sammy Mahdi.

⁷¹⁶ Myria, Verslag contactvergadering internationale bescherming 15 juni 2022, available in French and Dutch at: <https://rb.gy/c0pmbe>, 23-24.

⁷¹⁷ 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/2ilDj3>.

⁷¹⁸ 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/39kotlE>.

⁷¹⁹ Bron jaarverslag JRS 2021, available in French at: <https://rb.gy/jhmnxt>.

Following the ECtHR's *Kanagaratnam*,⁷²⁰ and *Muskhadzhiyeva* judgments,⁷²¹ the Secretary of State decided that from 1 October 2009 onwards families with children arriving at the border and not removable within 48 hours after arrival should be detained in a family unit, not in a detention centre. However, in August 2018, Belgium opened detention facilities for families with children.⁷²² 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 detention centre for families is located next to the **127bis** repatriation centre near the Brussels National Airport. The Royal Decree of 22 July 2018 (amending the Royal Decree of 2 August 2002) establishes the rules for functioning the closed family units near Brussels International airport.⁷²³

Between August 2018 and April 2019, a total of 9 families with 20 children were detained. While the Council of State first suspended the Royal Decree in April 2019,⁷²⁴ it later only annulled some provisions of the aforementioned Royal Decree, maintaining the possibility of detaining families with children for a maximum of 4 weeks.⁷²⁵ A procedure before the European Court of Human Rights has subsequently been initiated to obtain the annulment.⁷²⁶ A decision by the ECtHR concerning France of 22 October 2021 raises questions as to the lawfulness of the detention duration of 4 weeks. In that decision the ECtHR decided that the detention of a baby of 4 months for 11 days, constitutes an excessive duration in the sense of Article 3 ECHR.⁷²⁷ However, since the judgment of the Council of State, no families with minor children are held at the 127bis detention centre.

In two decisions of March 2022, Belgium was condemned by the Committee on the Rights of the Child for having detained children in the family units of the 127bis repatriation centre.⁷²⁸ The Committee recalled that the detention of any child because of their parent's migration status contravenes the principle of the best interests of the child and that "detaining children as a measure of last resort must not be applicable in immigration proceedings". The Committee moreover reminded Belgium of its obligation to use alternatives to detention. Belgium has already been condemned before by the ECtHR for the detention of children in closed centres that provided for inhumane living conditions.

In September 2020, the current government had agreed to no longer detain families with children in detention centres, as a matter of principle. New, alternative measures would be developed to avoid that this measure would be abused to make return impossible.⁷²⁹ In the context of the 'Migration Deal' of 9 March 2023, the government has announced it would officially insert the prohibition of child detention in the law.⁷³⁰

⁷²⁰ 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.

⁷²¹ 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.

⁷²² Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>, 34.

⁷²³ Arrêté royal du 22 juillet 2018 | Koninklijk besluit van 22 juli 2018.

⁷²⁴ Council of State, Decision No 244.190, 4 April 2019.

⁷²⁵ Council of State, Decision No 251051 of 24th of June 2021

⁷²⁶ Vluchtelingenwerk Vlaanderen acts as one of the applicants in this procedure.

⁷²⁷ ECtHR, *M.D. et A.D. v. France*, Application No. 5703518, Judgment of 22 October 2021.

⁷²⁸ Committee on the Rights of the Child 24 March 2022, *E.B. v. Belgium*, CRC/C/89/D/55/2018, available in English at <https://bit.ly/3nPf1cL> and Committee on the Rights of the Child 22 March 2022, *K.K. and R.H. v. Belgium*, CRC/C/89/D/73/2019, available in English at <https://bit.ly/43bY3VT>.

⁷²⁹ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French, available at: <https://bit.ly/3sJdgMd>, 34.

⁷³⁰ Move Coalition, *One does not detain a child. Point.*, 21 March 2023, available in French and Dutch at <http://bit.ly/3zAt5Jx>.

The detention of unaccompanied children is explicitly prohibited by law.⁷³¹ 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.⁷³² 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](#)). In 2021, 4 unaccompanied children were transferred from the Caricole detention centre to the OOC.⁷³³ 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.⁷³⁴ 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.

An exception to the legal prohibition to detain unaccompanied children, is when the border control officers have doubts as to whether an unaccompanied child arriving at the border is a minor. In such a case, unaccompanied are held in detention for the duration of their age assessment procedure.⁷³⁵ 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.⁷³⁶ In 2020, two minor boys were held in detention because of doubts about their declared age. Because the Belgian authorities did not want to carry out a bone test while the boys were in confinement for sanitary reasons (COVID-19), it eventually took 22 days before they were officially declared minors and released from detention. In 2021, 10 asylum-seekers were declared to be minors. This is a *status quo* with 2020, in which 8 asylum seekers declared to be minors of which 5 were found to be effectively minors after a bone scan.⁷³⁷ There is no similar provision in the law for unaccompanied children which are arrested on the territory during the age determination procedure in case of doubt about their minority. In practice, however, they are also detained in the detention centres.⁷³⁸

For unaccompanied children, the average duration of detention in 2021 was 34,9 days, an increase due entirely to the fact that one person has stayed for 235 days (which was eventually found to be an adult). Without this person, the average stay of unaccompanied children was 13 days in 2021.

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. The ECtHR has moreover recognized that persons in detention are vulnerable in se.⁷³⁹ The issue is also recognized by the UNHCR and the Committee against Torture which both state that alternatives for detention should be provided for victims of torture, victims of serious physical, psychological or sexual violence, victims of trafficking, pregnant women, the elderly and persons with disabilities.⁷⁴⁰ By contrast, such persons are considered vulnerable by the Reception Act to meet

⁷³¹ Article 74/19 Aliens Act.

⁷³² Article 40, 41, §1 Reception Act.

⁷³³ Annual Report Caricole

⁷³⁴ 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.

⁷³⁵ Article 41, §2 Reception Act.

⁷³⁶ Figures confirmed by the Immigration Office in January 2020.

⁷³⁷ According to the Annual Report of the Immigration Office 26 migrants declared to be minors. For 12 of these 26 migrants, doubts were expressed about their age. 20 of these 26 migrants were effectively found to be minors.

⁷³⁸ Information communicated to Myria during the visit to CIB on 24 May 2019 and during the visit of the centre 127bis on 27 May 2019.

⁷³⁹ ECtHR, *Riad and Idiab v. Belgium*, Application No. 29787/03, Judgment of 24 January 2008, §99; ECtHR, *S.D. v. Greece*, Application No. 53541/07, Judgment of 11 June 2009, §47; ECtHR, *Mahmundi v. Greece*, Application No. 14902/10, 31 July 2012, §62.

⁷⁴⁰ HCR, *Principes directeurs du HCR en matière de détention, ligne directrice 9.1, CPT, fiche thématique Rétention des Migrants*, mars 2017, available at: <https://bit.ly/3l6ej9z>, 33 ; CPT, *Fiche thématique rétention des migrants*, Mars 2017, <https://rm.coe.int/16806fbf13>, 9.

their specific needs.⁷⁴¹ One of the recommendations of the Move Coalition is to introduce a procedure for the screening of the vulnerability of the persons that will be detained and to attach appropriate consequences to a finding of vulnerability such as alternatives to detention.⁷⁴²

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.⁷⁴³ Detention can be prolonged for another 2 months for reasons of national security or public order.⁷⁴⁴ 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.

However, when an asylum seeker refuses to board a plane, the detention period can sometimes be longer than 6 or 5 months. In this situation, a practice is applied by the Immigration Office in which the detention period is reset to zero.⁷⁴⁵ Although such a practice received criticism as to creating a situation of indefinite detention duration, it was confirmed by the Belgian Court of Cassation.⁷⁴⁶ The case was afterwards brought before the ECtHR in the *Kabongo v. Belgium* case. In that case, Miss Kabongo, a national of the Democratic Republic of Congo refused to board planes to Southern Africa five times. The Immigration Office took a new decision of detention for a period of 5 months, as a result of which Miss Kabongo was detained more than 10 months. The ECtHR ruled that, considering the multiple attempts by the Immigration Office to remove Miss Kabongo from the territory and her systematic opposition to this, the practice could not be seen as a violation of Article 5 ECHR.⁷⁴⁷

Asylum seekers in the Dublin procedure may be detained to determine the responsible Member State and 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.⁷⁴⁸

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. 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.⁷⁴⁹ However, being admitted to

⁷⁴¹ Article 36 Reception Act.

⁷⁴² Move Coalition, *Hervorming van het Belgisch Migratiewetboek*, zomer 2021, 18-19, available in Dutch at : <https://rb.gy/psdhxe>.

⁷⁴³ Articles 74/5 and 74/6 Aliens Act.

⁷⁴⁴ *Ibid.*

⁷⁴⁵ *Gesloten centra voor vreemdelingen in België: een stand van zaken*, December 2016, available in Dutch at: <https://bit.ly/3DH0nZS>.

⁷⁴⁶ Belgian Court of Cassation, Application No° A.R. P.04.0363.F, nr. 173, Judgment of 31 March 2004.

⁷⁴⁷ ECtHR, *Nancy Ntumba Kabongo v. Belgium*, Application No. 52467/99, Judgment of 22 June 2005, p 18-20.

⁷⁴⁸ Before this legal amendment, the minister could not delegate these decisions to a staff member of the Immigration Office.

⁷⁴⁹ Article 74/5(4)(4) and (5) Aliens Act, as amended by the Law of 21 November 2017.

the territory does not automatically mean that the asylum seeker will be set free. As shown in practice, the Immigration Office takes a new detention decision based on one of the grounds set out in Article 74/6(1) of the Aliens Act, which regulates detention on the territory.⁷⁵⁰

While the duration of detention of asylum seekers is unknown in practice, the Immigration Office stated that the average duration of detention of all persons detained in immigration detention was 27.9 days in 2021.⁷⁵¹

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.⁷⁵² The Criminal Procedures Act and the Aliens Act provide for a strict separation of persons illegally entering or residing on the territory and criminal offenders or suspects.⁷⁵³ 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. Detention centres

The following table gives an overview of the detention centres and their respective capacity in March 2023:⁷⁵⁴

Detention centre	Capacity
127 bis (Steenokkerzeel)	120
Caricole	100
Centrum voor 'illegalen' Brugge (CIB)	104
Centrum voor 'illegalen' Merksplas (CIM)	110
Centrum voor 'illegalen' Vottem (CIV)	77
Centrum voor 'illegalen' Holsbeek (CIH)	28
Gesloten Gezinsunits bij 127bis	0
Total	539

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 detention centre for 50 women.

⁷⁵⁰ See more explanation on this practice in Nansen, Vulnerability in detention: border procedures, fast-track procedure and videoconference (2019-2020), available in French at: <https://bit.ly/3lc5tqA>.

