

Country Report: Belgium



2020
Update

Acknowledgements & Methodology

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

This report draws on statistical information obtained from the competent administrative agencies, information obtained through the monthly contact meetings between the asylum authorities and civil society, analysis of legislation, practices and case law. Vluchtelingenwerk Vlaanderen also gathers crucial information from its own activities. Vluchtelingenwerk has a legal helpdesk through which 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 to swiftly monitor any changes in the profiles of asylum seekers and in the registration practice. Vluchtelingenwerk Vlaanderen also monitors the situation of asylum seekers in detention and coordinates a platform of NGOs visiting the detention centres in Belgium.

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The information in this report is up-to-date as of 31 December 2020, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

127-bis Repatriation Centre	Detention centre near Brussels National Airport
Caricole	Detention centre near Brussels National Airport
Pro Deo	Second line free legal assistance
Refusal of entry	Negative decision of the Immigration Office declaring that Belgium is not responsible for an application under the Dublin Regulation
Social integration	Financial assistance under social welfare intégration sociale maatschappelijke integratie
Transit group	Consortium of NGOs, comprising Nansen vzw, JRS Belgium, Caritas, Ciré and Vluchtelingenwerk, coordinating immigration detention monitoring visits
CALL	Council of Alien Law Litigation Conseil du contentieux des étrangers Raad voor Vreemdelingenbetwistingen
Carda	Centre d'accueil rapproché pour demandeurs d'asile en souffrance mentale
Cedoca	Research service of the CGRS
CGRS	Commissioner-General for Refugees and Stateless Persons Commissaire général aux réfugiés et aux apatrides Commissariaat-generaal voor de vluchtelingen en de staatlozen
CIB	Centre for Illegals of Bruges Centre pour les illégaux de Bruges Centrum voor illegallen van Brugge
CIM	Centre for Illegals of Merksplas Centre pour les illégaux de Merksplas Centrum voor illegallen van Merksplas
CIRE	Coordination et initiatives pour réfugiés et étrangers
CIV	Centre for Illegals of Vottem Centre pour les illégaux de Vottem Centrum voor illegallen van Vottem
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EMN	European Migration Network
Evibel	Registration database of the Immigration Office
Fedasil	Federal Agency for the Reception of Asylum Seekers
FGM	Female genital mutilation
INAD	Centre for Inadmissible Passengers
Inadmissible application	Negative decision of the CGRS declaring an application inadmissible
KCE	Federal Knowledge Centre for Health Care
LGBTI	Lesbian, gay, bisexual, transsexual and intersex
LRI	Local reception initiative initiative locale d'accueil (ILA) lokaal opvang initiatief (LOI)
NANSEN Vzw	Belgian non-profit organisation created in 2017 assisting persons in need of international protection.
OOO	Observation and Orientation Centre for unaccompanied children
PCSW	Public Centre for Social Welfare Centre public d'action sociale (CPAS) Openbaar centrum voor maatschappelijk welzijn (OCMW)

RIZIV / INAMI

National Institute for Health and Disability Insurance | Institut national d'assurance maladie-invalidité | Rijksinstituut voor ziekte- en invaliditeitsverzekering

VVSG

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

Overview of relevant documents during the asylum procedure

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

Statistics

Overview of statistical practice

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

Applications and granting of protection status at first instance: 2020

	Applicants in 2020	Pending at end 2020	Refugee status	Subsidiary protection	Rejection	Protection rate	Refugee rate	Subs. Prot. rate	Rejection rate
Total	16,910	15,775	4,888	948	10,592	34.1%	29.8%	5.7%	64.5%
Breakdown by main countries of origin:									
Afghanistan	3,104	1,679	208	365	1,067	32.9%	12.7%	22.3%	65%
Syrië	1,725	1,082	1,331	168	988	62.8%	53.5%	6.8%	39.7%
Irak	864	625	163	49	794	20.3%	16.2%	4.9%	78.9%
Eritrea	832	641	612	0	147	78.6%	80.6%	/	19.4%
Palestina	788	1,753	307	2	1,227	19.5%	20%	0.1%	79.9%
Somalië	747	351	270	73	271	51.7%	44%	11.9%	44.1%
Turkije	671	553	367	0	217	60.4%	62.8%	/	37.2%
Guinee	656	713	182	3	681	21.9%	21%	0.4%	78.6%
El Salvador	538	908	32	34	834	7.8%	3.6%	3.8%	92.7%
Albanië	447	154	7	0	414	1.6%	1.7%	/	98.3%

Source: CGRS. The figures provided in the first row on total decisions refer to *persons* (not to cases), while the total rates refer to the number of *cases* (not persons). These decisions were taken by the CGRS in 2020, irrespective of the year of submission of the asylum application. The figures provided in the other rows, i.e. the breakdown by 10 countries of origin, also refer to *persons* (not to cases). Rejection includes inadmissibility decisions.

In terms of number of *cases* however the number of decisions provided by the CGRS is as follows: 3,743 refugee status, 845 subsidiary protection, and 8,854 rejections.³ The protection rate is the proportion of *cases* (one case can include several persons) for which the CGRS granted refugee status or subsidiary protection

¹ CGRS, *Figures*, available in French at: <http://bit.ly/2XYZoiL>.

² Myria, Contact group international protection, available in French at: <http://bit.ly/211LR47>.

³ CGRS, *Figures 2020*, available in French at: <http://bit.ly/2XYZoiL>, 7.

status in relation to the total number of cases in which a final decision was taken (= the total number of decisions - interim decisions) - withdrawals & cessations. In 2020, the CGRS took 4,487 inadmissibility decisions, which concerned 3,748 (this includes 5 subcategories: subsequent applications, international protection in another EU Member State, accompanied minor making his/her own request for international protection, first country of asylum and nationals of EU Member states). A breakdown per subcategory and per country is not available.

The higher proportion of inadmissibility decisions for subsequent applicants (mainly Afghans and Iraqis) and especially for applicants who already benefit from protection in another Member State (mainly Syrians, Palestinians, Iraqis and Afghans) are the main reason for the decrease of the protection rate. When these cases are not taken into consideration, the protection rate is at 47,3%.⁴

Gender/age breakdown of the total number of applicants: 2020

	Number	Percentage
Total number of applicants	16,910	100%
Men	8,255	48.8%
Women	3,487	20.6%
Accompanied children	5,168	22.7%
Unaccompanied children *	1,335	7.9%

Source: CGRS. Situation on 8 January 2021.

Comparison between first instance and appeal decision rates: 2020

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	17,384	100%	:	:
Positive decisions	5,836	33.6%	:	:
<i>Refugee status</i>	4,888	28.1%	:	:
<i>Subsidiary protection</i>	948	5.5%	:	:
Negative decisions	10,592	60.9%	:	:

⁴ CGRS, *Statistiques d'asile – bilan 2020*, available at: <http://bit.ly/2XYZoIL>.

Intermediary decisions	794	4.6%	:	:
Protection status ended or revoked	162	0.9%	:	:
Annulments			:	:

Source: CGRS, CALL. The percentage at first instance is calculated on the total number of decisions, which also includes intermediary decisions as well as cessations and revocations. Statistics on the appeal procedure were not available at the time of writing.

Overview of the legal framework

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

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

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

Title (EN)	Original Title (FR/NL)	Abbreviation	Web Link
<p>Royal Decree of 8 October 1981 regarding the entry on the territory, residence, settlement and removal of aliens</p>	<p>Arrêté royal du 8 octobre 1981 concernant l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</p>	<p>Aliens Decree</p>	<p>http://bit.ly/1IkJsLv (FR)</p>

	Koninklijk Besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en verwijdering van vreemdelingen		
Royal Decree of 11 July 2003 determining certain elements of the procedure to be followed by the Immigration Office charged with the examination of asylum applications on the basis of the Law of 15 December 1980	<p>Arrêté royal du 11 juillet 2003 fixant certains éléments de la procédure à suivre par le service de l'Office des étrangers chargé de l'examen des demandes d'asile sur la base de la loi du 15 décembre 1980</p> <p>Koninklijk besluit van 11 juli 2003 houdende vaststelling van bepaalde elementen van de procedure die dienen gevolgd te worden door de dienst van de Dienst Vreemdelingenzaken die belast is met het onderzoek van de asielaanvragen op basis van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</p>	Royal Decree on Immigration Office Asylum Procedure	http://bit.ly/1KOyLBu (NL)
<p>Royal Decree of 11 July 2003 determining the procedure and functioning of the Office of the Commissioner General for Refugees and Stateless persons</p> <p><i>Amended by: 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>	Royal Decree on CGRS Procedure	<p>http://bit.ly/1FYKWaB (FR)</p> <p>http://bit.ly/1Jo26IJ (NL)</p> <p>https://bit.ly/2WhfNwS (FR)</p> <p>https://bit.ly/2Ten2U4 (NL)</p>
Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation	<p>Arrêté royal du 21 décembre 2006 fixant la procédure devant le Conseil du Contentieux des Etrangers</p> <p>Koninklijk besluit van 21 december 2006 houdende de rechtspleging voor de Raad voor Vreemdelingenbetwistingen</p>	Royal Decree on CALL Procedure	<p>http://bit.ly/1VtXdgc (FR)</p> <p>http://bit.ly/1VtXhJ3 (NL)</p>
Royal Decree of 9 June 1999 implementing the law of 30 April 1999 regarding the employment of foreign workers	<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>	Royal Decree on Foreign Workers	http://bit.ly/1Q9rEXZ (NL)

<i>Amended by:</i> Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers	Arrêté royal du 29 octobre 2015 modifiant l'article 17 de l'arrêté royal du 9 juin 1999		http://bit.ly/1MYS23I (FR)
Royal Decree of 12 January 2011 on the granting of material assistance to asylum seekers receiving income from employment related activity	Arrêté royal de 12 janvier 2011 relatif à l'octroi de l'aide matérielle aux demandeurs d'asile bénéficiant de revenus professionnels liés à une activité de travailleur salarié Koninklijk besluit van 12 januari 2011 betreffende de toekenning van materiële hulp aan asielzoekers die beroepsinkomsten hebben uit een activiteit als werknemer	Royal Decree on Material Assistance to Asylum Seekers	http://bit.ly/1IAukcQ (FR) http://bit.ly/1JB9PwY (NL)
Royal Decree of 9 April 2007 determining the medical aid and care that is not assured to the beneficiary of the reception because it is manifestly 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	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 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	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	Loi de 26 mai 2002 concernant le droit à l'intégration sociale Wet van 26 mei 2002 betreffende het recht op maatschappelijke integratie	Law on Social Integration	http://bit.ly/1GwdpYC (FR) http://bit.ly/1GnKfsF (NL)
Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary	Arrêté royal du 25 avril 2007 déterminant les modalités de l'évaluation de la situation individuelle du bénéficiaire de l'accueil Koninklijk besluit van 25 april 2007 tot bepaling van de nadere regels van de evaluatie van de individuele situatie van de begunstigde van de opvang	Royal Decree on the Assessment of Reception Needs	http://bit.ly/1MHwJMS (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	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	Royal Decree on Closed Centres	http://bit.ly/1Fx8sZ0 (FR)

<p>disposal of the government or withheld, in application of article 74/8 §1 of the Aliens Act</p> <p><i>Amended by:</i> Royal Decree of 7 October 2014</p> <p><i>Amended by:</i> Royal Decree of 22 July 2018</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> <p>Arrêté royal du 7 octobre 2014 Koninklijk besluit van 7 oktober 2014</p> <p>Arrêté royal du 22 juillet 2018 Koninklijk besluit van 22 juli 2018</p>		<p>http://bit.ly/1QSveUL (FR)</p> <p>http://bit.ly/1YkhRPe (NL)</p> <p>https://bit.ly/2DrHA6e (FR)</p> <p>https://bit.ly/2R5VvCH (NL)</p>
<p>Royal Decree of 9 April 2007 determining the regime and functioning rules of the Centres for Observation and Orientation of Unaccompanied Minors</p>	<p>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</p> <p>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</p>	<p>Royal Decree on OOC</p>	<p>http://bit.ly/1QLxABu (FR)</p> <p>http://bit.ly/1S40bo8 (NL)</p>
<p>Royal Decree of 24 June 2013 on the rules for the training on the use of coercion for security personnel</p>	<p>Arrêté royal déterminant les règles relatives à la formation dispensée dans le cadre du recours à la contrainte, prise en exécution de l'article 74/8, § 6, alinéa 3, de la loi du 15 décembre 1980</p> <p>Koninklijk besluit tot bepaling van de regels voor de opleiding in het kader van het gebruik van dwang, genomen in uitvoering van artikel 74/8, § 6, derde lid, van de wet van 15 december 1980</p>	<p>Royal Decree on the Use of Coercion for Security Personnel</p>	<p>http://bit.ly/1luWwLU (FR)</p> <p>http://bit.ly/1cLmdvV (NL)</p>
<p>Royal Decree of 18 December 2003 establishing the conditions for second line legal assistance and legal aid fully or partially free of charge</p>	<p>Arrêté royal de 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire</p> <p>Koninklijk besluit van 18 december 2003 tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand</p>	<p>Royal Decree on Legal Aid</p>	<p>http://bit.ly/1EZmLoC (FR)</p>

			http://bit.ly/1Ihe2CS (NL)
Ministerial Decree of 5 June 2008 establishing the list of points for tasks carried out by lawyers charged with providing second line legal assistance fully or partially free of charge	<p>Arrêté ministériel de 5 juin 2008 fixant la liste des points pour les prestations effectuées par les avocats chargés de l'aide juridique de deuxième ligne partiellement ou complètement gratuite</p> <p>Ministerieel besluit van 5 juni 2008 tot vaststelling van de lijst met punten voor prestaties verricht door advocaten belast met gedeeltelijk of volledig kosteloze juridische tweedelijnsbijstand</p>	Ministerial Decree on Second Line Assistance	http://bit.ly/1AO5I3i (FR) http://bit.ly/1T0jAYm (NL)
Royal Decree of 15 February 2019 establishing the list of safe countries of origin	<p>Arrêté royal portant exécution de l'article 57/6/1, alinéa 4, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, établissant la liste des pays d'origine sûrs</p> <p>Koninklijk besluit tot uitvoering van het artikel 57/6/1, vierde lid, van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, houdende de vastlegging van de lijst van veilige landen van herkomst</p>	Royal Decree on Safe Countries of Origin	https://bit.ly/2XAvXlr (FR) https://bit.ly/2XFXPob (NL)
Royal Decree of 2 September 2018 establishing the rules and regime for reception centres and the modalities for control of the rooms	<p>Arrêté royal déterminant le régime et les règles de fonctionnement applicables aux structures d'accueil et les modalités de contrôle des chambres</p> <p>Koninklijk Besluit tot vastlegging van het stelsel en de werkingsregels van toepassing op de opvangstructuren en de modaliteiten betreffende de kamercontroles</p>	Royal Decree	https://bit.ly/2BZbL3F (FR) https://bit.ly/2ENzJAz (NL)

Overview of the main changes since the previous report update

The report was previously updated in **March 2020**.

Political context

On 26 May 2019, regional, federal and European elections took place in Belgium. After lengthy negotiations, a new federal government was formed on 1 October 2020. As a result, a new Secretary of State for migration was appointed, who is part of the Flemish Christian Democratic party CD&V. In his policy note, which was presented to the Parliament on 18 November 2020, it is stated that the new Belgian government aims to achieve a human-centred migration policy, which opens opportunities to further secure the (basic) human rights of migrants. While the previous administrations did not focus on the continuity of the reception system, the current Secretary of State aims to develop a stable, but flexible reception system. Some aspects of the announced policy aim to improve the quality of the overall procedure, such as faster procedures and better guidance of applicants during these procedures. Others, however, are more restrictive such as the lack of a complete prohibition of the detention of children and the possible tightening of criteria for family reunification.⁵

In 2020, the number of applicants for international protection decreased by 39% compared to 2019, with a total of 16,910 applicants in 2020 compared to 27,742 applicants in 2019. This is the lowest number of applicants for international protection since 2008. The Commissioner-General for Refugees and Stateless Persons (CGRS) has stated that this is due to the impact of the covid-19 crisis. In the period between March and July 2020 there was an immense drop in the number of applicants for international protection. Since August the number began to rise again.⁶

In 2020, 34,1% of the final decisions were positive decisions granting international protection. Protection was mainly granted to Syrians, Afghans, Turks, Somalis and Eritreans. The recognition rate steadily decreased since 2016. While it reached 57.7% in 2016, it went down to 50.7% in 2017, 49.1% in 2018 and 36.9% in 2019. This decrease is mainly due to the increase of inadmissibility decisions and the number of subsequent applications (i.e. multiple applications) as well as applications from persons with protection status in another Member State. When excluding these cases, the recognition rate reached 47,3% in 2020.⁷

Asylum procedure

❖ **Access to the asylum procedure:** Due to the outbreak of the covid-19 pandemic, the Immigration Office decided to close its doors to the public on 17 March 2020. On 3 April 2020 the Immigration Office re-opened with a new system for the registration of applicants for international protection. Applicants wanting to make their application had to fill in an online registration form, after which they were invited on a later date to officially make and lodge their application for international protection. Because of various shortcomings of this system, a multitude of civil society organisations decided to declare the Belgian state in default at the Brussels court of first instance. On 5 October 2020 the court condemned the Belgian state⁸, after which the Immigration Office returned to the previous system of physical registrations on 3 November 2020 (see: [Registration of the asylum application](#)).

⁵ Chamber of Representatives, Doc 1580/014, *Policy Note on asylum and migration*, 04 November 2020, available in Dutch/French at: <https://bit.ly/3c9hy9z>; see also: Vluchtelingenwerk Vlaanderen, *Reactie Beleidsnota*, December 2020, available at: <https://bit.ly/3amGXeG>.

⁶ CGRS, *Statistiques d'asile – bilan 2020*, 14 January 2021, available at: <http://bit.ly/3il2dhs>

⁷ CGRS, *Asylum statistics – survey of 2020*, <http://bit.ly/3a2yJao>.

⁸ Brussels Court of First Instance, decision nr. 2020/105/C of 5 October 2020, available in French at: <http://bit.ly/3bpjgCU>.

- ❖ **Examination of applications for international protection:** Due to the outbreak of the covid-19 pandemic, the CGRS closed its doors on 13 March 2020. From this day, no more personal interviews were organised. The CGRS continued to work on pending cases and took decisions in cases in which a personal interview had already taken place. From 8 June 2020 onwards, personal interviews were gradually resumed, under strict respect of sanitary and distancing measures⁹.

In the light of the covid-19 sanitary measures, the CGRS announced in November 2020 that, in certain cases, it would conduct interviews with people residing in open reception centres through videoconference. The aim was to introduce interviews by videoconference on a structural level. However, civil society organisations instituted an urgency procedure before the Council of State against this decision, arguing the CGRS had no legal competence to take this decision. In a judgment of 7 December 2020, the Council of State suspended the decision, ruling that the CGRS had indeed overstepped its competences. Any adaptations of the conditions of the personal interview ought to be taken by Royal decree or law.¹⁰ In one later judgment, the CALL extended the ruling of the Council of State to the longstanding practice of interviews through videoconference for people residing in closed detention centres given that, here too, that practice was based solely on a CGRS decision.¹¹ The CGRS now expressed its intention to recommend the Secretary of State to take legal initiative to ground interviews through videoconference in the Royal Decree.¹² (see [Regular procedure: personal interview](#))

- ❖ **Extension of the Dublin transfer period:** In February 2020 the Immigration Office started a new practice with regards to the organisation of the voluntary return procedure for applicants who had received a negative Dublin transfer decision with order to leave the territory (annex 26quater). Upon receiving this decision, applicants had to fill in a 'voluntary return form', confirming they would cooperate with their transfer to the responsible member state, and send this back to the Immigration Office within ten days. If they failed to do so, the transfer deadline would be extended from 6 to 18 months. In July 2020 the CALL ruled this practice to be in conflict with the CJUE *Jawo* judgement and its definition of the term 'absconded'. Based on this judgement, the Immigration Office ended this practice altogether in July (see [Dublin: procedure](#)).

Reception conditions

- ❖ **Decrease of occupancy rate of reception system:** Despite the numerous warnings of the federal reception agency for asylum seekers Fedasil as well as civil society actors, a new reception crisis emerged in 2019.¹³ Although new reception centres opened throughout 2019, the occupancy rate was at 96 % on 1 January 2020 - while saturation is already reached at 94 % of occupancy.¹⁴ In the course of 2020, 14 new reception centres were opened, while 3 centres were closed. Combined with a significant decrease of asylum applications of 39% in 2020, this led to a decrease of occupancy rate of the reception system to 85% on 1 January 2021. In line with the new Secretary of State's intention to develop a more stable reception system, Fedasil announced it would continue to look for new reception places in 2021, in order to ensure flexibility in case of fluctuations of the influx of asylum seekers.¹⁵
- ❖ **Lack of access to reception:** Between March and October 2020 a significant number of applicants for international protection had no access to the reception system. This was mostly due to the introduction of the online registration system for applications for international protection introduced by the Immigration Office. According to the law, applicants for international protection are only entitled

⁹ CGRS, *The CGRS during the coronacrisis*, <http://bit.ly/3qV2sZC>.

¹⁰ Council of State judgment no. 249 163 of 7 December 2020.

¹¹ CALL judgment no. 247 396 of 14 January 2021.

¹² CGRS Communication of 17 December 2020, available [here](#) on its website.

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

¹⁴ Fedasil, *Statistics*, 1 January 2020, available at: <http://bit.ly/fedasilstatistics>.

¹⁵ Fedasil, *Daling van de instroom in 2020*, 19 January 2021, available at: <http://bit.ly/38Ve9t6>.

to material aid from the moment they make their application for international protection. Since some applicants for international protection had to wait multiple weeks before they were able to make their application for international protection, they had no access to the reception system during this waiting period. 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 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) had no access to the reception system either. Because of a ruling of the Brussels court of first instance in October 2020, the Immigration Office was forced to suspend the online registration system and went back to the old system of physical registrations at the arrival centre. Applicants have since then regained immediate access to reception conditions. As for the re-integration in the reception system, Fedasil confirmed in October 2020 that it was possible for people having previously received a 'code 207 No Show' to make an appointment with the Dispatching service in order to receive a place in the reception system. (see [Right to shelter and assignment to a centre](#))

❖ **Withdrawal of reception conditions:** Due to the critical reception capacity at the beginning of 2020, policy measures were adopted to withdraw reception conditions of certain asylum applicants. Through instructions of 3 January 2020 (applicable from 7 January 2020 onwards), Fedasil limited the material reception to medical assistance for two categories of applicants:

- a) applicants for international protection who have received an Annex 26quater on the basis of the Dublin III Regulation, but for whom Belgium becomes responsible by default due to failure to transfer within the six months deadlines (Article 29(2) Dublin III Regulation);
- b) applicants for international protection who make a first application in Belgium but who already have an international protection status (i.e. refugee or subsidiary protection status) in another EU Member State.

Several national, Flemish and French speaking NGOs introduced an appeal with the Council of State aiming for the suspension and the annulment of the Fedasil instructions. In September 2020, right before the hearing before the Council of State was scheduled, Fedasil withdrew the instructions of 3 January 2020. Both categories of asylum seekers have thus since regained their full right to material assistance, including reception, during their asylum procedure (see [Right to shelter and assignment to a centre](#)).

Detention of asylum seekers

❖ **Increased detention capacity:** The government decided on 14 May 2017 to maximise the number of places in existing detention facilities. In 2019 the open reception centre (**Holsbeek**) has thus been turned into a closed centre for 60 women. Two additional detention centres will be established in **Zandvliet** and **Jumet**. The new government-coalition, that was inaugurated on the 1st of October 2020 has confirmed the construction of additional places. The construction of additional detention centres in Zandvliet (200 places) and Jumet (120 places) by the end of its legislation.¹⁶ Together with plans for the expansion of the number of places in the centres 127bis and Merksplas, these plans will bring Belgium's detention capacity up to 1,066 places.¹⁷ Additionally the new Government has announced the replacement of the centre in Bruges, as the condition of the current centre is deemed 'very bad'.¹⁸

¹⁶ De Morgen, Regering-De Croo bouwt gesloten centra in Zandvliet en Jumet, 8 October 2020, available in Dutch at: <https://bit.ly/2Y2sPJF>.

¹⁷ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>.

¹⁸ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French, available at : <https://bit.ly/3sJdgMd>, p. 34.

- ❖ **Detention of children and families:** In August 2018, the government opened five family units in the 127bis repatriation centre, as a result of which families with children were being detained again. Detention is applied where the family manifestly refuses to cooperate with the return procedure.¹⁹ However the Royal Decree of 22 July 2018 that establishes the rules for the functioning of the closed family units near Brussels International airport,²⁰ has been suspended by the Council of State in April 2019,²¹ and thus no more families have been detained. The council of state still has to pronounce its decision on the annulation of this Royal Decree. The current government, however, 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 that this measure would be abused to make return impossible.

Content of international protection

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

¹⁹ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>, 34.

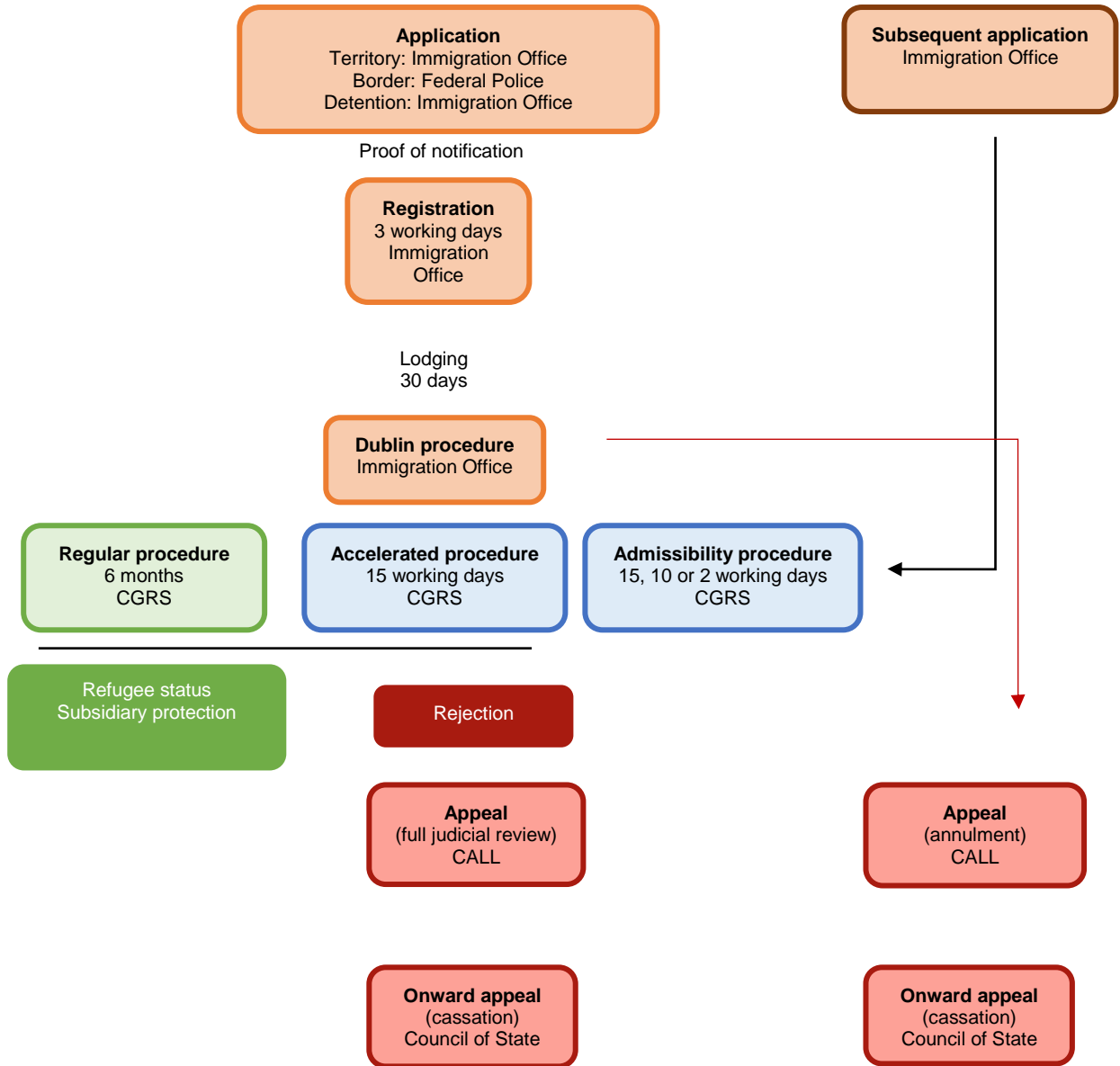
²⁰ Arrêté royal du 22 juillet 2018 | Koninklijk besluit van 22 juli 2018.

²¹ Council of State, Decision no 244.190, 4 April 2019.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|--|---|-----------------------------|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ²² | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ²³ | <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: ²⁴ | <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

Following the 2017 reform, different types of procedures entered into force on 22 March 2018.

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

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

²² For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

²³ Accelerating the processing of specific caseloads as part of the regular procedure.

²⁴ Albeit not labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

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	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)	494.1 FTE	Independent	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

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

In 2020, the CGRS had a total of 494,1 FTE staff, out of which 273,2 FTE were caseworkers responsible for examining applications for international protection. As regards its internal structure, the CGRS is divided into geographical departments and into units responsible for certain asylum procedures and/or certain asylum applicants. It has two vulnerability-oriented units that provide support to caseworkers dealing with specific cases, as will be discussed further below. The Dublin procedure, however, is conducted by the Immigration Office prior to transmitting the application to the CGRS.