⁷⁵¹ Information provided by the Immigration Office, February 2022. 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.

⁷⁵² Article 4 Royal Decree on Closed Centres, referring to Articles 74/5 and 74/6 Aliens Act.

⁷⁵³ 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.

⁷⁵⁴ Information provided by the Immigration Office in March 2023.

The new government-coalition, that was inaugurated on 1 October 2020, has confirmed the construction of additional places. With the construction of two additional detention centres in Zandvliet (144 places) and Jumet (200 places), the construction of a new centre in Jabbeke (112 places) as replacement for the centre in Bruges and the creation of a new quick-departure centre in Steenokkerzeel, the total detention capacity in Belgium will amount to 1,145 places in 2030 (See [General](#)).

The following table gives an overview of the amount of detentions per centre in the year 2022:⁷⁵⁵

Detention centre	Amount of detentions
Caricole	1,787
127 bis (Steenokkerzeel)	801
Centrum voor 'illegalen' Brugge (CIB)	380
Centrum voor 'illegalen' Merksplas (CIM)	665
Centrum voor 'illegalen' Vottem (CIV)	420
Centrum voor 'illegalen' Holsbeek (CIH)	232
Total	4,285

In 2022, 3,300 persons were forcibly returned. It concerned 1,174 repatriations, 795 Dublin transfers, 1,329 refoulements at the border and 2 voluntary returns facilitated by the International Organisation for Migration (IOM).⁷⁵⁶

1.2. Return houses

As regards families with children, they can be detained in return houses. The family or housing units in the return homes are individual houses or apartments where families are detained during the time required to prepare their return to the country of origin, their readmission by the EU Member State responsible for processing their asylum application, or to be authorized to stay further in the territory (see [Alternatives to detention](#)). When those families with children are being transferred from the border, these persons are legally speaking not considered to have entered the territory.

In 2021, there were 5 sites with 28 housing units with a capacity of 169 persons spread over the communes of **Zulte**, **Tielt**, **Tubize**, **Sint-Gillis-Waas** and **Beauvechain**. A total of 205 persons resided in the housing units throughout that year, compared to 497 persons in 2019. Out of the 205 persons in 2021, 85 were adults and 120 were children. Moreover, 21 families were released in 2021.⁷⁵⁷

In its general policy note in November 2021, the previous Secretary of State declared the intention to create more places in the return houses. The plan to double places in return houses was then repeated on a blog post of the current Secretary of State in December 2022.⁷⁵⁸ Until now, no independent evaluation of the conditions of such facilities has been carried out, although NGOs have urged for it.⁷⁵⁹

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

⁷⁵⁵ Information provided by the Immigration Office in March 2023.

⁷⁵⁶ Information provided by the Immigration Office in March 2023.

⁷⁵⁷ Information provided by the Immigration Office, February 2022.

⁷⁵⁸ Chamber of Representatives, *Policy Note on asylum and migration*, 3 November 2021, available in Dutch and French, available at: <https://bit.ly/3jmBVq4>; Chamber of Representatives, *Policy Note on asylum and migration*, 12 July 2022, available in Dutch and French at: <https://bit.ly/3wRwimD>; Nicole de Moor | Nicole de Moor: “Plannen voor terugkeercentra worden bakstenen” (nicoledm.be)

⁷⁵⁹ Plateforme mineurs en exil, *Report: Return houses in Belgium, a fully-fledged alternative to detention, effective and respectful of children's rights?*, available in French at: <https://bit.ly/3HWbXmy>.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? Yes No
❖ If yes, is it limited to emergency health care? Yes No

So far, the legal provisions relating to detention under the recast Reception Conditions Directive have not been transposed. Although the provisions can still be applicable due to the exceeding of the transposition deadline, 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 detention centres are managed by the Immigration Office, not by Fedasil as are the open reception centres. An informal group of several Belgian human rights organisations active in the field of administrative detention of migrants (see [Access to detention facilities](#)), released a report on the state of detention centres for administrative detention in Belgium. Caritas, Vluchtelingenwerk Vlaanderen, Ciré and others worked together to produce this report, which was the first time in 10 years a similar report had been published.⁷⁶⁰ In 2019 the same NGO group also published a report focusing on vulnerability in detention.⁷⁶¹ It does not concern the detention conditions as such. Still, it addresses certain relevant topics such as the profiles of the detainees, the legality control on detention, the right to family life etc. In 2021, a formal Coalition of NGOs accredited to visit detention centers was created; it was named “Move: Beyond detention of migrants”. The visitors of Move continue to visit all detention centres in Belgium weekly, which enables them to confirm that the findings in these previous reports are still relevant at the moment of writing. In 2022, JRS Belgium published a monitoring report of the detention conditions in the centres, with a specific focus on the centres of Merksplas, Brugge, Caricole and the FITT-unit that they visit every week.⁷⁶²

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.⁷⁶³ 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.⁷⁶⁴ The Immigration Office organises training for the security personnel at the detention centres on the use of coercion, as provided for by law.⁷⁶⁵ 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.

On arrival at the centre, every asylum seeker is subjected to a search.⁷⁶⁶ The search is aimed at verifying whether the asylum-seeker is in possession of objects or substances that are prohibited or dangerous to

⁷⁶⁰ Vluchtelingenwerk Vlaanderen et al., *Closed centres for foreigners in Belgium*, January 2017, available in Dutch available at: <https://rb.gy/ogaeap>.

⁷⁶¹ Caritas, Ciré, JRS Belgium, Plateforme Mineurs en Exil, Point d'appui and Vluchtelingenwerk Vlaanderen, *Vulnerabilité et Détenition en Centres Fermés*, October 2019, available in French at : <https://rb.gy/nl1yre>.

⁷⁶² JRS Belgium, *Monitoring report 2022*, available in Dutch at: <https://bit.ly/3X7r29c>

⁷⁶³ Articles 21, 25, 31, 41, 65 Royal Decree on Closed Centres.

⁷⁶⁴ Articles 85-111/4 Royal Decree on Closed Centres.

⁷⁶⁵ Article 74/8 Aliens Act and Royal Decree on the Use of Coercion for Security Personnel.

⁷⁶⁶ Article 10 and 111/1 Royal Decree on Closed Centres.

himself, other residents, the staff or the security of the centre.⁷⁶⁷ The search shall not exceed the time necessary for this purpose and the asylum seeker is obliged to fully cooperate.⁷⁶⁸ The search can be done in several different ways such as by using a metal detector or other screening equipment, by thoroughly touching the body over the clothes or by having an asylum seeker undress completely in order to enable a thorough search of the clothing.⁷⁶⁹ It is carried out by two members of the staff having the same gender as the asylum-seeker.⁷⁷⁰ If prohibited or dangerous objects or substances are found as a result of the search, they shall be taken into custody, made available to the competent authorities or, with the consent of the asylum seeker, be destroyed.⁷⁷¹ After the security screening, the asylum-seeker must use the sanitary facilities, unless this is not appropriate for medical or safety reasons.⁷⁷² The person concerned must cooperate in a medical examination, after which, if necessary, appropriate medical treatment will follow.⁷⁷³

For every new resident, an administrative record is opened. Every document which can be deemed useful for the identification and the processing of the administrative record shall be taken into custody for the duration of the stay in the detention centre.⁷⁷⁴ The asylum seeker has the right to inspect these documents and is allowed to keep a copy, unless it has been established that the documents are false or forged, in which case they are handed over to the judicial authorities.⁷⁷⁵ Upon arrival, every asylum seekers is entitled to one free national phone call of minimum ten minutes.⁷⁷⁶

Upon arrival, every asylum seeker receives a brochure that provides an overview of his rights and obligations during his stay in the detention centre, as well as the possibilities in the field of medical, psycho-social, psychological or religious assistance.⁷⁷⁷ A more general brochure is also distributed informing him of the right to appeal against detention, the possibilities to make a complaint about the conditions of detention, the possibilities to obtain assistance from a non-governmental organization and to seek legal advice.⁷⁷⁸

The Royal Decree on Closed Centres characterises daily life in the detention centres as being collective during daytime.⁷⁷⁹ Detention facilities have separated rooms or wings for families and single women, including at the border. In sanitary and sleeping facilities, single women and men are separated; in sanitary installations, only staff members of the same sex are present.⁷⁸⁰ For persons who appear not to be able to adapt to the collective regime, the managing director can decide to adopt other specific measures e.g. a specific “room regime”.⁷⁸¹ The other isolation regimes are the medical isolation and the disciplinary isolation. Migrants can be placed in disciplinary isolation in case of the following infringements: damage to goods, theft, threats, beatings, escape, sexual assault and weapon possession⁷⁸² or when a migrant commits the following infringements three times: insults to staff or fellow residents, entering restricted areas, sale-purchase between residents, possession of prohibited substances, disobedience to orders, disturbing the peace or safety and disregard of obligations.⁷⁸³ In principle, the isolation can last a maximum of 24 hours, with a possibility of extension to 72 hours.⁷⁸⁴ In case of assault of staff, the duration

⁷⁶⁷ Article 11 Royal Decree on Closed Centres.

⁷⁶⁸ Article 111/1 Royal Decree on Closed Centres.

⁷⁶⁹ Article 111/2 Royal Decree on Closed Centres.

⁷⁷⁰ Article 111/2 Royal Decree on Closed Centres.

⁷⁷¹ Article 11 and 111/3 Royal Decree on Closed Centres.

⁷⁷² Article 12 Royal Decree on Closed Centres.

⁷⁷³ Article 13 Royal Decree on Closed Centres.

⁷⁷⁴ Article 14 Royal Decree on Closed Centres.

⁷⁷⁵ Article 14 Royal Decree on Closed Centres.

⁷⁷⁶ Article 15 Royal Decree on Closed Centres.

⁷⁷⁷ Article 17 Royal Decree on Closed Centres.

⁷⁷⁸ Article 17 Royal Decree on Closed Centres.

⁷⁷⁹ Article 83 Royal Decree on Closed Centres.

⁷⁸⁰ Article 83 Royal Decree on Closed Centres.

⁷⁸¹ Article 83/1 Royal Decree on Closed Centres.

⁷⁸² Article 98, §2, 1° Royal Decree Closed Centres.

⁷⁸³ Article 98, §2, 3° Royal Decree Closed Centres.

⁷⁸⁴ Article 101, §1 Royal Decree Closed Centres.

is immediately brought to 72 hours with a maximum extension up to 7 days.⁷⁸⁵ It happens nonetheless that the legal regime applicable to the isolated person changes throughout isolation period (from a specific room regime to disciplinary isolation) which ends up to isolation period longer than the legally prescribed duration.