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

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

5. Short overview of the asylum procedure

Registration

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

- (a) on the territory with the Immigration Office, within 8 working days after arrival;²⁸
- (b) at the border, in case the asylum seeker does not dispose of valid travel documents to enter the territory with the border police; or
- (c) from a detention centre, in case the person is already being detained for the purpose of removal.

²⁶ Article 57/2 Aliens Act.

²⁷ Article 57/6 §2(3) Aliens Act.

²⁸ 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.

The applicant receives a “certificate of declaration” (*attestation de déclaration*). The Immigration Office **registers** the application within 3 working days of the notification, which can be prolonged up to 10 working days in case of large numbers of asylum seekers applying simultaneously.

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

The Immigration Office is the mandated administration of the Minister responsible for the entry to the territory, residence, settlement and removal of foreign nationals in Belgium. It also has the competence to register asylum applications and decides on the application of the Dublin Regulation. The Immigration Office also only registers subsequent applications and transfers them to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS).²⁹

First instance procedure

As mentioned above, the CGRS is the central administrative authority exclusively responsible for the first instance procedure in terms of examining and granting, refusing and withdrawing of refugee and/or subsidiary protection status.

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

Prioritised procedure: The CGRS prioritises cases where:

- (a) the applicant is in detention;
- (b) the applicant is in a penitentiary facility;
- (c) a prioritisation request has been issued by the Immigration Office or the Secretary of State for Asylum and Migration; or
- (d) the application is manifestly well-founded.

There is no time limit for taking a decision in these cases.³⁰

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.³¹

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.³²

²⁹ Articles 57/6/2 and 51/8 Aliens Act.

³⁰ Article 57/6(2) Aliens Act.

³¹ Article 57/6/1 Aliens Act.

³² Article 57/6(3) Aliens Act.

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

Appeal

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

Appeals before the CALL against the decisions of the CGRS in the regular procedure have automatic suspensive effect and must be lodged within 30 days. The deadline is reduced to 10 days 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.

In the past the CGRS committed to communicate the applicable appeal deadlines but, since the entry into force of the law in 2018, it is unable to do so due to the existing workload.³³ The decision received by the asylum seeker does not mention which specific delay is applicable to his or her case. The decision only makes reference to the general provision (Article 39/57 of the Aliens Act). The CGRS announced in January 2019 that it would change its practice by mentioning again which delay is applicable and if the appeal has a suspensive effect.

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

- Decisions taken under an accelerated procedure when the time limit for an appeal is reduced to 10 days. The 10-day period for an appeal in the accelerated procedure is only applicable if the CGRS has taken the decision within 15 working days of receipt of the file. As this information is difficult to access, and the solution adopted so far is not sufficiently clear, it has been decided to include explicit information on appeals in decisions.
- Decisions declaring the application inadmissible, especially subsequent applications. These decisions now include a paragraph on the suspensive nature or not of the appeal, as well as a paragraph mentioning the two periods of appeal that are applicable, depending on whether or not the applicant is being detained at the time of his or her application. Indeed, both the applicant and his or her counsel know whether or not this is the case. Both time limits will be mentioned in simplified language to make this information more accessible.³⁴

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

The CALL has no investigative competence and has to take a decision based on all elements in the file presented by the applicant and the CGRS. In accordance with its “full judicial review” 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 in order to decide on the appeal and further investigation by the CGRS is needed.

³³ Myria, *Contact meeting*, 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 12.

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

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

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

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No
2. Is there a border monitoring system in place? Yes No
 - ❖ If so, who is responsible for border monitoring? National authorities NGOs Other
 - ❖ How often is border monitoring carried out? Frequently Rarely Never

There are no published reports by NGOs about cases of actual *refoulement* at the border of persons wanting to apply for asylum.

In French, returning someone at the border without having allowed them to access the territory, but after having examined their asylum application on its well-foundedness, is wrongly referred to with the legal term “*refoulement*”. This may add to the confusion between a genuine *refoulement* (or “push back”) and the execution of a return decision.

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 is officially in place and known by the name MOVE. Currently, the members of the steering Committee of MOVE are Vluchtelingenwerk Vlaanderen, JRS Belgium, Caritas International Belgium and Ciré, but the goals of MOVE are achieved in full collaboration with an advisory committee composed of other NGO’s. 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:

- visits and monitoring of detention centers, in order to give to the detainees psychosocial support, neutral information and legal aid. 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 by the political pillar, which maintains close contact with politicians;
- a media and communication pillar, that works on fundamentally questioning detention for migratory reasons in the public space.

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?³⁵ 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 No³⁶

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

The law foresees a three-stage registration process:

1. The asylum seeker “makes” (*présente*) his or her application to the Immigration Office within 8 working days after arrival on the territory.³⁷ An application at the border is made with the Border Police Section of the Federal Police immediately when the person is apprehended at the border and asked about his or her motives for entering Belgium,³⁸ or with the prison director in penitentiary institutions. These authorities refer the application immediately to the Immigration Office. Other applicants make their application at the arrival centre (Petit Château/Klein Kasteeltje). The asylum seeker receives a “certificate of declaration” (*attestation de déclaration/bewijs van aanmelding*) as soon as the application is made.³⁹

³⁵ The applicant must make the application within 8 working days of arrival in Belgium.

³⁶ 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 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. 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>.

³⁷ Article 50(1) Aliens Act.

³⁸ *Ibid.*

³⁹ Article 50(2) Aliens Act.

Under the law, failure to apply for a residence permit after irregularly entering the country or failure to apply for international protection within the 8-day deadline constitutes a criterion for the determination of a “risk of absconding”.⁴⁰ Non-compliance with this deadline can also be taken into consideration by the CGRS as one of the elements in assessing the credibility of the asylum claim. It is not clear if or to what extent these provisions are currently being applied.

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 2018.⁴¹ The civil society organisations invoked, *inter alia*, Articles 6 and 7 of the recast Asylum Procedures Directive, to argue that the measure was unlawful. The Council concluded that such a measure constitutes a barrier to the effective exercise of the fundamental right to apply for asylum, as enshrined in the 1951 Geneva Convention and the national law. The Council further stressed the importance of Article 7(1) of the recast Asylum Procedures Directive, which obliges the Member States to make sure that every person, whether a minor or an adult, has the right to make an asylum request. In that regard, it found that the contested act was making it *prima facie* unreasonably difficult to gain effective access to the procedure.

While issues on the access to the asylum procedure had been reported in early 2019, this did not persist throughout the year. However, isolated incidents continued to be reported from time to time. On 18 November 2019 for example, 65 people were not allowed to apply for asylum due to a lack of reception space and had to come back the following day.⁴² On 9 March 2020, 69 persons were not able to make their claim for international protection. These persons received a document which indicated that they had to return the next day in order to lodge their claim for international protection.

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 for international protection 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 the covid-19 sanitary measures. Since not every registered person could be invited immediately, priority was given to families with children and vulnerable persons. Non-accompanied minors (with the exception of boys aged 15 and above) were granted automatic access to the procedure if they presented themselves spontaneously at the Immigration Office without having registered online.⁴³

For the duration of the existence of the online registration system, Vluchtelingenwerk Vlaanderen was present at the Immigration Office to monitor the situation.⁴⁴ The following observations are

⁴⁰ Articles 1(11) and 1(2)(1) Aliens Act.

⁴¹ Council of State, Decision No 243.306, 20 December 2018, available in Dutch at: <https://bit.ly/2WquTQK>.

⁴² Vluchtelingenwerk Vlaanderen, ‘Opnieuw asielzoekers op straat: kroniek van een aangekondigde opvangcrisis’, <https://bit.ly/303Pr3C> ; Le Vif, ‘Des demandeurs d’asile trouvent de nouveau les portes closes au Petit-Château’, 18 November 2019, <https://bit.ly/2R50xkl>; De Standaard, ‘65 mensen kunnen geen asiel aanvragen in Klein Kasteeltje’, 19 November 2019, <https://bit.ly/2sTibjA>.

⁴³ 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.

⁴⁴ 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>.

mostly based on these monitoring activities. Asylum seekers faced various extra obstacles in accessing the asylum system due to this online registration system:

- ❖ Firstly, the waiting time between the completion of the online registration and the invitation was unknown, but in some cases it could take several weeks. Over time, the backlog of persons awaiting an invitation steadily grew to 686 in September 2020 and 154 in October 2020.
- ❖ Secondly, asylum seekers encountered various practical difficulties when trying to complete the online registration. The online registration form was only available in Dutch and French. As result, the majority of the applicants were unable to fully understand the registration form and had to rely on help from third persons or NGO's. In addition, the registration form was only accessible from smartphones with a Belgian sim-card or from computers with a Belgian IP-address. Since most of the asylum seekers do not have either of these, they were unable to access the online registration form. Furthermore, the applicants had to provide an email address in order to be able to receive the invitation. A large part of the applicants did not have an email address, which made it difficult to access the online registration. In one particular case, a family with 8 minor children with no phone, literacy or social network had to wait multiple weeks before they received an invitation for an appointment at the Immigration Office.
- ❖ Thirdly, non-accompanied minors were not automatically granted access to the Immigration Office to lodge their request for international protection. Especially non-accompanied minors aged 16 to 18 had difficulties accessing the procedure if they did not register online for an appointment. In the case they did register for an online appointment, they had to wait multiple days (in some cases more than one week) until they received an appointment.

Moreover, the Immigration Office did not consider the completion of online registration form as a formal request for international protection. As a result, many applicants who had completed the online registration form - i.e. who had indicated that they were in need of protection - were left destitute since they had no formal right to reception (see [Right to shelter and assignment to a centre](#)).

Because of the shortcomings listed above, the online registration system came under heavy criticism from various NGO's. In August, a number of NGO's declared the Belgian state in default at the Brussels court of first instance thereby requesting for a suspension of the online registration system. On 5 October 2020, the court condemned the Belgian state, stating that the completion of 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. The Belgian state was given 30 days to change the registration system in a way that ensured the immediate access of applicants to the reception system.⁴⁵ 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 wants 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.

2. The Immigration Office registers the application within 3 working days of "notification".⁴⁶ This can be prolonged up to 10 working days when a large number of asylum seekers arrive at the same time, rendering it difficult in practice to register applications within the 3 working days deadline.⁴⁷

⁴⁵ Brussels Court of First Instance, decision nr. 2020/105/C of 5 October 2020, available in French at: <http://bit.ly/3bpjgCU>.

⁴⁶ Article 50(2) Aliens Act.

⁴⁷ *Ibid.*

3. The asylum seeker “lodges” (*introduit*) his or her application either immediately when it is made, or as soon as possible after the “notification” but no later than 30 days after the application has been made.⁴⁸ This period may exceptionally be prolonged by way of Royal Decree, which has not occurred so far. When the application is lodged, the asylum seeker receives a “proof of asylum application” certifying his or her status as a first-time applicant (“Annex 26”) or a subsequent applicant (“Annex 26 quinquies”). The Immigration Office informs the CGRS of the lodging of the application.⁴⁹

In the context of the covid-19 sanitary measures, the three-phase system was changed and applicants now immediately lodge their application at the arrival centre on the moment of making the application. They immediately 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 currently being made, registered and lodged on the same day.⁵⁰

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, taking a chest X-ray to detect tuberculosis; and
- ❖ Conducting the Dublin procedure.

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

If Belgium is the responsible country under the Dublin Regulation, the file is sent to the CGRS. The questionnaire about the reasons for the asylum application and impossibility of a return to the country of origin is transferred to the CGRS as well.⁵¹ 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, while the Border Inspection section is responsible for asylum applications lodged at the border. The three sections within the Immigration Office (Asylum section, Closed Centres section and Border Inspection section) follow the exact same procedure within the Immigration Office’s general competence, each for their respective ‘categories’ of asylum seekers.

There have been significant delays in the asylum procedure at the stage of the Immigration Office. Even though the lodging takes place no later than 30 days after the application has been made in accordance with legal standards, the first interview might be conducted more than several months later in certain cases.⁵² This is the case for subsequent applications or applications for which it is assumed that no other

⁴⁸ Article 50(3) Aliens Act.

⁴⁹ *Ibid.*

⁵⁰ Myria, *Contact meeting*, 16 September 2020, available in French at: <https://bit.ly/3sE592s>

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

⁵² Myria, *Contact meeting*, 22 May 2019, available in French at <https://bit.ly/2N8TSoH>, 240-245; Myria, *Contact meeting*, 18 September 2019, available in French at: <https://bit.ly/2QHpw57>, 50-65.

Member State will be deemed responsible under the Dublin III-Regulation. Applications in which there is a Dublin-hit will be treated in priority in order to meet the time limits set out in the Dublin III regulation.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | 6 months |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2020: ⁵³ | |
| ❖ Immigration Office | 7,260 |
| ❖ CGRS | 12,633 cases |

The asylum applications for which Belgium is responsible according to the Dublin Regulation are transferred to the office of the CGRS to be examined on their merits. The CGRS, which is the competent determining authority, is exclusively specialised in asylum decision-making. In a single procedure, the CGRS first examines whether the applicant fulfils the eligibility criteria for refugee status. If the applicant does not meet these criteria the CGRS will automatically examine whether the applicant is eligible for subsidiary protection.⁵⁴

The CGRS has the competence to:⁵⁵

- ❖ Grant or refuse refugee status or subsidiary protection status;
- ❖ Reject an asylum application as manifestly unfounded;⁵⁶
- ❖ Reject an asylum application as inadmissible;⁵⁷
- ❖ Apply cessation and exclusion clauses or to revoke refugee or subsidiary protection status (including on instance of the Minister);
- ❖ Terminate the procedure in case the person does not attend the interview, among other reasons, and reject the application in some cases;⁵⁸ and
- ❖ Issue civil status certificates for recognised refugees.

The CGRS has to take a decision within 6 months after receiving the asylum application from the Immigration Office.⁵⁹ There is no sanction when this delay is not being respected. This may be prolonged by another 9 months where: (a) complex issues of fact and/or law are involved; a large number of persons simultaneously apply for asylum, rendering it very difficult in practice to comply with the 6-month deadline; or (c) the delay is clearly attributed to the failure of the applicant to comply with his or her obligations.⁶⁰

Where needed, the deadline can be prolonged by 3 more months.⁶¹

⁵³ 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>.

⁵⁴ Article 49/3 Aliens Act.

⁵⁵ Article 57/6(1) Aliens Act.

⁵⁶ Article 57/6(1)(2) Aliens Act.

⁵⁷ Article 57/6(3) Aliens Act.

⁵⁸ Article 57/6(5) Aliens Act sets out the reasons for terminating the procedure.