Against each decision taken on the basis of the aforementioned Royal Decree, the detained person can file a complaint to the 'Commission of complaint'. The complaint is written either in one of the official Belgian national languages or in the occupant's mother tongue (no translation is necessary). The complaint is signed and dated by the detainee who lodges the complaint, so a third party (witness, NGO visitor or lawyer) cannot lodge it in his place. The detained migrant can file his complaint with the Secretariat of the Commission or he/she can also file a complaint with the director of the centre where he is detained, who will then transmit the complaint to the Secretariat. This second option is generally preferred by the detainees. The complaint must be filed within five days from the day after the day on which it can be considered established that the complainant has actual knowledge of the facts or the decision giving rise to the complaint. Most of the complaints are declared inadmissible. But if the complaint is well-founded, the Commission can either issue a recommendation, annul the decision taken, or propose a sanction against the staff member. The lodging of a complaint does not suspend the expulsion measures or their execution. Because the whole system lacks transparency and independence, it is considered to be an ineffective redress mechanism for migrants people in detention.⁷⁸⁶

Each centre has a social service which is charged with the psychological and social supervision of the asylum seeker during his stay in the detention centre and prepares rejected asylum-seekers for their possible removal.

3 meals a day are provided, special diets can be delivered on medical prescription, pork is never to be served and alcohol is prohibited.⁷⁸⁷ The asylum seekers get the opportunity to wash themselves on a daily basis and toiletries are at their disposal free of charge.⁷⁸⁸ 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.⁷⁸⁹

In practice, conditions vary from one centre to another. The Government has announced the replacement of the centre in Bruges, as the condition of the current centre is deemed 'very bad' (old building, deficient air-cooling system, broken sanitary, etc.)⁷⁹⁰ The government has announced that a budget has been made available to address the most urgent renovations. By 2030, a new centre in the neighbouring commune of Jabbeke will replace the centre in Bruges.⁷⁹¹

Not only in Bruges, but also in other detention centres, there are some issues. During the COVID-19 pandemic, migrants were often placed in medical isolation to prevent other persons' contamination. In 2021, at least 2288 persons were placed in medical isolation, most of whom were in quarantine due to COVID-19. The rooms in the medical wing are described as bare and having only one window. In some detention centres, there is a television, toilet and washbasin in the room, in some others (e.g. Bruges) the room is common to 10 people with bulk beds.

As far as the isolation cells are concerned, they are described as being extremely bare with grey walls and a small window. The room is lined with a bed with anti-tearing sheets and an aluminium toilet.

⁷⁸⁵ Article 101, §2 Royal Decree Closed Centres.

⁷⁸⁶ CECLR (ex-Myria), *La Commission des plaintes chargée du traitement des plaintes des personnes détenues en centres fermés (2004-2007)*, available in French at : <https://bit.ly/3jxpGXF>.

⁷⁸⁷ Articles 79-80 Royal Decree on Closed Centres.

⁷⁸⁸ Article 78 Royal Decree on Closed Centres.

⁷⁸⁹ Article 76 Royal Decree on Closed Centres.

⁷⁹⁰ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French, available at: <https://bit.ly/3sJdgMd>, 34.

⁷⁹¹ Cd&v, 'Nicole de Moor: "Plannen voor terugkeercentra worden bakstenen"', available in Dutch at: <http://bit.ly/406MpsE>.

Furthermore, persons placed in isolation no longer have access to the telephone, only contact with a lawyer remains possible.

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 daytime whenever they want. In other centres this is strictly regulated. A minimum of two hours of exercise outside is provided.⁷⁹²

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.⁷⁹³

The asylum seeker has an unlimited right to entertain correspondence during the day.⁷⁹⁴ Writing paper is provided in the centre, as is assistance with reading and writing by staff members.⁷⁹⁵ 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.⁷⁹⁶ Calls can be made at the asylum seekers' own expenses during daytime to an unlimited extent.⁷⁹⁷ In some detention centres, the residents are allowed to use their cell phone at all times.⁷⁹⁸ In most centres there exist the possibility to consult the internet in a specially designed room. Since residents could not receive visitors during the COVID-19 pandemic, several detention centres decided to extend the internet moment and to allow resident to use their own smartphone in a private room to be able to facetime with their family and friends.⁷⁹⁹

The social service of the centre has to organise sport, cultural and recreational activities.⁸⁰⁰ In most centres, fitness activities are offered and sporting tournaments of volleyball, soccer and basketball are organised on a regular basis. However, due to COVID-19, contact sports were prohibited, these sports could not be offered in the detention centres in 2021. Every centre has a library at the disposal of the inhabitants, which usually provides a diverse range of books in different languages.⁸⁰¹ Newspapers and other publication can be purchased at their own expense.⁸⁰² They are also entitled to follow radio and television programmes.⁸⁰³ In several detention centres, the rooms are equipped with a television.⁸⁰⁴

According to Article 74/8(4) of the Aliens Act, asylum seekers who are detained in closed centres could be allowed to perform work for remuneration. However, to date, the implementing decree laying down the conditions is still missing. In practice, certain centres provide the possibility for residents with little to no financial resources to do cleaning chores in order to obtain call credit, cigarettes, hygiene products or sweets.⁸⁰⁵

⁷⁹² Article 82 Royal Decree on Closed Centres.
⁷⁹³ Articles 46-50 Royal Decree on Closed Centres.
⁷⁹⁴ Articles 19 Royal Decree on Closed Centres.
⁷⁹⁵ Articles 22 and 23 Royal Decree on Closed Centres.
⁷⁹⁶ Articles 20-21/2 Royal Decree on Closed Centres.
⁷⁹⁷ Article 24 Royal Decree on Closed Centres.
⁷⁹⁸ Jaarverslag Vottem en Caricole.
⁷⁹⁹ Jaarverslag Caricole.
⁸⁰⁰ Articles 69-70 Royal Decree on Closed Centres.
⁸⁰¹ Caricole annual report 2021.
⁸⁰² Articles 71-72 Royal Decree on Closed Centres.
⁸⁰³ Article 72 Royal Decree on Closed Centres.
⁸⁰⁴ Annual report CIH, CIM, Vottem en Caricole
⁸⁰⁵ Annual report detention centres Caricole, Vottem, CIM.

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.⁸⁰⁶ The doctor attached to the centre can decide that a person has to be transferred to a specialised medical centre.⁸⁰⁷ 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.⁸⁰⁸ At the same time, the quality of the health care available depends a lot on the medical infrastructure and individual doctor in the centre.

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.⁸⁰⁹ After every failed attempt of removal when forced was used, the doctor has to examine the person concerned.⁸¹⁰ The person is not automatically provided with a medical report after examination. 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.

If the person so wishes, he/she can request an external doctor to examine him/her in the detention centre at his/her own costs.⁸¹¹ This does not happen very frequently in practice as there are few voluntary doctors to come to the centres (some of them being geographically isolated) and the detained persons do not usually have the financial means to pay for it.

Following Belgium's conviction by the ECtHR in its *Paposhvili* judgment,⁸¹² 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.⁸¹³ The 'special needs' 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. The 'special needs'-programme offers individual assistance to vulnerable persons who return to their country of origin. Within this framework, their stay in a detention centre can be adapted to their needs, assistance can be provided for their return and, if necessary, assistance can be provided for the reintegration in their country of origin.⁸¹⁴ In 2021, 20 persons appealed to the special needs programme.⁸¹⁵

⁸⁰⁶ Article 53 Royal Decree on Closed Centres.

⁸⁰⁷ Article 54-56 Royal Decree on Closed Centres.

⁸⁰⁸ ECtHR, *Yoh-Ekale Mwanje v. Belgium*, Application No 10486/10, Judgment of 20 December 2011. Not the threatened deportation at an advanced stage of her HIV infection to Cameroon, her country of origin, without certainty that the appropriate medical treatment would be available was considered in itself to constitute a violation of Article 3 ECHR, but the delay in determining the appropriate treatment for the detainee at that advanced stage of her HIV infection.

⁸⁰⁹ Article 61 Royal Decree on Closed Centres.

⁸¹⁰ Article 61/1 Royal Decree on Closed Centres.

⁸¹¹ Article 53 Royal Decree on Closed Centres.

⁸¹² ECtHR, *Paposhvili v. Belgium*, Application no. 41738/10, 13 December 2016.

⁸¹³ Myriadoc, *Terugkeer, detentie en verwijdering van vreemdelingen in België*, December 2018, available in Dutch: <https://bit.ly/2S3ooBM>, 30.

⁸¹⁴ Myriadoc, *Terugkeer, detentie en verwijdering van Vreemdelingen in België*, November 2017, available in Dutch: <https://bit.ly/3l5zW9V>.

⁸¹⁵ 13 in Merksplas, 4 in Brugge and 3 in Holsbeek.

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.⁸¹⁶

During their visits in the centres of Merksplas, Brugge and Vottem between 10 April and 14 May 2020, Myria observed that the medical facilities were not always adequate to deal with the COVID-19-crisis (a fortiori when isolation-cells were used to organise medical isolation), and that internal procedures varied between the different centres.⁸¹⁷

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.⁸¹⁸ 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.⁸¹⁹ The modalities of the visits, outside activities, telephone conversation and correspondence are strictly determined in the house rules.⁸²⁰ When a child is absent for more than 24 hours or where vulnerable children (i.e. under 13 years of age, 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.⁸²¹

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.⁸²² Access is granted to UNHCR, the Children's Rights Commissioner, Myria and some supranational human rights institutions.⁸²³ NGOs need to get the approval from the Immigration Office's managing director in advance to get access to the detention centres.⁸²⁴ 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, Point d'Appui and Nansen, who previously formed an informal coalition to work on topics related to administrative detention of migrants. Since January 2021, this informal 'Transit group' is succeeded by an official coalition known by the name Move (www.movecoalition.be). Currently, the members of the steering Committee of Move are Vluchtelingenwerk Vlaanderen, JRS Belgium, Caritas International Belgium and Ciré. The coalition's goals are pursued in collaboration with other NGOs working in the field of migration, such as Nansen or Point d'Appui. The members of Move build on almost 20 years of experience in the field of immigration detention and possess vast expertise in the four specific pillars of the coalition:

⁸¹⁶ Ciré, *Vulnerabilité et détention en centre fermé*, October 2019, available in French at: <https://rb.gy/nl1yre>.

⁸¹⁷ Myria, *Bezoeken van Myria aan de gesloten centra van Merksplas, Brugge en Vottem tussen 10 april en 14 mei 2020 in het kader van de COVID-19-pandemie*, available in Dutch at: <https://bit.ly/2Ye1J9y>, 12.

⁸¹⁸ Articles 7 and 10 Royal Decree on OOC.

⁸¹⁹ Article 10 Royal Decree on OOC.

⁸²⁰ Article 10 Royal Decree on OOC.

⁸²¹ Articles 10 and 11 Royal Decree on OOC.

⁸²² Article 64 Royal Decree on Closed Centres.

⁸²³ Article 44 Royal Decree on Closed Centres.

⁸²⁴ Article 45 Royal Decree on Closed Centres.

- ❖ visits and monitoring of detention centers, in order to provide psychosocial support, neutral information and legal aid to detainees. The visitors observe the conditions in the detention centers;
- ❖ quality legal expertise offered to visitors and other legal practitioners, in order to increase access to legal defense for the detainees;
- ❖ field observations and recommendations for concrete changes are carried out under the political pillar; to better pursue its objectives, the coalition also maintains close contact with politicians;
- ❖ a media and communication pillar, that works on fundamentally questioning detention for migratory reasons in the public space.

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.⁸²⁵ 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.⁸²⁶

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.⁸²⁷ 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.⁸²⁸ 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.⁸²⁹ Because of the COVID-19 sanitary measures all forms of visiting were abolished, even those by NGO's, from March 2020. On 25 May, very limited visitation was allowed by one person per week, preferably the same person. On 15 June 2020, the visit once a week could take place by either two adults or one adult with two minors. If the minors were under the age of twelve; brief hugs were even allowed. As of 3 November 2020, the visits were again restricted. Only visits by one adult and two minors were allowed once a week. The visit took place behind a screen and while wearing masks, touching each other was strictly prohibited. Only since March 2022, the visits have resumed normally.

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? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | N/A | |

When asylum seekers are detained, they are informed in writing of the detention decision, its reasons and the possibility to lodge an appeal.⁸³⁰ Those reasons are mostly limited to very general considerations such as "having tried to enter the territory without the necessary documents (at the border)", or "risk of absconding (in Dublin cases)". Translation of the detention decision in the language of the asylum seeker is not provided for by law, but in some centres a social interpreter is arranged by the centre's social assistant on request by the detainee.

⁸²⁵ Articles 33, 42 and 43 Royal Decree on Closed Centres.

⁸²⁶ Articles 37 and 40 Royal Decree on Closed Centres.

⁸²⁷ Article 34 Royal Decree on Closed Centres.

⁸²⁸ Article 36 Royal Decree on Closed Centres.

⁸²⁹ Articles 29-30 Royal Decree on Closed Centres.

⁸³⁰ Article 17 Royal Decree on Closed Centres.

While in detention, the CGRS prioritises the examination of the asylum application, although no strict time limit is foreseen.⁸³¹ The appeal must be lodged within 10 days after the first instance decision.⁸³² The Court of Alien Law Litigation (CALL) has already criticized the use of this fast-tracked procedure and annulled the decision of the asylum authorities in a case of an asylum applicant at the border because of the threat to his rights of defence and the principle of equality of arms.⁸³³

National legislation does provide for judicial review of the lawfulness of detention. Unlike in case of a suspect in criminal cases, an asylum seeker who is detained is not automatically brought before a judge to determine the lawfulness of his or her detention, but he or she can lodge a request to be released with the Council Chamber of the Criminal Court every month.⁸³⁴ 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.⁸³⁵ 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 before the Court of Cassation.

It is only when the Immigration Office decides to prolong the detention for another month after the applicant has spent already 4 months in detention, that an automatic review by the Council Chamber of the Criminal Court takes place.⁸³⁶

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.⁸³⁷ 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. Through such a restriction, the Aliens Act prevents an effective judicial control of the conditions of necessity and proportionality it imposes itself.⁸³⁸ 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*.⁸³⁹ 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.⁸⁴⁰ 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. The same position has already been adopted by the Court of Justice of the European Union in its earliest case law, as a result of which an overly strict interpretation of the Belgian

⁸³¹ Article 57/6(2) Aliens Act.

⁸³² Articles 39/57 and 39/77 Aliens Act.

⁸³³ CALL, case n° 284.595 of 10th of February 2023.

⁸³⁴ Article 71 Aliens Act.

⁸³⁵ Article 72 Aliens Act.

⁸³⁶ Article 74 Aliens Act.

⁸³⁷ Article 72 Aliens Act.

⁸³⁸ Move Coalition, *Hervorming van het Migratiewetboek*, Zomer 2021, 24 available in Dutch at <https://rb.gy/psdhxe>

⁸³⁹ ECtHR, *Saadi v. United Kingdom*, Application No 13229/03, Judgment of 29 January 2008.

⁸⁴⁰ See for examples of jurisprudence and more on this issue, BCHV-CBAR, *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen*, January 2012.

legal framework constitutes a violation of EU law.⁸⁴¹ Previous case law of the Court of Justice of the European Union adopted the same. 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.⁸⁴² 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, the detention period can exceed the legal maximum and result in the asylum seeker remaining in detention for prolonged periods. This practice has repeatedly been marked as a violation of Article 5(4) ECHR by the ECtHR.⁸⁴³

The European Court of Human Rights examined the legality of the detention and the effectiveness of the remedy provided against the deprivation of liberty and found a violation of the Convention on these points. As such, the Court opposed the case law of the Court of Cassation, which held for many years that an appeal against a decision depriving a person of their liberty is without foundation when, after it has been lodged, the foreign national has been detained based on another separate detention title.⁸⁴⁴ Jurisprudence of the Court of Cassation has slightly been amended since a decision of 27th of September 2022 where the Court found that the procedure had to be continued, even though the person had in the meanwhile been released.⁸⁴⁵

The policy note of the government, however, formulates the intention to amend this: “*In addition, we are working to provide an effective remedy, whereby both the legality and the expediency of the detention can be reviewed by the courts.*”⁸⁴⁶ The government is currently making efforts to reform the Migration Code. Recommendation by the Move Coalition on the judicial review of the detention order concern the introduction of automatic judicial review, assignment of territorial jurisdiction to the Council Chamber of the district in which the detention centre is located in order to facilitate the designation of a legal aid lawyer, the applicability of the procedure states in the Law on the Provisional Custody, and specialization of the judges entrusted with the review of the detention order.⁸⁴⁷

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
 Yes No
2. Do asylum seekers have effective access to free legal assistance in practice?
 Yes No

The law provides for access to free legal assistance for the 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

⁸⁴¹ Move Coalition, *Hervorming van het Migratiewetboek*, Zomer 2021, 24 available in Dutch at: <https://rb.gy/psdhxe>.

⁸⁴² Law of 20 July 1990 concerning pre-trial detention, available in French at: <http://bit.ly/1B626nE> and Dutch at: <http://bit.ly/1KpjZzR>.

⁸⁴³ ECtHR, *Firoz Muneer v. Belgium*; *M.D. v. Belgium*; ECtHR, *Makdoudi v. Belgium*, Application No 12848/15, Judgement of 18 februari 2020; ECtHR, *Muhammad Saqawat v. Belgium*, Application No 54962/18, Judgement of 30 June 2020; Myria and FIRM, *Communication au Comité des Ministres du Conseil de l'Europe, au sujet de l'exécution des arrêts Makdoudi c. Belgique et Saqawat c. Belgique*, available in French at: <http://bit.ly/3jB92WW>.

⁸⁴⁴ ECtHR, *Muhammad Saqawat v. Belgium*, Application No 54962/18, Judgement of 30 June 2020.

⁸⁴⁵ Court of Cassation, 27 September 2022, P.22.1122.N.

⁸⁴⁶ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French at: <https://bit.ly/3sJdgMd>, 35.

⁸⁴⁷ Move Coalition, *Hervorming van het Migratiewetboek*, Zomer 2021, 26-27, available in Dutch at: <https://rb.gy/psdhxe>.

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 detention centre and free and uninterrupted contact between him or her and his or her lawyer.⁸⁴⁸

In the detention centres in **Vottem and Bruges**, a legal permanence of specialized lawyers used to be organised by the bureau for legal assistance of the bar association. Due to COVID-19, these permanences were stopped in Bruges and held by telephone in Vottem. Meanwhile the legal permanence of specialized lawyers have resumed both in the detention centre of Bruges and in that of Vottem. 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.⁸⁴⁹ The Move coalition 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.⁸⁵⁰ Move Coalition and its partners therefore propose the use of an appointment list of lawyers that are entrusted with legal aid in the detention centres, who will be subject to an assessment at the start that tests their knowledge of immigration law and afterwards to an annual/semi-annual assessment organized by the bar associations.⁸⁵¹ 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 currently a structural shortage of qualified legal aid.

Findings of the Move Coalition for the Reform of the Migration Code in 2021 indicate that the access to quality legal aid remains difficult. In a report of 2016, it is stated that only 20% of the detained migrants has access to a lawyer.⁸⁵² The quality of legal aid varies among the detention centres. Partnerships have been established between directors of certain detention centres and the bar associations of the judicial district in which the centre is located, leading to inequalities in the concrete implementation of the constitutional right to legal aid. For example in the centres of Vottem and Bruges, there is currently a first-line legal aid service organised by the Legal Aid Commission, however this is not the case in the other detention centres. The Move Coalition therefore recommends that the Royal Decree on Closed Centres shall include the obligation for the staff of the detention centres to ensure that every newly detained migrant from the first day of detention enjoys the effective assistance of a lawyer by providing information on the right to legal aid and by contacting the agency for legal aid.⁸⁵³ It also recommends that the Royal Decree shall include the obligation for the directors of the detention centres to establish a first-line assistance service in their institution, to be held twice a week at fixed times.⁸⁵⁴

⁸⁴⁸ Articles 62 and 63 Royal Decree on Closed centres.

⁸⁴⁹ UNHCR Belgium, *Juridische Begeleiding van verzoekers om internationale bescherming in België*, September 2019, available in Dutch at: <https://bit.ly/38NjQWZ>, 25 and 43.

⁸⁵⁰ See all the findings in UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at: <https://bit.ly/3wRmwB2>.

⁸⁵¹ Note pour un amélioration de l'aide juridique accessible aux justiciables dans les centres de détention pour personnes migrantes, Brussels 3 May 2022.

⁸⁵² CARITAS INTERNARIONAL, CIRE, Ligue des droits de l'Homme, MRAX, « Gesloten centra voor vreemdelingen - Stand van zaken », December 2016, 61

⁸⁵³ Move Coalition, *Hervorming van het Belgisch Migratiewetboek – Zomer 2021*, 31, available in Dutch at: <https://bit.ly/40qJZpK>.

⁸⁵⁴ Move Coalition, *Hervorming van het Belgisch Migratiewetboek – Zomer 2021*, 32, available in Dutch at: <https://bit.ly/40qJZpK>.