⁵⁹ Article 57/6(1) Aliens Act.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

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.⁶² This has not yet been applied in practice.⁶³

If the deadline is prolonged, the CGRS shall inform the applicant of the reasons and give a timeframe within which the decision should be expected.⁶⁴

In 2020, the CGRS was planning to reduce the backlog of cases. Due to the outbreak of the covid-19 virus –and the temporary suspension of personal interviews- the CGRS was unable to reduce this backlog. As a result, the total work stock of the CGRS - i.e. the number of files for which the CGRS has not yet taken a decision - has steadily increased to 12,633 asylum files by the end of 2020. Out of them, 8,463 of these files can be considered as backlog cases, while 4,200 files are part of the normal work stock.⁶⁵ This results in longer waiting times for persons in the asylum procedure⁶⁶. Throughout 2020, the average processing time of cases by the CGRS was 213 days, counting from the moment the file was sent to the CGRS until the first decision by the CGRS.⁶⁷ This mainly involves cases for which the CGRS had already taken a decision but that were sent back to the CGRS after being annulled by the CALL.

1.2. Prioritised examination and fast-track processing

The CGRS may prioritise the examination of an asylum application where:⁶⁸

- 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 having filed a subsequent application for international protection, non-accompanied minors, applicants having obtained a protection status in another EU member state, applications from Brazil (upon request of the Secretary of State) and applicants coming from safe countries of origin.⁶⁹

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

⁶² *Ibid.*

⁶³ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

⁶⁴ Article 57/6(1) Aliens Act.

⁶⁵ CGRS, *Statistiques d'asile – bilan 2020*, 14 January 2020, available in Dutch at : <https://bit.ly/3il2dhs>

⁶⁶ CGRS, *Processing time of asylum applications*, 4 August 2020, <http://bit.ly/3iwnIBP>.

⁶⁷ Information provided by the CGRS, January 2021.

⁶⁸ Article 57/6(2) Aliens Act.

⁶⁹ Myria, *Contact meeting*, 20 January 2020, available in French at: <http://bit.ly/3sE592s>

At least one personal interview by a protection officer at the CGRS is imposed by law.⁷⁰ The interview may be omitted where:

(a) the CGRS can grant refugee status on the basis of the elements in the file;

(b) the CGRS deems that the applicant is not able to be interviewed due to permanent circumstances beyond his or her control;

or (c) where the CGRS deems it can take a decision on a subsequent application based on the elements in the file.⁷¹

Generally, for every asylum application the CGRS conducts an interview with the asylum seeker, although the length and the substance of the questions can vary substantially, depending e.g. on the manifestly well-founded or unfounded nature of the claim, or the presence or absence of new elements presented in case of a subsequent application. The interview serves the CGRS to examine whether the asylum application is credible and qualifies for refugee status or subsidiary protection status. The lawyer and/or another person of confidence chosen by the asylum seeker can attend the interview.⁷² The CGRS has elaborated an interview charter as a Code of Conduct for the protection officers, which is available on its website.⁷³

If the CGRS is considering **Cessation** or **Revocation** of international protection after receiving new facts or elements, it can choose not to interview the person and to instead request written submissions on why the status should not be ceased or withdrawn.⁷⁴ In practice these persons will be invited for a personal interview, however.⁷⁵

In the context of the covid-19 sanitary measures, the CGRS has granted the refugee status on the basis of the elements in the file – so without conducting a personal interview – in more than 500 cases in the course of 2020. No exact statistics are available. A large part of these cases (more than 50%) concerned Syrian nationals. However, other nationalities also qualified for this approach. Although there are no fixed criteria to determine whether or not a case qualifies for this approach, it concerns 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 is investigated on the basis of the elements and documents provided by the applicant, internet and social media research etc.⁷⁶

Interpretation

When lodging their application at the Immigration Office, asylum seekers must indicate irrevocably and in writing whether they request the assistance of an interpreter, in case their knowledge of Dutch or French is not sufficient.⁷⁷ 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.⁷⁸ However, very rarely - and for practical reasons - “the language role” can be changed in the case of a subsequent application.⁷⁹

⁷⁰ Article 57/5-ter(1) Aliens Act.

⁷¹ Article 57/5-ter(2) Aliens Act.

⁷² Article 13/1 Royal Decree on CGRS Procedure.

⁷³ CGRS, *Interview Charter*, available at: <http://bit.ly/1FAxkyQ>.

⁷⁴ Article 57/6/7(2) Aliens Act.

⁷⁵ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

⁷⁶ Myria, *Contact meeting*, 20 January 2021, available in French at: <http://bit.ly/3sE592s>.

⁷⁷ Article 51/4(2) Aliens Act.

⁷⁸ *Ibid.*

⁷⁹ Myria, *Contact meeting*, 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, para 3.

In general, there is always an interpreter present who speaks the mother tongue of the asylum seeker. Sometimes, if the person speaks a rare language or idiom, this can be problematic and then an interpreter in another language can be proposed. During and after the interview at the CGRS, the interpreter has to respect professional secrecy and act according to certain rules of deontology. A brochure on this Code of Conduct is also made available on the CGRS website.⁸⁰ The quality of the interpreters being very variable, the correct translation of the declarations, as they are written down in the interview report, is sometimes a point of contention in the appeal procedures before the Council of Alien Law Litigation (CALL), which in general does not take this element into consideration since it is impossible to prove that the interpreter deliberately or otherwise translated wrongly or had any interest in doing so.

In 2019, UNHCR identified a number of issues regarding the access and quality of interpretation. These issues seem to apply to all stages of the asylum procedure and concern the competent authorities, lawyers, social workers in reception structures as well as associations. UNHCR thus recommends to facilitate access to interpretation by clarifying the rules on interpretation and on how to find an interpreter. It also suggest to improve the current system by centralising the contact details of interpreters, standardising practices within the closed centres and providing clear information on the right to free interpretation under the Belgian legal aid system.⁸¹

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,⁸² 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.⁸³

The asylum seeker or his or her lawyer may request a copy of the interview report, together with the complete asylum file. This should be done within 2 working days following the interview.⁸⁴ 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.⁸⁵ The asylum seeker or his or her lawyer may provide comments within 8 working days after the reception of the file.⁸⁶ 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.⁸⁷

Since June 2016 the CGRS conducts interviews through videoconference in some of the closed detention centres. In 2019, this practice has been extended to all 6 detention centres. It is especially common for people who reside in the Transit centre Caricole near Brussels Airport. In 2019, 475 people were interviewed through videoconference. 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 are less positive about this approach and argue that it impedes the creation of a safe space. The videos themselves are not kept on file, and the CGRS uses the transcript following the interview as the basis.⁸⁸ The asylum

⁸⁰ CGRS, *Deontology for translations and interpretations*, available at: <http://bit.ly/1ROmcHs>.

⁸¹ UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at: <https://bit.ly/35G2h9s>, 7 and 31.

⁸² Article 57/5-quater(1) Aliens Act.

⁸³ Articles 16-17 and 20 Royal Decree on CGRS Procedure.

⁸⁴ Article 57/5-quater(2) Aliens Act.

⁸⁵ Myria, *Contact meeting*, 20 June 2018, available in Dutch at: <https://bit.ly/2WiFPjf>, para.35.

⁸⁶ Article 57/5-quater(3) Aliens Act.

⁸⁷ *Ibid.*

⁸⁸ Myria, *Contact meeting*, 21 September 2016, available at: <http://bit.ly/2kxOqOG>, para 25.

seeker and his or her lawyer can request for an interview in person when they can provide elements of vulnerability that would justify such a request. In exceptional cases this can be granted. However, the call for the interview does not mention the possibility of requesting an in person interview.⁸⁹ 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 to introduce this interview method in a limited number of open centres at first, to then generalise 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.

A number of civil society organisations introduced an urgency procedure before the Council of State to suspend this decision. In its judgment nr. 249 163 of 7 December 2020, the Council of State suspended the decision of the CGRS on the grounds that it is not the competent authority to alter the modalities of the personal interviews. Given that the conditions of the personal interview are regulated in a Royal Decree⁹⁰, 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.

This decision also raises questions as to the legality of the interviews through videoconference in the closed centres, given the fact that these are also based on a mere practice of the CGRS and have no legal basis provided for by Royal Decree or law. Previously, the CGRS argued that a legal basis was not required to hold interviews through videoconference because the interview frames within an administrative – not a judicial – procedure. In addition, it claimed that the Royal Decree did not require the simultaneous presence of the protection officer and the asylum seeker. In a judgment of 14 January 2021, 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 lacking of a legal basis providing for videoconferences.⁹¹

In a communication of 17 December 2020, the CGRS stated that it stood by its plans to introduce interviews through videoconference structurally. It announced it would take the necessary steps within its powers to ensure that the Secretary of State Sammy Mahdi takes legislative initiative to provide for videoconference interviews in the Royal Decree.⁹²

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 2020: 7 months

⁸⁹ Myria, *Contact meeting*, 22 January 2020, available at: <https://bit.ly/2LtQV3K>.

⁹⁰ 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*)

⁹¹ CALL judgment no. 247 396 of 14 January 2021.

⁹² CGRS Communication of 17 December 2020, available [here](#) on the CGRS website.

1.4.1. Appeal before the CALL

A judicial appeal can be introduced with a petition before the CALL against all negative decisions of the CGRS within 30 days.⁹³ 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.⁹⁴ 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](#)).

The appeal has automatic suspensive effect in the regular procedure.⁹⁵

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

- ❖ Confirm the negative decision of the CGRS;
- ❖ Overturn it by granting refugee or subsidiary protection status; or
- ❖ Annul the decision and refer the case back to the CGRS for further investigation.⁹⁶

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

All procedures before the CALL are formalistic and essentially written, thereby making the intervention of a lawyer necessary. All relevant elements have to be mentioned in the petition to the CALL.⁹⁷ Parties and their lawyers are then invited to an oral hearing, during which they can orally explain their arguments to the extent that they were mentioned in the petition.⁹⁸ The CALL is also obliged to take into consideration every new element brought forward by any one of the parties with an additional written note before the end of the hearing.⁹⁹ Depending on how the CALL assesses the prospects of such new elements leading to the recognition or granting of an international protection status, it can annul the decision and send it back to the CGRS for additional examination – unless the CGRS can submit a report about its additional examination to the CALL within 8 days – or leave the asylum seeker the opportunity to reply on the new element brought forward by the CGRS with a written note within 8 days. Failure to respond within that 8-day time-is a presumption of agreeing with the CGRS on this point.

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 an ‘ordonnance’ (a provisional decision) containing the reasons why the written procedure is being applied as well as the judgement the CALL makes on the basis of the elements in the administrative file. If one of the parties does not agree with the judgment, it has 15 days to ask the CALL to be heard, in which an oral hearing will be organised. If none of the parties asks to be heard, they are supposed to consent with the judgment, which is subsequently confirmed by a final arrest.¹⁰⁰

⁹³ Article 39/57(1) Aliens Act.

⁹⁴ *Ibid.*

⁹⁵ Article 39/70 Aliens Act.

⁹⁶ Article 39/2 Aliens Act.

⁹⁷ Article 39/69 Aliens Act.

⁹⁸ Article 39/60 Aliens Act.

⁹⁹ 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.

¹⁰⁰ Article 39/73 Aliens Act.

In the context of the Covid-19 pandemic, the Special Powers decree of 5 May 2020 allowed the CALL to apply a purely written procedure in some cases: parties who did not agree with the ordonnance taken in application of article 39/73 Aliens Act, could no longer ask to be heard but could instead introduce an additional 'pleading note' within 15 days after reception of the ordonnance. This pleading note was taken into consideration when making the final judgement, which was rendered without hearing the parties during an oral hearing.¹⁰¹

The CALL must decide on the appeal within 3 months in the regular procedure.¹⁰² There are no sanctions for not respecting the time limit. In practice, the appeal procedure often takes longer. In 2020, the average processing time (the total of the delays divided by the total number of files) was 217 calendar days or 7 months, for 5.616 files.¹⁰³ The median (the delay in the middle and thus less influenced by extremely long or short delays, what makes it a more reliable indicator) of the processing time was 181 calendar days, i.e. approximately 6 months).¹⁰⁴

Decisions of the CALL are publicly available.¹⁰⁵

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.¹⁰⁶ 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.¹⁰⁷ 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).¹⁰⁸ On the other hand, it must be acknowledged that the quality of a lot of appeals submitted is often poor, especially if these are not introduced by specialised lawyers in the field.

The Immigration Office will give an order to leave the territory when:

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

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

As opposed to suspensive appeals against in-merit decisions, an appeal against an order to leave the territory or a Dublin decision has no automatic suspensive effect. A request to suspend the decision can be introduced simultaneously with the appeal. In case no request to suspend has been introduced and once the execution of the removal decision becomes imminent, an appeal in an extremely urgent necessity procedure can be lodged before the CALL within 10 or 5 calendar days in case of a subsequent return decision, invoking a potential breach of an absolute fundamental right (e.g. Article 3 ECHR).¹⁰⁹ This

¹⁰¹ Special Powers Decree Nr. 19 of 5 May 2020 regarding the extension of the judicial delays before the CALL and the written treatment of cases : <https://bit.ly/3se5M2Q>

¹⁰² Article 39/76(3) Aliens Act.

¹⁰³ Myria, *Contact meeting*, 20 January 2021, available in French at: <http://bit.ly/3sE592s>.

¹⁰⁴ Myria, *Contact meeting*, 24 March 2021.

¹⁰⁵ Judgments are available on the website of the CALL at: <http://bit.ly/2waz6tu>.

¹⁰⁶ CALL, *Report of activities of the year 2019*, available in Dutch at: <https://bit.ly/2YjQlsQ>, p. 17 etc.

¹⁰⁷ 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>.

¹⁰⁸ Myria, *Contact meeting*, 20 March 2019, available in French: <https://bit.ly/306X4GF>, 319-329.

¹⁰⁹ Article 39/82(4) Aliens Act; Article 39/57(1) Aliens Act.

appeal is suspensive until a judgment is issued.¹¹⁰ It demands a swift decision of the CALL within 48 hours; the time limit is extended to 5 days where the expulsion of the person is not foreseen to take place until 8 days after the decision.¹¹¹

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.¹¹² 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, in order to avoid the risk of Article 3 ECHR violations. The case was struck out the ECtHR Grand Chamber’s list in March 2015, as the applicant had already been granted residence status.¹¹³

A study of UNHCR of 2019 states that several actors regret the rigidity and complexity of the asylum procedure in Belgium, which inevitably requires greater specialisation on the part of lawyers. While most of them generally agree that the time limits inherent in the asylum procedure are generally sufficient, they consider that the time limits inherent to accelerated procedures hamper the quality of legal assistance, especially in detention. In their view, the lack of transparency and the multiplication of procedures causes a significant loss of resources and time.¹¹⁴

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.¹¹⁵

The Government has since then ensured that it would examine a new application for international protection by conducting a rigorous examination of all available evidence in relation to both the general situation in Colombia and to the individual circumstances of the applicant. Such an assurance is made to remedy the apparent lack of effective remedy available to the applicant.