Legal assistance at the moment of arrestation

Unlike in criminal matters, there is currently no legal safeguard that requires a lawyer to be present at the audition after arrestation of asylum-seekers that can possibly be detained. On 16 November 2021, a legislative proposal has been submitted to embed the right to legal assistance of a lawyer for asylum seekers which can possibly be detained. The presence of a lawyer at this stage of the procedure is necessary, *inter alia* because of the right to be heard. Respect for this right can be ensured by the presence of a lawyer since he can provide the asylum seeker with timely information on his family and socio-professional situation, as well as element concerning his physical and mental health and about the possible violation of human rights in case of return to his country of origin or transit.⁸⁵⁵ It remains to be seen whether this will be adopted.

E. Differential treatment of specific nationalities in detention

No distinctions are made between different nationalities in detention.

⁸⁵⁵ Move, Advies over een “Salduz”-wet voor vreemdelingen (parlementair document 55 2322/001), 7, available in Dutch at <http://bit.ly/3YqXB3b>.

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.⁸⁵⁶ 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.⁸⁵⁷ 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.⁸⁵⁸ 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.⁸⁵⁹

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 prolong the card in a timely manner, a paper document temporarily covering the right to residence is issued by the commune. This document is named an “Annex 15”.⁸⁶⁰

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.

⁸⁵⁶ Article 49 Aliens Act.

⁸⁵⁷ Article 76 Aliens Decree.

⁸⁵⁸ Article 49/2(2)(3) Aliens Act.

⁸⁵⁹ Article 77 Aliens Decree.

⁸⁶⁰ 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.⁸⁶¹

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](#),

⁸⁶¹ 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.⁸⁶² 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 2022:	N/a
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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.⁸⁶³ 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 2023 the required amount is set at 967 € per month, plus 323 € per dependent person.⁸⁶⁴
- ❖ 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.⁸⁶⁵ The municipal authorities confirm this by issuing a certificate of receipt (“Annex 16bis”).⁸⁶⁶ 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 L-card with a validity of 10 years and the mention “EU – long-term resident”.⁸⁶⁷ In addition to this, the mention “international protection granted by Belgium on [date]” is written on the residence permit

⁸⁶² Article 5 Belgian Nationality Code.

⁸⁶³ 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.

⁸⁶⁴ More info available at: <http://bit.ly/2jAyqvU>.

⁸⁶⁵ Article 29(1) Aliens Decree.

⁸⁶⁶ Article 29(2) Aliens Decree.

⁸⁶⁷ More info about the L-card available at: <http://bit.ly/40U6XW7>.

for long-term residents.⁸⁶⁸ The duration of validity of long-term residence status is unlimited, contrary to the residence card D itself.⁸⁶⁹

In the event of a refusal, the municipal authorities will notify the applicant with a so-called Annex 17.⁸⁷⁰ 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 aliens having acquired the Belgian nationality in 2021:	39,448

There are multiple systems for receiving 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. Apart from those to mechanisms of ‘acquiring the Belgian nationality’ (*verkrijging van de Belgische nationaliteit/acquisition de la nationalité belge*) there is a third mechanism of ‘granting the Belgian nationality’ (*toekening van de Belgische nationaliteit/attribution de la nationalité belge*), which is the result of an almost automatic procedure mostly used for minors who receive citizenship by descent, after adoption or because they were born in Belgium.

In 2021, 39,448 aliens received Belgian citizenship.⁸⁷¹ 14,031 of that number represents the (almost automatic) ‘granting’ of citizenship. 24,960 persons acquired citizenship through a declaration of nationality; 364 persons acquired citizenship via naturalisation *stricto sensu*. There is a small ‘rest-category’ of specific cases.⁸⁷²

On 31 December 2022, some changes were made to the Code of Belgian nationality. Some significant changes are the following:

- The formulation of article 10 is altered in the sense that a child born in Belgium who does not have another nationality, automatically has the Belgian nationality without first having to be recognised as stateless; A Central Authority for nationality is constituted within the Federal Public Service (FPS) Justice. If a local officer of a municipality has doubts about the application of the Code of Belgian nationality, it can ask for a non-binding advice of this Central Authority, that gives advice within 6 months (delay which can be prolonged with another 6 months).

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:⁸⁷³

- ❖ The applicant has to be 18 years or older;
- ❖ The applicant has to stay legally in Belgium;

⁸⁶⁸ Article 30(2) Aliens Decree.

⁸⁶⁹ Article 18(1) Aliens Act.

⁸⁷⁰ Article 30(1) Aliens Decree.

⁸⁷¹ Myria, *La migration en chiffres et en droits : le rapport migration 2022 sous forme de cahiers – Nationalité*, available in French and Dutch at : <https://bit.ly/434fM1J>. This report contains numbers until 2021 ; no statistics about citizenship are available yet for the year 2022.

⁸⁷² Myria, *La migration en chiffres et en droits : le rapport migration 2022 sous forme de cahiers – Nationalité*, available in French and Dutch at : <https://bit.ly/434fM1J>, table p. 6.

⁸⁷³ Article 19 Code of Belgian Nationality and Circular of 8 March 2013, published on 14 March 2013.

- ❖ 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.⁸⁷⁴ Legal stay implies a right to residence of unlimited duration.⁸⁷⁵

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.⁸⁷⁶

The amount of 'naturalisations' as a means of receiving the Belgian nationality is steadily decreasing: it represented 0,9% of all changes of nationality in 2021, compared to 23,2% in 2013.

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;⁸⁷⁷
- ❖ 10 years of legal stay.⁸⁷⁸

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.⁸⁷⁹ Since July 2018, the duration of the asylum procedure leading to the recognition of refugee status (for recognised refugees) is once 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 2013.⁸⁸⁰ 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.⁸⁸¹ *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.

⁸⁷⁴ 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.

⁸⁷⁵ Article 7bis(2)(1) Code of Belgian Nationality.

⁸⁷⁶ Article 19(2) Code of Belgian Nationality.

⁸⁷⁷ Article 12-bis(1)(2) Code of Belgian Nationality.

⁸⁷⁸ Article 12-bis(2)(5) Code of Belgian Nationality.

⁸⁷⁹ Article 7-bis(2)(1) Code of Belgian Nationality.

⁸⁸⁰ 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.

⁸⁸¹ Court of Appeal Ghent, 2014/AR/1095, 24 December 2015.

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 2013.⁸⁸² Specific details on the documents available to prove social integration, knowledge of languages and economic participation are provided for in the March 2013 Circular.⁸⁸³

10 years of legal stay

Article 12bis(1)(5) of the Code of Belgian Nationality refers to people who have legally stayed in Belgium for 10 years without a significant interruption. The first requirement is to have stayed in Belgium for 10 years and to have a right of residence of unlimited duration. The language requirement is explicitly mentioned as well. The new condition for this option is the fact that an applicant has to prove participation to life in the receiving society. There is no strict legal definition for 'receiving society' but the Circular of 2013 specifies that "receiving society" cannot be interpreted as meaning the society of people of the same origin as the applicant.⁸⁸⁴ 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 municipality might ask for the payment of another fee (stamp duties), the amount of which differs per municipality. 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.

⁸⁸² 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).

⁸⁸³ Circular of 8 March 2013, para IV A(1)(1.2).

⁸⁸⁴ Circular of 8 March 2013, para IV A(1)(1.1)(4).

- ❖ **The prosecutor issues a certificate of receipt but does not issue an opinion:** The declaration is automatically accepted. The civil servant will notify the applicant and register the applicant. The applicant is a Belgian citizen from the day of registration.
- ❖ **The prosecutor does not stand against the declaration:** If the prosecutor does not stand against the declaration the civil servant notifies and registers the applicant. The applicant is a Belgian citizen from the day of registration.
- ❖ **The prosecutor stands against the declaration:** If the prosecutor stands against the declaration, it issues a registered letter to the civil servant and the applicant. The applicant can appeal this decision by sending a registered letter to the civil servant asking that the file be resent to the court of first instance.

In the two situations where the applicant can appeal to the court of first instance, the applicant has 15 days, starting from receiving the negative advice or the notification of the civil servant, to demand the civil servant to transfer the case to the court of first instance. The judge in the court of first instance will have to make a motivated decision on the negative advice and will hear the applicant. The registry of the court of first instance will notify the applicant of the decision.

A second appeal is available with the court of appeal for both the applicant and the prosecutor. The time limit is again 15 days. The procedure however is expensive and can take a long time. The court will rule after advice from the general prosecutor and the applicant will be heard. In the event of a positive decision 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.⁸⁸⁵

5. Cessation and review of protection status⁸⁸⁶

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

The grounds for **cessation of refugee status** are laid down in Article 55/3 of the Aliens Act. The article refers to the situations in Article 1C of the 1951 Convention.

If a refugee falls under Article 1C(5) or 1C(6), the authorities have to check whether the change in circumstances in connection with which the refugee has been recognised is sufficiently significant and of a non-temporary nature. During the 5-year period of temporary residence granted to recognised refugees, the Immigration Office can ask the CGRS to cease refugee status on the basis of actions that fall under Article 1C of the Refugee Convention.⁸⁸⁷ The CGRS can also decide this *ex officio*. There is no time limit

⁸⁸⁵ Law of 28 April 2015 changing registration, mortgage and registrar fees in order to reform registrar rights, 26 May 2015, 2015003178.

⁸⁸⁶ 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.

⁸⁸⁷ Article 49(1) Aliens Act.

in this situation. The possibility of cessation of the refugee status was included in the Aliens Act after a legislative amendment in 2016.⁸⁸⁸ 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.⁸⁸⁹

In October 2017, a specific unit was created as part of the Immigration Office focusing 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.

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.⁸⁹⁰ 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.⁸⁹¹ 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 that the applicant(s) decided to re-avail themselves of protection under the authorities of the country of origin.⁸⁹² 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.⁸⁹³

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.⁸⁹⁴

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

⁸⁸⁸ Article 49(2) Aliens Act.

⁸⁸⁹ Article 11(3)(1) Aliens Act.

⁸⁹⁰ Commissie voor de Binnenlandse Zaken, de Algemene Zaken en het Openbaar Ambt, Integraal verslag, 5 December 2017, 13, CRIV 54 COM 774.

⁸⁹¹ 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>.

⁸⁹² See also Article of the 1951 Convention.

⁸⁹³ 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.

⁸⁹⁴ CALL, 24 February 2017, No 182.917; CALL, 13 September 2017, No 191.961; CALL 13 September 2017, No 191.956.

basis of Article 15(c) of the recast Qualification Directive.⁸⁹⁵ 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, in 2017 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.⁸⁹⁶

Cessation of status is possible during the 5 years of temporary residence as provided for in Article 49/2 of the Aliens Act.⁸⁹⁷ 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.⁸⁹⁸ 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.⁸⁹⁹

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.⁹⁰⁰ 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.⁹⁰¹

In 2022, the CGRS decided on the cessation or withdrawal of the protection status in 120 cases.⁹⁰² In 2021, the CGRS took 79 cessation decisions. In 44 cases it concerned the cessation of the refugee status: Albania (9), Russian Federation (7), DRC (5), other countries (23). In 35 cases, it concerned the cessation of subsidiary protection: Iraq (19), Afghanistan (15), other countries (1).⁹⁰³

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.