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.¹¹⁶ 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.¹¹⁷ It cannot make its own assessment and decision on the facts of the case. Appeals before the Council of State are first channelled through an admissibility filter, whereby the Council of State filters out, usually within a month, those cassation appeals that have no chances of success or are only intended to

¹¹⁰ Articles 39/82 and 39/83 Aliens Act.

¹¹¹ Article 39/82(4) Aliens Act.

¹¹² 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.

¹¹³ ECtHR, *S.J. v. Belgium*, Application No 70055/10, Judgment of 19 March 2015.

¹¹⁴ UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at : <https://bit.ly/35G2h9s>, 7.

¹¹⁵ EDAL, ECtHR, *R.L. V. Belgium*, Application No 15388/18, 16 January 2020, available in French at: <https://bit.ly/2SZiXWb>.

¹¹⁶ Article 39/67 Aliens Act.

¹¹⁷ Article 14(2) Acts on the Council of State.

prolong the procedure.¹¹⁸ If the decision under review is annulled (“quashed”), the case is sent back to the CALL for a new assessment of the initial appeal.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

Article 23 of the Belgian Constitution determines that the right to a life in dignity implies for every person *inter alia* the right to legal assistance. The Aliens Act guarantees free legal assistance by a lawyer to all asylum seekers, at every stage (first instance, appeal, cassation) of the procedure and in all types of procedures (regular, accelerated, admissibility, appeal in full jurisdiction, annulment and suspension), with the exception of the Immigration Office stage.¹¹⁹ 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.¹²⁰

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

There are two types of free legal assistance: first line assistance and second line assistance.¹²¹ The competence for the organisation of the first line assistance lies at the regional level.

1.5.1. First-line legal assistance

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

1.5.2. Second-line legal assistance

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

¹¹⁸ 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).

¹¹⁹ Articles 39/56 and 90 Aliens Act.

¹²⁰ Article 33 Reception Act.

¹²¹ Article 508/1-508/25 Judicial Code.

bureau to be appointed as such, upon the direct request of an asylum seeker. Within this “second line assistance”, a lawyer is appointed to give substantial legal advice and to assist and represent the person in the asylum procedure.

The criteria for lawyers to register on the lists of second-line assistance in migration law varies widely. The criteria are often not demanding enough and the lawyers appointed are therefore not always sufficiently competent or specialised in the field. Nevertheless, some larger bar associations have set up a specialised section on migration law and have tightened up the criteria to be able to subscribe for it. However, other bars with few lawyers simply lack specialised lawyers and some even oblige their trainees, who are not specialised, to register on the list.¹²²

The 2003 Royal Decree on Legal Aid determines the conditions under which one can benefit from this second line legal assistance free of charge. Different categories are defined, in general depending on the level of income or financial resources and, with regard to specific procedures, on the social group they belong to. For asylum seekers and persons in detention, among others, there is a rebuttable presumption of being without sufficient financial resources. With regard to children, unaccompanied or not, this presumption is conclusive. Adults should provide some proof of 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 the fact that the condition of having insufficient resources also applies in order 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 in order to refuse those manifestly unfounded requests, which have no chance of success at all.¹²³ However, this provision is only very rarely applied in practice. Therefore, if a person entitled to legal aid asks for a lawyer free of charge to be appointed, the bureaus for legal assistance grant this quasi-automatically. However, there are reports of a more stringent appointment practice in some districts when the lawyers request to be appointed themselves after having been consulted by an asylum seeker, especially in case of subsequent asylum applications.¹²⁴

Since September 2016 the second line assistance has changed significantly. The most important change – that has been ruled unconstitutional in 2018 - entailed the introduction of a ‘flat fee’. This meant that legal aid was no longer entirely free. In June 2018 the Constitutional Court annulled this legal provision, stating that such an obligation entailed a significant reduction of the protection of the right to legal aid, as guaranteed by Article 23 of the Constitution.¹²⁵

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.¹²⁶ 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:

¹²² UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at : <https://bit.ly/35G2h9s>, 44.

¹²³ Article 508/14 Judicial Code.

¹²⁴ 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.

¹²⁵ Constitutional Court, Decision No 77/2018, 21 June 2018, available in French at: <https://bit.ly/2RNAd1D>.

¹²⁶ For an overview of the full nomenclature, please consult the Ministerial Decree of 19 July 2016, available at: <http://bit.ly/2jAdVzs>.

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 actual time spent to execute each intervention. It suffices to provide proof of the intervention itself. If the lawyer believes his or her work real 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 and efficiency.¹²⁷ To that end, the different bureaus of legal assistance have put in place an audit mechanism, in which the quality of the work of pro deo lawyers is checked by a group of volunteering lawyers. There is also a system of “cross control” in which the bureaus of legal assistance audit each other’s work. The results are sent to the Minister of Justice, who has the possibility to effect 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). Since 1 September 2016 the lawyer receives a basis of 3 points plus 1 point per started hour of the interview he or she attended. For a first appeal in asylum cases, a lawyer can receive a maximum of 11 points. For a second or subsequent asylum application the lawyer will no longer receive the basis points unless the CGRS takes an admissibility decision on the new application or unless the lawyer can 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 by the bureau for legal assistance, which are financed by the bar associations that receive a fixed annual subsidy “envelope” from the Ministry of Justice. Since 2018 the value per point was finally determined at €75.¹²⁸ This is still applied today.

In theory, costs can be re-claimed by the state if the asylum seeker would appear to have sufficient income after all, but this does not happen in practice. The reform of 2016 certainly makes the “pro-Deo” remuneration system less attractive for lawyers. Another obstacle for lawyers to engage in this area of legal work is the fact that they are only paid once a year for all the cases they have closed and reported to their bar association in the previous year. Closure of the case can only take place once all procedures are finished, which in reality is long after the actual interventions were undertaken by the lawyer. This legal aid funding appears to have an impact on the quality of service delivery and the effectiveness of the legal aid system. Many lawyers confirm that legal aid is problematic as it is currently based on low, unpredictable, and deferred compensation.¹²⁹

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

¹²⁷ 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>.

¹²⁸ Orde van de Vlaamse Balie, ‘Begroting justitie: OVB waakzaam positief’, 24 March 2018, available in Dutch at: <https://bit.ly/2HxAeCm>.

¹²⁹ UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at : <https://bit.ly/35G2h9s>, 7.

lawyers and has prevented experienced lawyers from assisting some in need of specialised legal assistance.

2. Dublin

2.1. General

Dublin statistics: 2020¹³⁰

In 2020 the total number of outgoing take charge and take back-requests was 6,607 (1,325 take charge and 5,282 take back requests), of which none for dependency reasons,¹³¹ and one for humanitarian reasons.¹³² A total of 3,813 requests were accepted.

A total of 454 persons were transferred from Belgium to other Member States in 2020. 406 of these transfers were carried out within six months, 43 within 12 months, and 5 within 18 months after the acceptance by the other Member State.

In 2020 there was a total of 2,985 incoming take charge and take back requests (401 take charge requests and 2,584 take back requests, of which none for dependency reasons,¹³³ and 47 for humanitarian reasons.¹³⁴ Out of the total of incoming requests, 1,655 were accepted, of which one for dependent persons and 3 for humanitarian reasons. 346 persons were effectively transferred to Belgium.

According to available statistics, the Immigration Office accepted 779 persons under the sovereignty clause.¹³⁵ In 2020 Belgium further became responsible “by default” for 16,733 persons: 3,142 persons were not transferred in time,¹³⁶ and 29 were not transferred due to the deficiencies in the asylum or reception system which could lead to an inhumane and degrading treatment in another Member State or because no Member State responsible could be designated on the basis of the criteria listed in the Dublin III Regulation.¹³⁷

Application of the Dublin criteria

There is no information available on how the Immigration Office generally applies the Dublin criteria. Information can be obtained through Parliamentary questions, and questions during the monthly contact meetings, of which the reports are published online.¹³⁸ The Aliens Act uses the term “European regulation” where it refers to the criteria in the Dublin III Regulation for determining the responsible Member State.¹³⁹

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.¹⁴⁰ However, this observation does not take into account the decisions in which the Immigration Office declared itself responsible for asylum applications.

¹³⁰ Source: Immigration Office.

¹³¹ Art. 16 Dublin III Regulation.

¹³² Art. 17 Dublin III Regulation.

¹³³ Art. 16 Dublin III Regulation.

¹³⁴ Art. 17 Dublin III Regulation.

¹³⁵ Art. 17(1) Dublin III Regulation.

¹³⁶ Art. 29(2) Dublin III Regulation.

¹³⁷ Art. 3(2) Dublin III Regulation.

¹³⁸ See for example the reports in French available at: <https://bit.ly/2T8Lcj4>.

¹³⁹ 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.

¹⁴⁰ Vluchtelingenwerk Vlaanderen, Contribution externe dans le rapport annuel de Myria 2018 : ‘Le droit à la vie privée et familiale dans le cadre du règlement de Dublin. Comment faire correspondre la pratique à la réalité des relations familiales?’, available in French at: <https://bit.ly/2RSPIv3>; Petra Baeyens and Eva Declerck, ‘Welk recht op een gezins- en familieleven binnen het Dublin-systeem’, Tijdschrift Vreemdelingenrecht, 2017/4, 389-400.

Exchanges with lawyers and practitioners indicate that information exchange on dependency and the situation in the other Member State between the Immigration Office and the lawyer prior to the decision in a specific case may lead to Belgium declaring itself responsible. However, it is impossible for the lawyers to know which element is decisive in each case. They will often invoke other elements as well, such as detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible state, together with elements of dependency.

Moreover, case law analysis emphasises the necessity of submitting medical attestations when invoking medical problems.¹⁴¹ A medical attestation concerning depression is not enough to prove dependency if it does not mention that the presence of a particular family member is necessary for the recovery.¹⁴² Likewise, mere cash payments to someone who still works in the home country is not enough to prove dependency, nor is proof of the intention to take care of a family member during the asylum procedure,¹⁴³ or actually living with said family member.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶

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

The criteria for applying the clauses are very unclear and no specific statistics are publicly available on their use. Since the *M.S.S. v. Belgium and Greece* judgment of the ECtHR, detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible state seem to be taken into consideration in some cases when deciding whether or not to apply the “protection clause”. Since the *C.K. and others v. Slovenia* judgment of the CJEU,¹⁴⁷ the CALL pays particular attention to the risk of inhuman and/or degrading treatment that a transfer in itself might entail for people with serious mental or physical illnesses, even if the responsible Member State does not demonstrate systematic flaws.¹⁴⁸ This risk assessment is important in determining whether or not to apply the “sovereignty clause”. The determining element is whether the transfer would deteriorate the person’s state of health in a significant and permanent manner. Analysis of case law shows that CALL uses a very strict standard concerning both the nature of the illness and the evidence thereof.¹⁴⁹ For instance, suffering from epilepsy or a returning brain tumour as such do not meet the aforementioned standard.¹⁵⁰ Heavy reliance is placed on medical attestations, for both the state of health and the impact of a transfer thereon.¹⁵¹

¹⁴¹ 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

¹⁴² CALL, Decision No 198726, 25 January 2018.

¹⁴³ CALL, Decision No 198635, 25 January 2018.

¹⁴⁴ CALL, Decision No 180718, 13 January 2017; CALL, Decision No 198815, 29 January 2018; CALL, Decision No 204600, 29 May 2018.

¹⁴⁵ CALL, Decision No 234423, 25 March 2020; CALL, Decision No 230767, 22 December 2019

¹⁴⁶ CALL, Decision No 199262, 6 February 2018.

¹⁴⁷ CJEU, Case C-578/16, *C. K. and Others*, Judgment of 16 February 2017.

¹⁴⁸ See for example CALL, Decision No 215 169, 15 January 2019; CALL, Decision No. 223 809, 9 July 2019.

¹⁴⁹ CALL, Decision no 245144, 30 November 2020

¹⁵⁰ CALL, Decision No 205298, 13 June 2018; CALL, Decision No 194730, 9 November 2017.

¹⁵¹ CALL, Decision No 206588, 5 July 2018.

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?
 Yes No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?
Not available

In practice, all asylum seekers are fingerprinted and checked in the Eurodac database after making their asylum application with the Immigration Office.¹⁵² In case they refuse to be fingerprinted, their claim may be processed under the **Accelerated Procedure**.¹⁵³ The CGRS stated that it has not used this legal possibility yet in practice and it does not keep statistics of these cases.¹⁵⁴ Refusal to get fingerprinted could be interpreted as a refusal to cooperate with the authorities, which could result in detention.

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

The Immigration Office has clarified that, in line with the Court of Justice of the European Union (CJEU) ruling in *Mengesteab*,¹⁵⁵ 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').¹⁵⁶

A decision to transfer following a tacit or explicit agreement to take back or to take charge of an asylum applicant is delivered in a written decision containing the reasons for the decision in person (the so-called 'Annex 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.¹⁵⁷

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.¹⁵⁸

Individualised guarantees

Following the 2014 ECtHR ruling in *Tarakhel v. Switzerland*,¹⁵⁹ 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.¹⁶⁰ This practice took an end in January 2019 following a letter from the Italian authorities stating that families with children will be accommodated in specific reception centres and the family unity will be respected. The Immigration Office considers this as sufficient guarantees.

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

¹⁵² Article 51/3 Aliens Act.

¹⁵³ Article 57/6/1(i) Aliens Act.

¹⁵⁴ Myria, *Contact meeting*, 16 January 2019, available in French at: <https://bit.ly/2Hj4pLJ>, para 290.

¹⁵⁵ CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

¹⁵⁶ Myria, *Contact meeting*, 22 November 2017, para 10.

¹⁵⁷ Article 71/3 Royal Decree 1981.

¹⁵⁸ Article 51/7 Aliens Act.

¹⁵⁹ ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

¹⁶⁰ Immigration Office, Letter to CBAR-BCHV in response to questions concerning the implementation of the *Tarakhel* judgment, 17 November 2014, unpublished.