⁸⁹⁵ Myria, *Contact meeting*, 22 November 2017, para 23.

⁸⁹⁶ CALL, 27 October 2017, No 194.465.

⁸⁹⁷ Article 49/2(3) Aliens Act.

⁸⁹⁸ Article 11(3)(1) Aliens Act.

⁸⁹⁹ Article 35/2 Royal Decree on CGRS Procedure.

⁹⁰⁰ Article 11(3)(1) Aliens Act.

⁹⁰¹ Myria, *Contact meeting*, 20 September 2017, para 22.

⁹⁰² Myria, *Contact meeting* 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, p. 15. This number includes both decisions of withdrawal and cessation of the protection status.

⁹⁰³ Information provided by the CGRS, January 2022. No similar statistics were provided for the year 2022.

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.⁹⁰⁴ The exclusion clause refers to Articles 1 D, E and F of the 1951 Convention.⁹⁰⁵

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.⁹⁰⁶

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 elements, 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.⁹⁰⁷

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.⁹⁰⁸ This ground for revocation was added in 2015 and is not limited in time.⁹⁰⁹ 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.⁹¹⁰

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

⁹⁰⁴ Article 55/3/1(2) Aliens Act.

⁹⁰⁵ Article 55/2 Aliens Act.

⁹⁰⁶ CALL, 11 March 2016, No 163942.

⁹⁰⁷ CALL, 27 February 2019, Decision No 217584.

⁹⁰⁸ Article 55/3/1(1) in conjunction with Article 49(2) Aliens Act.

⁹⁰⁹ 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.

⁹¹⁰ Myria, *Contact meeting*, 20 September 2017, para 24.

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) 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.⁹¹¹ This ground for revocation was only included in 2015 and is not limited in time.⁹¹²

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.⁹¹³ The subsidiary protection status can also be revoked any time when the beneficiary is considered to be a threat for society or national security.⁹¹⁴ 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.⁹¹⁵ 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.⁹¹⁶ 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.⁹¹⁷

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

⁹¹¹ Article 55/5/1(1) Aliens Act.

⁹¹² Article 10 Law of 10 August 2015.

⁹¹³ The crimes listed in Article 55/4(1) Aliens Act are also known as the 'exclusion clause' 1F of the 1951 Refugee Convention.

⁹¹⁴ Article 55/4(2) Aliens Act.

⁹¹⁵ Article 55/5/1(2)(2) Aliens Act.

⁹¹⁶ 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.

⁹¹⁷ 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 CALL in certain cases, but it does not seem to be a necessary element.

A 2016 amendment changed the wording of the Aliens Act, thereby allowing the 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 2022, the CGRS decided on the cessation or withdrawal of the protection status in 120 cases.⁹¹⁸ In 2021, the CGRS withdrew the protection status in 136 cases. Out of them, 106 concerned the refugee status of beneficiaries originating from Iraq (21), Syria (14), Russia (11), Afghanistan (8), Eritrea (8), other countries (44). The other 30 withdrawals concerned the subsidiary protection of persons originating from Afghanistan (15) and Iraq (9), Syria (3) and other countries (3).⁹¹⁹

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? Yes No
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?
To be exempt from material conditions Yes No
❖ If yes, what is the time limit? 12 months
3. Does the law set a minimum income requirement? Yes No

Certain family members of beneficiaries of international protection enjoy the right to join the beneficiary in Belgium through family reunification.⁹²⁰ The legal basis for family reunification is Article 10 of the Aliens Act.

In 2021, 4,804 visa applications were lodged for family reunification with a beneficiary of international protection in Belgium. This number is comparable with the pre-covid year 2019, when 4,635 applications were lodged. 78% of the applications in 2021 concerned family members of beneficiaries of the refugee status.⁹²¹

⁹¹⁸ Myria, Contact meeting 25 January 2023, available in French and Dutch at: <https://bit.ly/3KATnSI>, p. 15. This number includes both decisions of withdrawal and cessation of the protection status.

⁹¹⁹ Information provided by the CGRS, January 2022.

⁹²⁰ 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>.

⁹²¹ Myria, *Year report migration 2022 – Right to a family life*, p. 10, available in French and Dutch at: <https://bit.ly/3MohPI5>.

In 2021, 2,977 persons were granted a visa for family reunification with a beneficiary of international protection in Belgium. 33% concerned beneficiaries from Syrian origin and 21% concerned beneficiaries from Palestinian origin.⁹²²

In 2018, UNHCR and the Federal Migration Centre (Myria) published a report illustrating the main obstacles that beneficiaries of international protection face in the context of family reunification. These include:⁹²³

- ❖ 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;
- ❖ 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.

Many of these obstacles have since then remained unchanged. In view of a new legislative proposal that is being prepared on this topic, Myria published a new report in 2022 with recommendations on the procedure of family reunification for beneficiaries of international protection.⁹²⁴ It establishes that the procedure of family reunification for refugee families is very complex and difficult, due to both the living circumstances of the applicants and to the Belgian procedure. Issues with the Belgian procedure concern *inter alia*:

- ❖ the delays during which beneficiaries are exempt from certain material conditions, which are too short to be able to constitute a complete file for family reunification including all necessary documents in time;
- ❖ the application procedure, demanding that family members apply for family reunification at the Belgian diplomatic post in the country of origin;
- ❖ the lack of legislative framework on several aspects such as incomplete applications, the identity documents that can be considered etc.;
- ❖ the lack of information, advice and professional support for the application procedure.

Myria concludes that if neither the delays are prolonged nor the application procedure facilitated, beneficiaries of international protection are unable to realise their right to family reunification in practice. The success of an application for family reunification with a beneficiary of international protection currently entirely depends on whether or not the family receives professional support. This is especially the case for reunification with unaccompanied minors. Due to a lack of sufficient organisations and lawyers who are able to offer this professional support, many families are unable to realise their right to family reunification.⁹²⁵

In its year report of 2022, Myria indicates the specific issues that are encountered by Afghan family members since the take-over of power by the Taliban. Whereas the need for protection of these family members is often high, it has become almost impossible to gather the necessary documents and travel

⁹²² Myria, *Year report migration 2022 – Right to a family life*, , p. 10, available in French and Dutch at: <https://bit.ly/3MohPI5>.

⁹²³ UNHCR and Myria, *Le regroupement familial des bénéficiaires d'une protection internationale en Belgique*, June 2018, available in French at: <https://bit.ly/2GdKJIF>.

⁹²⁴ Myria, *Avis : Faciliter et soutenir les demandes de regroupement familial de réfugiés*, April 2022, available in Dutch and French at : <https://bit.ly/3m97Bk2>.

⁹²⁵ See also: Myria, *Year report migration 2022 – Right to a family life*, available in French and Dutch at: <https://bit.ly/3MohPI5>.

to the Belgian diplomatic post in Islamabad, Pakistan. Myria has published a specific report, highlighting obstacles and formulating recommendations on this topic.⁹²⁶

1.1. Eligible family members

Four categories of persons may join a beneficiary in Belgium.

- ❖ A spouse, equalled partner,⁹²⁷ 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.⁹²⁸ 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.⁹²⁹ 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.⁹³⁰

The conditions for a registered partner are largely similar but require proof of a “stable and lasting” relationship.⁹³¹ 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. Couples in a long and stable relationship but who are unmarried or did not have their relationship registered, do not qualify for family reunification. This poses *inter alia* problems for same-sex couples, who are often unable to marry or register their relationship in their country of origin. Consequently, the same-sex partner of a beneficiary of international protection in Belgium often does not qualify for family reunification and needs to apply for a humanitarian visa, which is not a right, but a favour granted by the Belgian government and the procedure for which is very complex.⁹³²

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 one 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.

⁹²⁶ Myria, *Takeover of power by the taliban in Afghanistan : absence of facilitation measures for applications for visa for family members*, April 2022, available in French and Dutch at: <http://bit.ly/3ma0OGM>

⁹²⁷ 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.

⁹²⁸ Article 10(1)(4) Aliens Act.

⁹²⁹ Children from a polygamous marriage are not excluded if they meet the general conditions: Constitutional Court, Decision No 95/2008, 26 June 2008.

⁹³⁰ Articles 11(2) and 12-bis Aliens Act.

⁹³¹ Article 10(1)(5) Aliens Act.

⁹³² On this and other categories of family members who don't fall within the scope of the “family concept” of the Belgian family reunification procedure: Vluchtelingenwerk Vlaanderen, *Family reunification for people on the move: obstacles and recommendations*, June 2022, available in Dutch at: <https://bit.ly/3N0EiaN>.

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.⁹³³ Until April 2018, family reunification with an unaccompanied minor was only possible when the child was recognised as a refugee or was granted subsidiary protection status.⁹³⁴ 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*⁹³⁵ 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 family reunification even if the unaccompanied minor turned 18 during the asylum procedure. On the basis of a recent CJUE ruling of August 2022 (C-279/20), it is established that this is equally the case for children wishing to join their parents residing in Belgium as a beneficiary of international protection: the minority of the child needs to be determined on the moment of the application for international protection of the parent.⁹³⁶ Although the CJUE rulings concerned beneficiaries of the refugee status, the Immigration Office also applies this jurisprudence to beneficiaries of subsidiary protection and people with a residence permit on the basis of medical regularisation.⁹³⁷ For children who turned 18 during the asylum procedure of their parent in Belgium, the Council of State recently ruled that the application for family reunification needs to be introduced within 12 months after the parent has obtained the protection status, instead of the previously applied 3 months.⁹³⁸ The Immigration Office has adapted its practice on the basis of this ruling. Although the ruling of the Council of State could be extended to family reunification of a parent with an ex-unaccompanied minor who turned 18 during the asylum procedure, the Immigration Office still requires that the application is introduced within 3 months after the child has received the protection status.

To establish family ties, Belgian law foresees a cascade system.⁹³⁹ 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.⁹⁴⁰ In the absence of other valid proof, the Belgian authorities may conduct interviews or any other inquiry deemed necessary, such as a DNA test.⁹⁴¹ In practice the Immigration Office makes little use of this cascade system and will often require the expensive DNA-testing.⁹⁴²

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 application for family reunification is submitted more than 1 year after recognition of the status, these conditions will have

⁹³³ Article 10(1)(7) Aliens Act.

⁹³⁴ Art. 10 of the Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens.

⁹³⁵ CJEU, Case C-550/16, *A and S v Staatssecretaris van Veiligheid en Justitie*, 12 April 2018.