Office's practice in some cases, without this having a generalised effect on its practice. By way of example, in 2015-2016 some decisions by the Immigration Office to transfer an asylum seeker in need of medical or psychological aid to Spain or Italy have been suspended by the CALL because no individualised guarantees had been demanded beforehand concerning the possibility to reintroduce an asylum applications and reception conditions adapted to their particularly vulnerable situation.¹⁶¹

In a ruling of October 2016, the CALL annulled the transfer decision under the Dublin III Regulation of an asylum seeker and her five minor children to Germany. The Immigration Office did not sufficiently take into account the best interests of the children, and the reception guarantees necessary to transfer the Afghan asylum seeker with her children to Germany, without a real risk of violating Article 3 ECHR.¹⁶²

In a ruling of March 2018, the CALL annulled the transfer decision under the Dublin III Regulation of an asylum seeker with HIV. Although the Immigration Office at that time had recognised the abovementioned *Tarakhel* jurisprudence and the fact that the transfer of an asylum seeker with additional vulnerabilities might entail a violation of Article 3 ECHR, it did not request individual guarantees in the present case. More specifically, the Immigration Office did not attach importance to the asylum seeker's vulnerability because of the HIV. On the contrary, the CALL decided that the decision of the Immigration Office was not sufficiently motivated in the light of article 3 ECHR as well as the principle of due care. Moreover, the Immigration Office ignored the asylum seeker's letter explaining that she has HIV, for which she is receiving treatment in Belgium.¹⁶³

In a ruling of May 2018, the CALL annulled the transfer to Spain of an asylum seeker with a new-born child, as individualised guarantees concerning reception conditions had not been requested. According to the CALL, the fact that the Immigration Office referred to general information on reception conditions to determine what the specific reception conditions of new-borns in Spain are was not sufficient to meet the requirements of Article 3 ECHR.¹⁶⁴ In a ruling that occurred on the same day and was based on the same reasoning, the CALL annulled the transfer of two young children who were accompanied by their parents.¹⁶⁵

In a ruling of July 2018, the CALL annulled the transfer to Germany of an asylum seeker having diabetes and parkinson's disease, as the Immigration Office did not request individualised guarantees and did not proceed to a rigorous examination of the evidence indicating the existence of a real risk of treatment prohibited by Article 3 ECHR. This decision was essentially based on the lack of individualised guarantees and on the AIDA report on Germany which indicates that asylum seekers have limited access to health care in Germany or that, in some cases, necessary but expensive treatments were not administered.¹⁶⁶

In January 2019, the CALL confirmed this reasoning in an appeal against a transfer decision to Italy concerning a woman who needed a medical follow-up. The decision referred to the AIDA report on Italy which indicates that it can take up to several months before an asylum seeker has access to medical care. The CALL suspended the transfer decision because no rigorous research was done by the Immigration Office on the possible consequences a transfer would have, and because it did not request individual guarantees.¹⁶⁷

In March 2019 the CALL suspended a Dublin transfer to Austria based on a violation of Article 3 ECHR. When the transfer decision was taken, the Immigration Office was aware of the fact that the applicant attempted suicide in Belgium in December 2018 and was violent. Given the special needs and the

¹⁶¹ 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.

¹⁶² CALL, Decision No 176046, 10 October 2016.

¹⁶³ CALL, Decision No 201 167, 15 March 2018.

¹⁶⁴ CALL, Decision No 203 865, 17 May 2018.

¹⁶⁵ CALL, Decision No 203 860, 17 May 2018.

¹⁶⁶ CALL, Decision No 207 355, 30 July 2018.

¹⁶⁷ CALL, Decision No 215 169, 15 January 2019.

psychological condition of the applicant, concrete and individual guarantees should have been obtained from the Austrian authorities as to the specific circumstances in which he will be received, which was not done in the present case.¹⁶⁸

In a ruling of August 2019 the CALL further annulled a Dublin transfer to Italy in which the Immigration Office had also omitted to request individual guarantees from the authorities.¹⁶⁹ The CALL cited the AIDA Italy report to demonstrate that it is not excluded that the applicant, as a Dublin returnee who previously received reception, may face difficult access to reception or even exclusion from reception conditions when returning to Italy. It ruled that the Immigration Office did not carry out a rigorous examination of a possible violation of Article 3 of the ECHR.

Transfers

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

Otherwise, after receiving an order to leave the territory in execution of the Dublin Regulation, 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](#)).

If 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, 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.

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.

In two judgments issued on 8 May 2018 by the united chambers of the CALL in Belgium,¹⁷⁰ the CALL ruled that an implicit decision by the Immigration Office in the context of the Dublin III Regulation to extend the transfer period from 6 months to 18 months is a disputable administrative legal act. Such a decision must be motivated and be written so that effective judicial review is possible. The Immigration Office lodged an appeal with the Council of State to contest this interpretation of the CALL, but the Council of State confirmed the judgement of the CALL on 17 October 2019.¹⁷¹

In a judgment of 26 April 2019, the CALL ruled that the choice of domicile at the address of the lawyer is not sufficient to exclude a risk of absconding.¹⁷² Referring to the CJEU's *Jawo* judgment of 19 March 2019,¹⁷³ 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 actually reside at the lawyer's address, this choice of 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

¹⁶⁸ CALL, Decision No 217 932, 6 March 2019.

¹⁶⁹ CALL, Decision No 224 726, 8 August 2019.

¹⁷⁰ CALL, Decision No 203684 and CALL, Decision No 203685, 8 May 2018.

¹⁷¹ Council of State, Decision No 245 799, 17 October 2019.

¹⁷² CALL, Decision No 220401, 26 April 2019.

¹⁷³ EDAL, CJEU, *Jawo*, Judgment in case C-163/17, 19 March 2019, available at: <https://bit.ly/3c9TxNq>.

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 with regards to 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'. The applicant was obliged to fill in this document with his contact information and address, after which he had to send the filled in document to the Immigration Office by mail within ten days upon notification of the Dublin decision.

If the applicant failed to comply with this procedure, there was the risk that he would be considered as being absconded which resulted in the extension of the transfer deadline from 6 to 18 months.¹⁷⁴ This practice came under heavy criticism by various organisation and lawyers, since it denied applicants in the Dublin procedure the possibility to execute their right to an effective appeal. In addition, the practice was perceived as being based upon a faulty interpretation of the *Jawo* judgment and its definition of 'absconded'.¹⁷⁵ The CALL confirmed this view in a judgment in July 2020.¹⁷⁶ It ruled that, according to the *Jawo* judgment, there has to be an intentional element linked to a material element in order to consider someone as being absconded. The intentional element, i.e. knowingly withdrawing from the return procedure, is required to consider someone as being 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 a sufficient element of proof to indicate that the applicant was intentionally withdrawing from the return procedure. Thus, the Immigration Office's practice to extend the transfer deadline from 6 to 18 months if an applicant did not fill in the voluntary return form was ruled to conflicting with the CJEU's *Jawo* judgment. In this particular case the decision to extend the transfer deadline from 6 to 18 months was annulled. However, based on the CALL's motivation in this judgment, the Immigration Office decided to end this practice altogether.

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

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

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

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

Asylum seekers have to attend a specific Dublin interview in which they can state their reasons for opposing a transfer to the responsible country.¹⁷⁷ Lawyers are not allowed to be present at any procedure at the Immigration Office, including the Dublin interview. They can nevertheless intervene by sending

¹⁷⁴ Myria, contact meeting, 19.02.2020

¹⁷⁵ EDAL, CJEU, *Jawo*, Judgment in case C-163/17, 19 March 2019, available at: <https://bit.ly/3c9TxNq>.

¹⁷⁶ CALL, Decision No 237903, 2 July 2020 and Myria, Contact Meeting 16 September 2020, paragraph 16

¹⁷⁷ Article 10 Royal Decree on Immigration Office Procedure.

information on the reception conditions and the asylum procedure in the responsible state or with regard to individual circumstances of vulnerability, presence of family members and relatives or other.¹⁷⁸ 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.¹⁷⁹ When a request to take back or take charge an asylum seeker is being sent to another state, this is mentioned in the "proof of asylum application" ("Annex 26").

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

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

The asylum seeker should specifically ask for a copy of the questionnaire at the end of the interview. Otherwise the lawyer will have to request a copy at the Immigration Office. The Belgian authorities are reluctant to issue a copy of the questionnaire automatically, as they think that asylum seekers are using these copies to rectify inconsistencies in their "made-up" statements.¹⁸⁰ 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.¹⁸¹

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

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

¹⁷⁸ Article 18 Royal Decree on Immigration Office Procedure.

¹⁷⁹ Article 10 Royal Decree on Immigration Office Procedure.

¹⁸⁰ 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.

¹⁸¹ Myria, *Contact meeting*, 21 December 2016, available at: <http://bit.ly/2jGwYmM>, para 29.

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

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

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

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

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

In a judgment of 12 February 2019, the Council of State referred a preliminary question to the CJEU regarding the right to an effective remedy. More precisely, the Council of State asked whether ignoring new elements - that arise after a decision on a Dublin transfer has been taken - is contrary to the right to an effective remedy.¹⁸² At the time of writing, the CJEU did not yet formulate an answer to this question.¹⁸³ In this regard, it should be noted that the CALL had suspended a transfer to Italy in a decision of 15 January 2019 on the basis that medical attestations were delivered after the transfer decision of the Immigration Office. Ignoring these medical attestations would call into question the conformity of the transfer with Article 3 ECHR.¹⁸⁴

The CALL verifies if all substantial formalities have been respected by the Immigration Office.¹⁸⁵ In 2016 this has included cases where the Immigration Office ordered a Dublin transfer without indicating which responsibility criterion was applicable.¹⁸⁶ The amenability to scrutiny of the correct application of the Dublin criteria has been confirmed in the same year by the Court of Justice of the European Union (CJEU) in the cases of *Ghezelbash* and *Karim*.¹⁸⁷

The CALL also considers whether the sovereignty clause or the protection clause should have been applied by assessing potential breaches of Article 3 ECHR. In order to do this, the CALL takes into consideration all the relevant elements concerning the state of reception conditions and the asylum procedure in the responsible state where the Immigration Office wants to transfer the asylum seeker to; frequently taking into account national AIDA reports. When such information on reception conditions and the asylum procedure in the country is only invoked in an annulment procedure, the CALL will only determine whether this information should have been known by the Immigration Office and included to its assessment of the sovereignty clause, in which case it will suspend the decision (regularly causing the

¹⁸² Council of State, Judgment No 243.673, 12 February 2019.

¹⁸³ CJEU, case C-194/19, *H. A. v. Belgium*

¹⁸⁴ CALL, Case No 215.169, 15 January 2019.

¹⁸⁵ Article 39/2(2) Aliens Act.

¹⁸⁶ CALL, Decision No 165134, 31 March 2016, available at: <http://bit.ly/2kZHIUV>.

¹⁸⁷ CJEU, Case C-63/15 *Ghezelbash* and Case C-155/15 *Karim v. Migrationsverket*, Judgments of 7 June 2016.

Immigration Office to revoke the decision spontaneously itself, as such avoiding negative follow-up jurisprudence) or even annul it and send it back to the Immigration Office for additional examination.¹⁸⁸

Following the *Tarakhel* judgment, in these suspension and annulment appeals the CALL not only scrutinises the general reception and procedural situation in the responsible state on systemic shortcomings, but also evaluates the need for individual guarantees from such a state in case shortcomings are not systemic, where the applicant appears to be specifically vulnerable (see section on [Dublin: Procedure](#)).¹⁸⁹

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

As with all final judgments by administrative judicial bodies, a non-suspensive cassation appeal before the Council of State can also be introduced against the judgments of the CALL concerning Dublin transfers.¹⁹⁰

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?
❖ Does free legal assistance cover: Yes With difficulty No
 Representation in interview
 Legal advice

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

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

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

¹⁸⁸ 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>.

¹⁸⁹ 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.

¹⁹⁰ Article 14(2) Acts on the Council of State.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

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

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

Hungary: In the course of 2016, the Immigration Office stopped Dublin transfers to Hungary and Belgium started to declare itself responsible for the concerned asylum applications. The Immigration Office emphasised in December 2016 that the suspension of transfers to Hungary is not due to the reception conditions of asylum seekers in the country as such but to the total lack of cooperation from Hungary on Dublin transfers.¹⁹¹ In January 2021, the Immigration Office confirmed that there were still no transfers carried out to Hungary, and that currently, no Dublin-transfer decisions are taken for Hungary.¹⁹² The Dublin procedure takes place but Belgium ends up declaring itself responsible for the asylum application.¹⁹³ Nevertheless, in June 2018 the government tried to perform a (one-off) Dublin transfer to Hungary. The CALL suspended this decision as no effort had been made to look into the reception conditions and whether (legal) support was provided for Dublin returnees in Hungary.

Greece: In mid-2017 the government resumed transfer requests to Greece. From January to October 2019, 821 take charge and take back request were made to Greece. 5 persons were transferred.¹⁹⁴ In 2020 no persons were transferred to Greece.¹⁹⁵ In January 2021, the Immigration Office informed that currently no Dublin-transfer decisions are taken for Greece.¹⁹⁶

In its decision of 8 June 2018, the CALL decided that the transfer of a Palestinian asylum seeker to Greece was not contrary to article 3 ECHR nor to Article 4 of the EU-Charter. It considered that the asylum situation in Greece does not demonstrate systemic flaws. This means that a case-by-case analysis is necessary to determine whether a transfer to Greece is possible. In the present case, the Palestinian asylum seeker did not demonstrate any additional vulnerability and the Immigration Office received individualised guarantees from Greece regarding his access to the asylum procedure and his reception conditions.¹⁹⁷

This jurisprudence was later confirmed by the CALL in another decision of September 2018 regarding the transfer of an Afghan asylum seeker to Greece. The reasons justifying his transfer were the fact that it concerned a single man who did not demonstrate any additional vulnerability as an asylum seeker. The Immigration Office further received individualised guarantees from Greece, notably that he would not be placed in detention nor suffer a treatment contrary to article 3 ECHR in the designated reception camp, and that there was no real risk of him falling under the EU-Turkey deal.¹⁹⁸

On the opposite, the CALL later suspended a transfer decision to Greece of a single woman due to her vulnerability as victim of sexual assault. Since she claimed to have been sexually assaulted twice during the time she spent in Greece, the CALL decided that the short interviews could not offer any conclusive evidence and that the sensitivity of disclosing intimate information on sexual abuses requires trust and

¹⁹¹ Myria, *Contact meeting*, 21 December 2016, available at: <http://bit.ly/2jGwYmM>.

¹⁹² Myria, *Contact meeting*, 20 January 2021, para 90, available at <https://bit.ly/3qRv6ua>.

¹⁹³ Myria, *Contact meeting*, 17 January 2018, available at: <http://bit.ly/2HCWN3B>, para 10.

¹⁹⁴ Myria, *Contact meeting*, 20 November 2019, available at: <http://bit.ly/2lZq1w9>.

¹⁹⁵ Myria, *Contact meeting*, 18 November 2020, available at: <https://bit.ly/3qUti3s>

¹⁹⁶ Myria, *Contact meeting*, 20 January 2021, para 90, available at <https://bit.ly/3qRv6ua>.

¹⁹⁷ CALL, Decision No 205104, 8 June 2018.

¹⁹⁸ CALL, Decision No 208991, 6 September 2018.

confidence of the asylum seeker in the interviewing officer of the administration. Given the circumstances, and because of the lack of measures adapted to victims of gender-based violence in Greece, the CALL considered that the transfer was incompatible with Article 3 ECHR and Article 4 EU Charter.¹⁹⁹

Italy: Following the *Tarakhel v. Switzerland* ruling of the ECtHR regarding Italy, the CALL initially suspended transfers of applicants who were at risk of being left homeless upon return due to the limited capacity of reception centres in the country.²⁰⁰ In the cases of families with minor children, the Immigration Office had a generalised practice of requesting individualised guarantees from Italy. This practice ended in January 2019 following a letter from the Italian authorities stating that families with children will be accommodated in specific reception centres and the unity of family will be respected. The Immigration Office considers this as sufficient guarantees.²⁰¹ Ever since 2016, the CALL has upheld transfers to Italy for most asylum seekers,²⁰² although it has ruled against transfers in other cases.²⁰³ 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.

In 2019, the CALL suspended several Dublin transfers to Italy. Most cases concerned a take back procedure (i.e. the applicant had already made an application for international protection in Italy) and involved vulnerable persons.²⁰⁴ Regardless of the vulnerability of applicants, transfers have also been suspended by the CALL on the basis that the Immigration Office had not taken all the individual facts of the case into account and motivated the decision too generally, especially in cases where the applicant had demonstrated through different sources (e.g. AIDA reports, OSAR reports) that Dublin returnees face obstacles in (re)accessing the asylum procedure and the reception system since the Salvini Decree of October 2018.²⁰⁵ In two other decisions, where the Immigration Office had motivated its decision more extensively, the CALL ruled that the AIDA and OSAR-reports did not demonstrate that transfers to Italy are contrary to Art. 3 ECHR and that the applicant had not sufficiently demonstrated such a risk in his individual case.²⁰⁶

In 2020, transfers to Italy were suspended at the height of the COVID-19 pandemic. Transfers resumed in the summer. In July, the CALL suspended a decision by the Immigration Office because it did not consider the risks imposed by the pandemic in Italy on the reception and sanitary conditions for AIP.²⁰⁷ In two cases of August, however, the CALL found that the applicants did not demonstrate that the situation of COVID-19 in Italy constituted a real risk of inhuman or degrading treatment for them specifically.²⁰⁸

Bulgaria: The Immigration Office continues to consider that transfers of asylum seekers to Bulgaria do not automatically constitute a risk of inhumane treatment. The number of transfers carried out, however, is limited.²⁰⁹ In January 2021 the Immigration Office confirmed it no longer takes Dublin-transfer decisions for Bulgaria, and that no transfers to Bulgaria were executed in 2020.²¹⁰

¹⁹⁹ CALL, Decision No 210384, 1 October 2018.

²⁰⁰ CALL, Decision No 138 940, 20 February 2015; No 144 488, 27 April 2015; No 144 400, 28 April 2015.

²⁰¹ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

²⁰² 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.

²⁰³ 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

²⁰⁴ CALL, Decision No 214701, 4 January 2019; No 224 129, 19 July 2019; No. 228 640, 7 November 2019; No 229 190, 25 November 2019.

²⁰⁵ CALL, Decision No 229 266, 26 November 2019; No 229 695, 2 December 2019.

²⁰⁶ CALL, Decision No 229 191, 25 November 2019; No 230 811, 30 December 2019.

²⁰⁷ CALL, Decision No 238 756, 22 July 2020.

²⁰⁸ CALL, Decision No 239 671, 13 August 2020; No 239 854, 19 August 2020.

²⁰⁹ Myria, *Contact meeting*, 16 November 2016, para 34; *Contact meeting*, 17 January 2018, para 10.

²¹⁰ Myria, *Contact meeting*, 20 January 2021, para 90, available at <https://bit.ly/3qRv6ua>.

In March 2017, the CALL ruled against the transfer of a single Afghan national to Bulgaria. The Immigration Office looked into general reports on the situation of asylum seekers in Bulgaria, but it did not specifically identify the reception conditions of Dublin returnees that have to make a new application for asylum. Moreover, since the Afghan national was a Dublin returnee and did not have a specific vulnerable profile, he most likely wouldn't have benefited from accommodation upon his return. Therefore, the CALL found that the Immigration Office did not perform a rigorous investigation into the different possible situations in which Article 3 ECHR could be breached.²¹¹

Another and similar example is a case in which the CALL annulled a transfer decision because the reference to general reports on the situation in Bulgaria was not sufficient to exclude violations of Article 3 ECHR. Here again, the Immigration Office had neglected to perform a thorough investigation into the current situation in Bulgaria and only referred to outdated reports.²¹² Moreover, the lack of interpreters in Bulgaria²¹³ and the procedural bias against Afghan nationals²¹⁴ have led the CALL to suspend transfers.

In 2018, 133 take charge and take back requests were made. However, only 3 transfers of single men were carried out.²¹⁵ This number refers only to the transfers carried out by the Immigration Office itself, as the latter is not aware of the number of asylum seekers that returned at their own initiative.

In 2019 only three cases were published on the website of the CALL concerning a Dublin transfer to Bulgaria. In all three cases the CALL suspended the transfer because the Immigration Office failed to conduct a thorough and individualised assessment of the situation in Bulgaria and the possible risks of a breach of Article 3 ECHR. Similarly to the judgements of the past years, the CALL judged that the Immigration Office uses outdated country information and did not take in account the issues that have been identified in Italy, e.g. the lack of interpreters and of legal assistance, the poor conditions in reception centres, and the use of violence by the authorities.²¹⁶

Spain: In 2018 and 2019, reports surfaced signalling that Dublin returnees were excluded from reception in Spain and that there was an increased influx of migrants. In a decision of January 2020, the CALL suspended a transfer decision to Spain, finding that the Immigration Office violated its duty of care because it did not assess the reception conditions for Dublin returnees in Spain, which could possibly be problematic in the light of art. 3 ECHR.²¹⁷ In most cases, however, the CALL upholds the transfer decisions to Spain, even more so since the Spanish government released a guideline stating that Dublin returnees may not be excluded from the reception system.

In 2020, transfers to Spain were suspended in the light of the COVID-19 pandemic for some months. They resumed in the summer.

2.7. The situation of Dublin returnees

The Immigration Office considers part of the Dublin returnees as **Subsequent Applicants**. This is the case for Dublin returnees whose asylum application in Belgium has been closed, for example following an explicit and/or implicit withdrawal. In the case where an asylum seeker has left Belgium before the first interview, he or she will have his or her asylum procedure terminated.²¹⁸ When this asylum seeker is then sent back to Belgium following a Dublin procedure and lodges an asylum application again, the CGRS is legally obliged to deem it admissible.²¹⁹ Nevertheless, depending on what stage of the asylum procedure

²¹¹ CALL, Decision No 184 126, 21 March 2017.

²¹² CALL, Decision No 185 536, 19 April 2017.

²¹³ CALL, Decision No 193 680, 13 October 2017.

²¹⁴ CALL, Decision No 185 279, 11 April 2017.

²¹⁵ Statistics provided by the Immigration Office, February 2019.

²¹⁶ Call Decision No 230 287, 16 December 2019; 228 795, 14 November 2019; 217 304, 22 February 2019.

²¹⁷ CALL Decision No. 231 762, 24 January 2020.

²¹⁸ Article 57/6/5.

²¹⁹ Article 57/6/2(1) Aliens Act.

they were at before leaving, these asylum seekers can be considered as subsequent applicants and are therefore left without shelter until the admissibility decision is officially taken.²²⁰

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](#)).²²¹

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;²²²
5. Has made a [Subsequent Application](#) with no new elements; or
6. Is a minor dependant who, after a final decision on the application lodged on his or her behalf, lodges a separate application without justification.

The CGRS must take a decision on inadmissibility within 15 working days. In practice, this time limit has not been respected due to shortage in staff throughout 2019, which has created a significant backlog of cases. No information was available for 2020 at the time of writing. Shorter time limits of 10 working days are foreseen for subsequent applications, or even 2 working days for subsequent applications in detention.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

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

A regular interview for the lodging of the asylum application takes place at the Immigration Office.²²³ 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.²²⁴

²²⁰ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 175-180.

²²¹ Myria, *Contact meeting*, 21 June 2016, available at: <http://bit.ly/2k3obi9>, para 9.

²²² Note that this ground is not foreseen in Article 33(2) recast Asylum Procedures Directive.

²²³ Article 51/10 Aliens Act.

²²⁴ Articles 10, 16 and 18 Royal Decree on Immigration Office Procedure.

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.²²⁵

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 his or her removal from the territory (a place as described in art. 74/8 and 74/9 of the Aliens act).²²⁶ The appeal has automatic suspensive effect, with the exception of some cases concerning [Subsequent Applications](#).²²⁷

The CALL shall decide on the application within 2 months,²²⁸ 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.

²²⁵ Article 57/5-ter(2) Aliens Act.

²²⁶ Article 39/57(1)(3) Aliens Act.

²²⁷ Article 39/70 Aliens Act.

²²⁸ 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?
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 control on the territory, being primarily within the competence of the Local Police.

Persons without the required travel documents will be refused entry to the Schengen territory at a border post and will be notified of a decision of refusal of entry to the territory and “*refoulement*” by the Immigration Office (“Annex 11-ter”).²²⁹ 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.²³⁰ The “decision of *refoulement*” is suspended until the decision is taken by the CGRS. The “decision of *refoulement*” is also suspended during the time limit to appeal and the whole appeal procedure itself.²³¹

The CGRS shall examine whether the application:²³²

- Is inadmissible; or
- Cannot be accelerated under the grounds set out in the [Accelerated Procedure](#).²³³

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

The asylum application will be examined while the applicant is kept in detention in a closed centre located at the border. The law provides that a person cannot be detained at the border for the sole reason that he or she has made an application for international protection.²³⁴ 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

²²⁹ 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.

²³⁰ Articles 50-ter and 50 Aliens Act.

²³¹ Article 39/70 Aliens Act.

²³² Article 57/6/4 Aliens Act.

²³³ Except for the ground relating to the failure of the applicant to apply for asylum as soon as possible.

²³⁴ Article 74/5(1)(2) Aliens Act.

detention under Article 74/6 (necessity test, evaluation of alternatives to detention etc.), this suggestion has not been taken into account (see [Grounds for Detention](#)).

Most of the asylum seekers who apply for asylum at the border are held in a specific detention centre called the “**Caricole**”, situated near Brussels Airport, but can also be held in a closed centre located on the territory, while in both cases legally not being considered to have formally entered the country yet.²³⁵ Asylum seekers who apply for asylum at the border are systematically detained, without preliminary assessment of their personal circumstances. No exception is made for asylum seekers of certain nationalities or asylum seekers with a vulnerable profile other than being a child or a family with children. Families with children are placed in so-called open housing units, which are more adapted to their specific needs, but which are legally still considered to be border detention centres.²³⁶

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 responsibility of the carrier.²³⁷ 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.²³⁸ This was one of the aspects of concern for the ECtHR in the *Singh* case when it ruled that Belgium lacked an effective remedy in such situations, in violation of Article 13 ECHR (see [Border Procedure: Appeal](#)).

The first instance procedure for persons applying for asylum at the border detained in a closed centre or open housing unit is the same as the regular procedure, although the law states that applications in detention are treated by priority.²³⁹ If the CGRS has not taken a decision within four weeks, the asylum seeker is admitted to the territory.²⁴⁰ 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.²⁴¹ In many cases the point of departure (and return) is not the country of origin, and the CGRS does not examine potential persecution or serious harm risks in other countries than the applicant’s country of origin. Not all issues rising under Article 3 ECHR in the country where the person is (forcibly) returned will therefore be scrutinised. This is in particular the case where the country of return is a country other than that of nationality, or also outside the scope of application of the Chicago Convention, where the CGRS has doubts over the person’s nationality or recent stay in that country, making it impossible in their opinion to pronounce itself on the risk of being treated inhumanely there.

In 2020, 231 asylum applications were made at the border.²⁴²

²³⁵ 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.

²³⁶ Article 74/9 Aliens Act.

²³⁷ 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>.

²³⁸ And it will be too late to appeal against it in an effective way, as also the ECtHR has ruled in *Singh v. Belgium*. Article 57/6(2)(1) Aliens Act.

²³⁹ Articles 57/6/4 and 74/5(4)(5) Aliens Act.

²⁴⁰ Article 74/4 Aliens Act.

²⁴¹ Information provided by the Immigration Office, January 2021.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

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

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

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

Vulnerable asylum seekers also face specific difficulties related to this accelerated asylum procedure. Since no vulnerability assessment takes place before being detained, their vulnerability is not always known to the asylum authorities and as a result may not be taken into account when conducting the interview, assessing the protection needs and taking a decision. However, it is clearly provided that the asylum seeker should fill in a questionnaire specifically intended to determine any specific procedural needs, at the start of the asylum procedure.²⁴³

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.²⁴⁴

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

4.4. Legal assistance

²⁴³ Article 48/9(1) Aliens Act.

²⁴⁴ Article 39/57 Aliens Act.

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 key role in making access to legal assistance effective for applicants for international protection. Where occupants do not have a lawyer upon arrival in the centre, the prompt submission of an application for designation of a lawyer is essential, especially as the time limits for the various procedures are very short. In practice, it seems that in some closed centres there is a difference in treatment between applicants for international protection considered as "real" by the staff, and foreign nationals that in the course of their procedures are applying for asylum for the first time in the centre or just before repatriation, which are considered as "false". A lawyer is automatically proposed to the former category, whereas the latter are not systematically offered one, thus rendering access to legal assistance arbitrary and dependent to the staff's judgement. Moreover, practices concerning the request for the appointment of a lawyer for an applicant for international protection in administrative detention are very different from one detention centre to another. It also appears that no request for appointment is made during weekends, since no social service duty is provided at that time, which is an additional challenge to meet applicable deadlines and represents an obstacle to effective access to legal assistance.²⁴⁵

In principle, the same system as described under the regular procedure applies for the appointment of a "pro-Deo" lawyer. However, most bureaus of legal assistance appoint junior trainee lawyers for these types of cases, which means that highly technical types of cases are handled by lawyers who do not have adequate experience. The contact between asylum seekers and their assigned lawyer is usually very complicated. Lawyers are often not present at the personal interview because asylum seekers cannot get in touch with them prior to the interview, and lawyers tend to not to visit them before the interview to prepare it. When a negative first instance decision is issued by the CGRS, it is not always easy to contact the lawyer over the phone or in person to discuss the reasons given in the decision. Often the lawyer decides that there are no arguments/grounds to lodge an appeal with the CALL and advises the asylum seeker not to lodge an appeal without explaining why. Some bureaus of legal assistance have or intend to create pools and lists of specialised alien law lawyers to be exclusively assigned in this type of cases, but the necessary control and training to effectively guarantee quality legal assistance seems to be lacking.²⁴⁶

²⁴⁵ UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, <https://bit.ly/35G2h9s>, 34.