⁹³⁶ CJUE, Case C-279/20, *Bundesrepublik Deutschland t. XC*, 1 August 2022.

⁹³⁷ Myria, *Contact meeting*, 16 May 2018, available at: www.myria.be, para. 6-9; for the rulings of 2022 confirmed on the website of the Agentschap Integratie en Inburgering: <http://bit.ly/3nMsGkK>.

⁹³⁸ Council of State 23 December 22, nr. 255.380. More information available in Dutch at: <https://bit.ly/3nMsGkK>.

⁹³⁹ Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, Belgian Official Gazette, 2 July 2009.

⁹⁴⁰ Article 12-bis(5) Aliens Act.

⁹⁴¹ Article 12-bis(6) Aliens Act.

⁹⁴² UNHCR and Myria, 'Gezinshereniging van begunstigden van internationale bescherming in België: vaststellingen en aanbevelingen', June 2018, available in Dutch at: www.myria.be, 19.

to be fulfilled. This however does not apply to parents of unaccompanied children wishing to join them in Belgium.⁹⁴³

In its recommendations of 2022, the Federal Migration Centre (Myria) indicated that the term of 1 year is in many cases too short due to the specific problems faced by the family of beneficiaries of international protection (e.g. unsafe situation in the country of origin which cause difficulties to travel to the diplomatic post or gather necessary documents, loss of contact with family members in the context of armed conflict, ... Myria recommends to permanently exempt beneficiaries of international protection from these material conditions, to allow the effective realisation of their right to family reunification.⁹⁴⁴

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 can alternatively submit the application form in any Belgian embassy which is authorised to apply for long-term visa applications. At the Belgian embassy they have to apply for a D visa for family reunification and provide certain documents to complete the file.

All applicants require a valid travel document (national passport or equivalent), a visa application form (including proof of payment of the handling fee of €180), a birth certificate, a copy of the beneficiary's residence permit in Belgium, a copy of the decision granting protection status, a medical certificate no more than 6 months old and an extract from the criminal record.

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

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

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

After submitting all the certified and translated documents, the file is complete, and the applicant will receive proof of submission of the application (a so-called "Annex 15quinquies"). The file then gets sent to the 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 extension 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 maximum 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.

⁹⁴³ Constitutional Court, Decision No 95/2008 of 26 June 2008.

⁹⁴⁴ Myria, *Avis : Faciliter et soutenir les demandes de regroupement familial de réfugiés*, April 2022, available in Dutch and French at : <https://bit.ly/3m97Bk2> and Myria, *Year report migration 2022 – Right to a family life*, available in French and Dutch at: <https://bit.ly/3MohPI5>.

In its year report of 2022, Myria has stressed the difficulties people might encounter to travel to Belgium within the validity period of the visa for family reunification (e.g., closed or insecure borders, difficulties in obtaining travel documents...). In the absence of a European or Belgian legal framework determining the consequences of the expiration of the validity period, it is unclear whether the validity period can be prolonged and in which circumstances, or whether a new visa application needs to be lodged. Myria stresses the need of a clear legal framework in this regard, allowing for a flexible approach by the Belgian asylum instances.⁹⁴⁵

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.⁹⁴⁶ 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.⁹⁴⁷ 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.

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.⁹⁴⁸ 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.

The fact that a parent and a child who has become of age don't live together anymore, cannot in itself constitute a reason to end the residence permit of the parent or the child: the reality of a 'family life' between a parent and a (adult) child does not necessarily require that they live together. The Immigration Office needs to investigate the existence of affective ties or at least the intention to have or re-establish contacts. This follows from the recent CJUE rulings of 1 August 2022 (joint cases C-273/20 & C-355/20

⁹⁴⁵ Myria, *Year report migration 2022 – Right to a family life*, , p. 12-18, available in French and Dutch at: <https://bit.ly/3MohPI5>.

⁹⁴⁶ 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.

⁹⁴⁷ Article 13(3) Aliens Act.

⁹⁴⁸ Articles 375, 398-400, 402, 403 and 405 Penal Code.

and C-279/20). The Immigration Office has confirmed that it considers affective ties in case parent and child do not live together.⁹⁴⁹

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 become of age, the Immigration Office will investigate the personal situation of the applicant and may still prolong the duration of the right to residence.⁹⁵⁰ However, the practice of ending the residence of a parent of a beneficiary of international protection that has become of age seems to be contrary to be contrary to the recent rulings of the CJUE of 1 August 2022 (joint cases C-273/20 & C-355/20 and C-279/20).

Resources are considered sufficient when they are 120% of the living wage of the category 'person with a dependent family'.⁹⁵¹ Currently this amounts to € 1.969,00 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.⁹⁵² 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.⁹⁵³ Based on said analysis, the Immigration Office can adjust the threshold.

C. Movement and mobility

1. Freedom of movement

⁹⁴⁹ Website of the Agentschap Integratie en Inburgering: <http://bit.ly/3nMsGkK>

⁹⁵⁰ 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.

⁹⁵¹ Article 10(5) Aliens Act.

⁹⁵² Constitutional Court, Decision No 121/2013, 26 September 2013.

⁹⁵³ Article 12-bis(2) Aliens Act.

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.⁹⁵⁴ Preferred destinations are major cities such as **Antwerp**, **Brussels** or **Ghent**, whereas **Wallonia** in general and smaller towns in Flanders are not among the first choices.⁹⁵⁵

2. Travel documents

Belgium issues travel documents for both refugees and beneficiaries of subsidiary protection.⁹⁵⁶ The duration of validity of both documents is 2 years.⁹⁵⁷ 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”.⁹⁵⁸ 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.⁹⁵⁹

Travel documents for beneficiaries of subsidiary protection are issued only if beneficiaries are unable to obtain one from their national authorities.⁹⁶⁰ The document is called “travel document for foreigners”. The travel document needs to be requested at the provincial passport service of the province of the municipality where the person is registered. A special travel document will be issued on condition that identity and nationality are established and a certificate of impossibility to obtain a national passport or travel document is submitted.

⁹⁵⁴ Reference Point Migration-Integration, *Monitoring movements*, October 2016, available in Dutch at: <http://bit.ly/2kWCldt>.

⁹⁵⁵ De Standaard, ‘Vluchtelingen vluchten weg uit Wallonië’, 3 November 2016, available in Dutch at: <http://bit.ly/2jx04dh>.

⁹⁵⁶ Article 57(3) Consular Code.

⁹⁵⁷ Circular on travel documents for non-Belgians, 7 September 2016.

⁹⁵⁸ CGRS, ‘You are recognised as a refugee in Belgium’, January 2018, available at: <http://bit.ly/2BjIRbd>.

⁹⁵⁹ Myria, *Contact Meeting*, 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 15-16.

⁹⁶⁰ CGRS, ‘You are eligible for subsidiary protection in Belgium’, November 2017, available at: <http://bit.ly/2n2fFBj>.

A certificate of impossibility is not necessary if the person belongs to one of the categories of foreign nationals who cannot obtain a national passport or travel document according to the Belgian Ministry of Foreign Affairs: Tibetans and persons of Palestinian origin do not have to submit such a certificate.⁹⁶¹

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 2022: Not available⁹⁶²

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 an 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).⁹⁶³

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 an NGO, the 2-month deadline will be afforded in this place.

Since several years, the outflow of recognised refugees from reception centres is hindered by a shortage in housing supply. According to a press release from Orbit, in August 2022 at least 1,600 recognised refugees were stuck in federal reception centres due to a shortage of housing in Flanders, Brussels and Wallonia.⁹⁶⁴

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.⁹⁶⁵ Finding affordable and adequate housing is even more problematic for beneficiaries of international protection that are reunited with their family.⁹⁶⁶ To illustrate the extent of this housing crisis in Flanders:

- ❖ At the end of 2021, more than 180,000 families were on the waiting list for social housing in Flanders.⁹⁶⁷

⁹⁶¹ For more information: Foreign Affairs Office, 'Titre de voyage pour réfugié, apatride ou étranger', available in French at: <https://bit.ly/2UzuQQW>.

⁹⁶² Number available for 31 December 2020: 675 (including 130 unaccompanied minors): Myria, *Contact meeting*, 20 January 2020, available in French at: <http://bit.ly/3sE592s>.

⁹⁶³ 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.

⁹⁶⁴ Orbit VZW, *Persbericht: minstens 1600 erkende vluchtelingen geblokkeerd in federale en lokale opvang*, August 2022, available in Dutch at: <http://bit.ly/3GkC6KG>.

⁹⁶⁵ To find more information on the housing issue (and recommendations) please see: 'Vluchtelingenwerk Vlaanderen, 'Mensen voorop: de weg naar een echt asielbeleid. Voorstellen voor de verkiezingen 2019: Vlaams-Federaal-Europees, November 2018, available in Dutch at: <https://bit.ly/2MNTL0o>, 30.

⁹⁶⁶ Vluchtelingenwerk Vlaanderen en Orbit VZW, *Beleidsnota Gezinshereniging en Wonen*, August 2019, available in Dutch at: <https://bit.ly/2Rev4ht>.

⁹⁶⁷ Annual Report Flemish Parliament 2021-2022, available in Dutch at: <http://bit.ly/404wewe>.

- ❖ 47% of private housing is of insufficient quality.⁹⁶⁸
- ❖ More than 1/3 of the income of 52% of private tenants is dedicated to cover rent expenses.⁹⁶⁹

The European Committee of Social Rights (ECSR), that monitors whether the provisions of the European Social Charter are observed, expressed particularly critical opinions regarding some elements of the housing policy of Belgium, among other countries. In 2021, 38 Flemish organisations, united in a coalition called the “Woonzaak” that advocates for a fair and just housing policy in Flanders,⁹⁷⁰ started a procedure before the ECSR against the Flemish housing policy. This procedure can lead to a condemnation, which is not binding in itself, but can have a positive impact on national legislation, as was the case in France. The complaint was declared admissible on 13 July 2022. A decision is expected in January 2024.⁹⁷¹

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.

On top of the housing crisis, a new allocation system in social renting applies from 2023. For 80% of allocations, a ‘local tie’ will be required. This means you will be given priority if you have lived continuously in the housing company’s municipality or operating area for at least 5 of the past 10 years. For newcomers, this implies entering the (social) housing market with unequal opportunities. The Council of State was very critical of this new allocation system. It pointed out that a priority scheme with long-term residence ties could be a serious obstacle to free movement and freedom of establishment within the European Union.⁹⁷²

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.⁹⁷³ They are equally exempt from a professional card.⁹⁷⁴ 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

⁹⁶⁸ Vanderstraeten L. & Ryckewaert M., *Grote Woononderzoek 2013. Deel 3. Technische woningkwaliteit*, Steunpunt Wonen, March 2015, available in Dutch at: <https://bit.ly/40GZFFF>.

⁹⁶⁹ Heylen K. & Vanderstraeten L., *Wonen in Vlaanderen anno 2018*, Steunpunt Wonen, 2019, available in Dutch at: <https://bit.ly/3MdjhNg>.

⁹⁷⁰ De Woonzaak: <https://www.woonzaak.be/>.

⁹⁷¹ More information: <https://bit.ly/3hYERou>.

⁹⁷² Huurdersplatform, *Lokale binding sinds geboorte*, March 2022, available in Dutch at: <http://bit.ly/3maMyNY>

⁹⁷³ 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.

⁹⁷⁴ Article 1(4) Royal Decree on the professional card.

to be fulfilled related to the activity the beneficiary wishes to pursue.⁹⁷⁵ 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.

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.⁹⁷⁶ 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 and 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 of instability. Therefore, a sustainable integration in the labour market still needs to be improved according to the study.

Integration process for beneficiaries of international protection

⁹⁷⁵ 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.

⁹⁷⁶ EMN, *Socio-economic trajectories of beneficiaries of international protection*, 4 July 2019, available at: <https://bit.ly/2x8vZbl>.

In Belgium, a civic integration trajectory is in place for newcomers. Policies relating to integration and the trajectory are designed and implemented at the regional level. Therefore, regional differences in the integration legislation exist, for example in the fee charged for the process or the target groups of integration. This section will focus on the legislation in Flanders and, although to a limited extent, on the Brussels-Capital Region. In 2021, a new Flemish decree altering the 2013 decree on Flemish integration and civic integration policy was announced and implemented.⁹⁷⁷ To understand the specificities of the new decree, an explanation of the current integration trajectory on a Flemish level is needed.

Civic integration is intended for foreign nationals of 18 years and older who come to settle in Flanders or in the Brussels region for the first time.⁹⁷⁸ All persons belonging to the civic integration target group are entitled to the programme, but for some – such as recognised refugees and persons having received subsidiary protection – it is mandatory.

The new decree stipulates that, from 1 January 2022, applicants for international protection will no longer be able to follow the trajectory until they are officially recognized a protection status. To mitigate the impact of this decision, Fedasil now tries to provide some guidance to applicants while they are waiting for the decision on their application. A limited integration process can already be initiated to ensure they are well prepared for the life that will follow after a recognition decision. To intensify this guidance, Fedasil has set up a new 'Future Orientation' service, bringing together the existing services 'Voluntary return', 'Resettlement' and a new 'Participation in society' cell. This should allow Fedasil to develop new counselling pathways and implement a more coherent policy, in close cooperation with other services but also with many external stakeholders, such as cities and municipalities.⁹⁷⁹

The civic integration programme consists of:

- ❖ a course on social orientation, about life, work, norms and values in Belgium (in a language that the student understands)
- ❖ Dutch language courses
- ❖ individual guidance in the search for work, studies, and assistance with credential evaluation
- ❖ a network and participation trajectory

The content of the civic integration trajectory is included in a civic integration contract, which needs to be signed in order to start the process. Those who pass both the social orientation course and the Dutch language course will receive a certificate of integration. After receiving the certificate, the persons requested to take part in the trajectory are further assisted in their search for work or a diploma. In Flanders, the Flemish Agency of Integration and Civic Integration and two urban agencies, one in Antwerp (Atlas) and one in Ghent (IN-Gent), offer civic integration trajectories.

With the new decree, a third pillar has been added to the first (social orientation) and second (Dutch language courses). This third pillar entails that non-working participants of working age will be obliged to register with the VDAB/Actiris (employment services) within 60 days after signing the integration contract. This is a new provision that aims at accelerating the possibility for newcomers to access the labour market, and as such being able to contribute to public expenses. Furthermore, a fourth pillar was added through the new decree, namely: the participation in a network trajectory of 40 hours. This pillar aims at extending the newcomer's social network, as to increase their chances of integration in the local society. This fourth pillar was implemented on the 1st of January of 2023.⁹⁸⁰

⁹⁷⁷ Decree of 9 July 2021, amending the decree of 7 June 2013 on the Flemish integration and civic integration policy.

⁹⁷⁸ For a detailed overview of the target group of the civic integration program, see in Dutch: <https://bit.ly/3uyhckk>.

⁹⁷⁹ Fedasil, *Integrated managementplan 2021-2026*, 30 September 2021, available in Dutch/French at: <http://bit.ly/3m7QHSG>.

⁹⁸⁰ Decree of the Flemish Government 7 October 2022 to determine the entry into force of the participation and networking trajectory and the fees for the training package social orientation within the framework of the integration pathway and to amend the Decree of the Flemish Government of 29 January 2016 implementing the Decree of 7 June 2013 on the Flemish integration and civic integration policy.

Another relevant change introduced by the decree, is the fact that it will be compulsory to pay two fees to access the social orientation course, a first of 90 euros for the course, paid only once, and a fee of 90 euros for the social orientation test. The latter must be paid each time a test is taken (again). Moreover, the two certifying language tests NT2 also require a reimbursement of 90 euros each. This means that the total cost of the integration process will now amount to 360 euros per person. Exceptions are provided for people with limited resources.

Compulsory civic integration students can face an administrative fine if they fail to comply. The fine increases with each new violation, from 50 to 5,000 euros. The fine does not release the person from the obligation to integrate.⁹⁸¹ In 2022, 401 people were fined for failing to complete their mandatory civic integration programme properly.⁹⁸²

On 1 June 2022, the integration obligation for newcomers in the Brussels-Capital Region was implemented. The Brussels integration policy imposes an integration obligation on foreigners with certain residence statuses who register as "newcomers" in one of the 19 Brussels municipalities from 1 June 2022.

If the newcomer does not fulfil his obligation, he can be sanctioned. The municipality will first send a reminder. If the newcomer then still fails to fulfil his obligation within 2 months, the file will be transferred to the region's enforcement officer. The latter can impose an administrative fine of € 100 to a maximum of € 2,500. The newcomer can lodge an appeal with the Council of State within 60 days.⁹⁸³

It is important to note that beneficiaries of temporary protection have access to a voluntary integration trajectory that differs from the mandatory trajectory for recognised refugees and persons having received subsidiary protection. For a complete overview, see [report on temporary protection](#).

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: DASPA) and "reception classes" (in the Flemish Community schools: OKAN), 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.

In practice, the capacity of some local schools is not always sufficient to absorb all non-Dutch speaking children entitled to education. During the school year of 2022-2023, hundreds of non-Dutch speaking children are on a waiting list to get access to the Flemish OKAN-classes. They might have to wait until September 2023 before they are able to get access to education. On the basis of numbers provided by some cities, approximately 550 students are on a waiting list and don't have access to education.⁹⁸⁴ These numbers concern all non-Dutch speaking students and not only children of beneficiaries of international protection.

⁹⁸¹ Decree of 9 July 2021, amending the decree of 7 June 2013 on the Flemish integration and civic integration policy.

⁹⁸² Written question of MP Maaïke De Vreese to Minister Bart Somers, 6 January 2023, available in Dutch at: <https://bit.ly/3GjjcDV>.

⁹⁸³ Decree of 5 May 2022 amending the Decree of 19 July 2018 of the GGC college of Brussels implementing the Ordinance of the GGC of 11 May 2017 on the integration pathway for newcomers

⁹⁸⁴ Vrt Nws, 'Hundredes of foreign speaking youngsters might wait until september to go to school', 3 April 2023, available in Dutch at: <http://bit.ly/3zBBNHn>.

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 need to have left the reception centre or other shelter in which they have been residing. Therefore, the application for social welfare can be made while still in the shelter, but it will only be granted from the moment the beneficiaries have left the shelter.

Further conditions for receiving social welfare are:

1. Habitual residence in a commune in Belgium;
2. Being an adult;
3. Being prepared to work;
4. Having insufficient means of subsistence and having no possibility to claim means of subsistence elsewhere or being able to obtain means of subsistence independently; and
5. Exhaustion of other social rights held in Belgium or abroad.

Since 2016, there are no longer any differences between refugees and subsidiary protection beneficiaries as regards social welfare.

If the beneficiary is an unaccompanied child, a different form of welfare can be awarded by the PCSW. In this case the claim for social welfare needs to be made by the guardian of the child.

The PCSW of the commune of habitual residence of the beneficiary is the authority responsible for social welfare. The term “habitual residence” refers to the place where the person’s material and personal interests are concentrated. This is a question of fact which is assessed by the PCSW.

Beneficiaries can freely move across the Belgian territory, therefore changing communes simply entails transfer of responsibilities to the PCSW of the new commune for social welfare. The new PCSW will nonetheless check again if the beneficiary meets all the conditions to obtain social welfare.

The requirement of “habitual residence” in a commune means that leaving the country for more than 7 days requires prior notification to the PCSW, otherwise the PCSW can suspend social welfare. If the beneficiary duly informs the PCSW and stays away no longer than 4 weeks in total per year, social welfare will not be suspended; it will be paid even when he or she is abroad. The PCSW can also allow an exception to this rule and even pay during the beneficiary’s stay abroad for more than 4 weeks. Examples in which this exception was granted include studies abroad to obtain a diploma or supporting a severely ill family member abroad.

In practice, the deadline of 2 months for leaving the shelter and finding a house after the grant of a protection status is overall too short (see [Housing](#)). If these 2 months have passed and 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 as 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.⁹⁸⁵ 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 obtain health insurance as an entitled person is on the basis of the right to residence. This is possible when the person concerned is allowed to stay over 3 months and registered in the Aliens Register, allowed to stay for over 6 months or has an unlimited right to residence and is registered in the Aliens Register. Both an electronic A and B card are therefore valid possibilities.

Dependent persons of an entitled persons include the spouse, (grand)child, (grand)parent and cohabitant.⁹⁸⁶ To be registered as a spouse both the marriage certificate and proof of living together have to be provided.⁹⁸⁷ 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.⁹⁸⁸ 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.⁹⁸⁹

⁹⁸⁵ Article 32 Law of 14 July 1994 on insurance for medical care and benefits, 27 August 1994, 1994071451, 21524.

⁹⁸⁶ Article 123 Royal Decree of 3 July 1996 implementing the Law of 14 July 1994 on insurance for medical care and benefits, 1996022344, 20285.

⁹⁸⁷ Article 124(3) Royal Decree 1996.

⁹⁸⁸ Article 123(3) Royal Decree 1996.

⁹⁸⁹ 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	
		3 September 2015	Law of 10 August 2015 amending the Aliens Act	
		21 November 2017	Law of 21 November 2017 amending the Aliens Act	http://bit.ly/1GmsxXT (FR)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	21 November 2017	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)