²⁴⁶ 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:²⁴⁷

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

The CGRS shall decide on the application within 15 working days.²⁴⁸ When the application is treated under the accelerated procedure on the aforementioned grounds, it may pronounce the application as manifestly unfounded.²⁴⁹ This has effects on the order to leave the territory, which will be valid between 0-7 days instead of 30 days.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

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

Exactly the same legal provisions apply to the personal interview in the accelerated procedures, including the ones dealing with the admissibility of the application, as to the one in the [Regular Procedure: Personal Interview](#). The only difference provided for is that in case of detention, the interview takes place in the detention centre where the applicant is being held, but this has no impact on the way the interview takes place as such.²⁵⁰ Also an interpreter is present during these interviews. The CGRS conducts interviews through videoconference in the closed detention centres. However, after the Council of State annulled the decision of the CGRS to conduct interviews by videoconference in open reception centres because the CGRS is not competent to modify conditions of the personal interviews, the CALL has recently extended this ruling to the longstanding practice of interviews through videoconference for people residing in closed

²⁴⁷ Article 57/6/1(1) Aliens Act.

²⁴⁸ *Ibid.*

²⁴⁹ Article 57/6/1(2) Aliens Act.

²⁵⁰ Article 13 Royal Decree on CGRS Procedure.

detention centres given that, here too, that practice was based solely on a CGRS decision and thus illegal.²⁵¹ The CGRS now expressed its intention to recommend the Secretary of State to take legal initiative to ground interviews through videoconference in the Royal Decree.²⁵² (see [Regular procedure: personal interview](#))

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?

<ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Judicial <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Administrative <input type="checkbox"/> No
---	--	---

An appeal in the accelerated procedure must be lodged within 10 days, and has suspensive effect.²⁵³

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

²⁵¹ CALL judgment no. 247 396 of 14 January 2021.

²⁵² CGRS Communication of 17 December 2020, available [here](#) on its website.

²⁵³ Article 39/57(1)(2) Aliens Act.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

The Aliens Act defines as vulnerable persons: minors (accompanied and unaccompanied), disabled persons, pregnant women, elderly persons, single parents with minor children and persons having suffered torture, rape or other serious forms of psychological, physical or sexual violence.²⁵⁴ The Reception Act mentions more profiles, and reflects the non-exhaustive list contained in Article 21 of the recast Reception Conditions Directive, referring to “children, unaccompanied children, single parents with minor children, pregnant women, disabled persons, victims of human trafficking, elderly persons, persons with serious illness, persons suffering from mental disorders and persons having suffered torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.”²⁵⁵ However, there is no definition of what the term vulnerability contains.

1.1. Screening of vulnerability

Both the Immigration Office and the CGRS have arrangements in place for the identification of vulnerable groups. In 2014 the Immigration Office started a “Vulnerability Unit” to screen all applicants upon registration on their potential vulnerability. The Vulnerability Unit consists of officials interviewing vulnerable cases, who have had specific training and are supposed to be more sensitive to the specific implications vulnerability might have on the interview.²⁵⁶

Since August 2016 the Immigration Office uses a registration form in which it is indicated if a person is a (non-accompanied) minor, + 65 years old, pregnant, a single woman, LGBTI, a victim of trafficking, victim of violence (physical, sexual, psychological), has children, or has medical or psychological problems.²⁵⁷ These categories offer a broader definition than the one provided in the Aliens Act and the Reception act. The form further offers an empty space for additional information, which is often used in practice to indicate if there are urgent needs, e.g. medical needs. For the asylum seekers concerned, the process of registration will be faster and certain reception centres, such as emergency centres, won’t be assigned to them.

Similarly, at the CGRS level, there are few specific provisions as to the screening, processing and assessing of vulnerabilities of asylum seekers. There is a general obligation to take into consideration the individual situation and personal circumstances of the asylum seeker, in particular the acts of persecution or serious harm already undergone, which could be considered a sort of specific vulnerability.²⁵⁸ In case of a gender-related claim, one can oppose to be interviewed by a protection officer from the other sex or with the assistance of an interpreter from the other sex.²⁵⁹ Children, whether unaccompanied or

²⁵⁴ Article 1(12) Aliens Act

²⁵⁵ Article 36 Reception Act.

²⁵⁶ 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.

²⁵⁷ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

²⁵⁸ Article 27 Royal Decree on CGRS Procedure.

²⁵⁹ Article 15 Royal Decree on CGRS Procedure.

accompanied, should be interviewed in appropriate circumstances and their best interests should be decisive in the examination of the asylum application.²⁶⁰

Unaccompanied children applying for asylum are handed over the brochure “Guide for the unaccompanied minor who applies for asylum in Belgium”, published by the CGRS in different languages. The Aliens Act also has specific provisions on the procedures for unaccompanied children when they do not apply for asylum. Unaccompanied children should always be accompanied by their guardian during interviews, while accompanied children who apply separately or who request to be heard by the CGRS during the procedure of their parents should only be accompanied by the lawyer and person of trust during the first interview. If there are more interviews at a later stage, the CGRS can also interview the child alone.²⁶¹

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

- ❖ A “Gender Unit”, trained following the EASO training module on Interviewing Vulnerable Persons, assembles all gender-related asylum applications,²⁶² including applications based on sexual orientation or gender identity (LGBTI), as well as those applications concerning genital mutilation (FGM), honour retaliation, forced marriages and partner violence or sexual abuse. Its main task is to guarantee an equal treatment of those asylum applications;²⁶³
- ❖ A “Minors Unit”, headed by an appointed coordinator, ensures a harmonised approach, information exchange and exchange of best practices. Unaccompanied minors are only interviewed by specially trained protection officers, who follow the EASO training module on Interviewing Children;²⁶⁴

In 2018, important initiatives were undertaken by Belgium regarding information provision to vulnerable applicants for international protection, as updated instructions for national practitioners in the fields of asylum and protection were issued. Specialised trainings were organised and communication leaflets were published aiming at raising awareness and providing guidance on issues related to gender-based violence, physical and sexual violence, as well as female genital mutilation and discrimination against transgender people.²⁶⁵

It should be noted that the GCRS used to have A “Psy Unit” which assisted protection officers in cases where psychological problems might have an influence on the processing of the application or on the assessment of the application itself. However, the CGRS put an end to the Psy Unit in September 2015 as a consequence of the need to prioritise other internal projects due to the rising numbers of applicants (see section on [Use of Medical Reports](#)).²⁶⁶

1.2. Age assessment of unaccompanied children

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

²⁶⁰ 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>.

²⁶¹ Article 57/1(3) Aliens Act.

²⁶² This includes 12 Gender reference persons in the six geographical sections of the CGRS, the Legal Service and the Documentation Centre (Cedoca).

²⁶³ Information provided by the CGRS, 24 August 2017.

²⁶⁴ Information provided by the CGRS, 24 August 2017.

²⁶⁵ EASO, *Annual Report on the Situation of Asylum in the European Union 2018*, available at: <https://bit.ly/2UV3yGj>.

²⁶⁶ Information provided by the CGRS: CBAR-BCHV, Contact meeting, 15 September 2015, available at: <http://bit.ly/1GymMYx>, para 60.

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.²⁶⁷

Age assessments in Belgium consist of scans of a person's teeth, wrist and clavicle. Following critiques around the accuracy of the medical test to establish the age of non-Western children by the Order of Physicians,²⁶⁸ a margin of error of 2 years is taken into account. This means that only a self-declared child who is tested to be 20 years of age will be registered as an adult.

An applicant may challenge an age assessment before the Council of State through a non-suspensive appeal, however the court is not competent to review elements such as the reliability of the results of the medical examination or the evidentiary value of identity documents. It can only check if the Immigration Office had the right to conduct an age assessment according to the law. This procedure is lengthy, often taking longer than a year, which means that the person often becomes an adult before the Council of State has reached a final decision. Accordingly, the procedure is not an effective appeal and has been met with criticism.²⁶⁹

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.²⁷⁰

The Council of State further decided that the Guardianship Service is not competent to assign a date of birth to the person who is declared minor following an age test, but for whom the margin of error of the age test results in a higher or lower age than the age declared. The Guardianship Service has declared that it will however not change its practice.²⁷¹

On 9 December 2019, the Council of State issued a decision relevant to the contested age assessment procedure.²⁷² The case concerned a Guinean national who claimed to be a minor. He was subsequently taken into care by the Belgian Guardianship Service as an unaccompanied minor. The Immigration Office later expressed doubts as to the applicant's age due to his physical appearance and ordered a medical examination which concluded the age of the applicant to be 26.7 years with a deviation of 2.6 years. The applicant contested the decision arguing that the examiner had offered only a general conclusion and it was unclear how the estimated age was determined. 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 it is the overall result that is relevant in age assessment decisions. This decision must be consistent and understandable in light of the individual tests carried out that are used to formulate an overall conclusion. The Court highlighted, *inter alia*, that an age determination below 18 was not excluded from the present examinations of the applicant's hands and wrists and that it was thus unclear how the estimated age of 26.7 was determined. It therefore found the statement of reason to be inadequate and annulled the contested decision.

²⁶⁷ Article 7 UAM Guardianship Act.

²⁶⁸ 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>.

²⁶⁹ Platform Kinderen op de vlucht, *Leeftijdsschatting van NBMV in vraag: probleemstelling, analyse en aanbevelingen*, September 2017, available in Dutch at: <http://bit.ly/2GyEJsd>.

²⁷⁰ 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.

²⁷¹ Council of State, Decision No 242.623, 11 October 2018, available in French at: <https://bit.ly/2FQBc10>; Decision No 241.990, 28 June 2018, available in French at: <https://bit.ly/2FZVL4g>.

²⁷² Council of State, Decision No 246340, 9 December 2019, available in French at: <https://bit.ly/2Rycbor>.

In 2020 3,424 unaccompanied children were signalled, out of which 87% were boys, and 12% were girls. The top 5 nationalities (among the signalisations) were:

Signalisations of unaccompanied children: 2020	
Country	Number
Afghanistan	1269
Eritrea	425
Morocco	320
Algeria	301
Sudan	127
Total	2,4421

Source: Guardianship Service

Out of a total of 941 age assessments conducted in 2020, 650 (69%) were declared to be over 18 years old.²⁷³

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

2.1. Adequate support during the interview

Following the reform that entered into force on 22 March 2018, it is now clearly provided that asylum seekers should, at the start of the asylum procedure, fill in a questionnaire determining any specific procedural needs.²⁷⁴ 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.²⁷⁵

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

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

²⁷³ Information provided by the Guardianship Service, January 2021; Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

²⁷⁴ Article 48/9(1) Aliens Act.

²⁷⁵ Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available in Dutch at <https://bit.ly/2S7NtO5>, 25.

attestations were not recent enough to proof current problems. Similarly, the CALL did not take the medical attestations into account in its judgement.²⁷⁶

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

Furthermore, a doctor appointed by the Immigration Office *can* make recommendations on procedural needs, based on a medical examination. However, this is not mandatory,²⁷⁷ and the Immigration Office does not keep any statistical information on if and how many times this is applied in practice.

If the procedural needs have not been signalled at the beginning of the asylum procedure, the asylum seeker can still submit a written note to the CGRS describing the elements and circumstances of his or her request.²⁷⁸ This does not, however, entail an obligation on the part of the CGRS to restart the examination of the asylum application. The Immigration Office and the CGRS remain free to decide if any special procedural needs apply and their decision in itself is not appealable.²⁷⁹

The CGRS indicated that the evaluation of the procedural needs is an ongoing process. This means that (i) a first evaluation will take place when the file is transferred to the CGRS, (ii) a second assessment is undertaken during the interview and (iii) another evaluation is conducted at the moment of the decision. Those different evaluations can be conducted both in relatively short or long timelines.²⁸⁰

Furthermore, according to the law, reception centres should not only evaluate if special reception needs apply, but should also proactively look for signs of special procedural needs themselves. Where such needs are identified, the centres must inform the Immigration Office and/or the CGRS accordingly, on the condition that the asylum seeker gives its consent.²⁸¹

Specific procedural needs which have been observed in practice include the conduct of the interview in rooms at ground level in cases where the applicant has a physical disability,²⁸² organising several breaks during the interview, postponing the interview after the birth of a child etc. Overall, when specific procedural needs are identified, the measures mainly consist of hearing the person concerned in an appropriate manner and providing them the opportunity to take a break at any time during the interview. The assistance of an interpreter during a personal interview has also been described in some decisions as a special procedural need. In essence, however, this is not the case since one is entitled to an interpreter during every asylum procedure as described in Article 51/4 of the Aliens Act.

The above examples demonstrate that the CGRS makes efforts to meet certain special procedural needs. However, certain limits have also been noted in practice. In a case of a minor who had reached the age of 18 during the asylum procedure, special assistance was no longer attributed to him.²⁸³

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

²⁷⁶ CALL, Decision No 217.807, 28 February 2019.

²⁷⁷ Article 48/9(2) Aliens Act.

²⁷⁸ Article 48/9(3) Aliens Act.

²⁷⁹ Article 48/9(4) Aliens Act.

²⁸⁰ Myria, *Contact meeting*, 18 April 2018, available in Dutch at: <https://bit.ly/2sIMaXC>, para. 56.

²⁸¹ Article 22(1/1) Aliens Act.

²⁸² CALL, Decision No 214.454, 20 December 2018; CALL Decision No 215.972, 30 January 2019; CALL, Decision No 213 350, 30 November 2018.

²⁸³ CALL, Decision No 217807, 28 February 2019.

of unaccompanied children, so that the necessary arrangements can be made.²⁸⁴ For unaccompanied minors the specific procedural needs mainly consists of the assistance of a guardian, an interview conducted by a protection officer trained in child protection and the fact that the CGRS takes into account the age and level of maturity when evaluating the applicants declarations.²⁸⁵

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.²⁸⁶ The language of the judgment was adjusted to such an extent that the minor could, even without the assistance of an adult, understand the reasoning of the judgment. By doing so, the CALL acts in accordance with the Guidelines for a Child Friendly judgment of the Council of Europe. The CALL further confirmed that the Immigration Office should apply the UNCRC and respect the best interest of the child.

In gender-related asylum claims the official of the Immigration Office must check if the asylum seeker opposes to a protection officer of the other sex.²⁸⁷ 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.²⁸⁸

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.²⁸⁹

Since August 2018 the government has opened family units within the closed centres in which it has detained several families. This is a practice that Belgium had suspended after it was convicted by the ECtHR in the past.²⁹⁰ 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 that this measure would be abused to make return impossible.²⁹¹

Although unaccompanied children are not detained, they are not exempted from the accelerated procedure in the law. However, in practice, the accelerated procedure is not applied to unaccompanied minors.²⁹²

²⁸⁴ Program Law (I) (art. 479), 24 December 2002 - Title XIII – Chapter VI : Guardianship of non-accompanied minors

²⁸⁵ 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.

²⁸⁶ 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>.

²⁸⁷ Article 9 Royal Decree on Immigration Office Procedure.

²⁸⁸ 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.

²⁸⁹ Article 48/9(5) Aliens Act.

²⁹⁰ ECtHR, *Muskhadzhiyeva v. Belgium*, Application No 41442/07, Judgment of 19 January 2010.

²⁹¹ Chamber of Representatives, *Policy Note on asylum and migration, 4 November 2020, available in Dutch and French, available at : <https://bit.ly/3sJdgMd>*, p. 34.

²⁹² Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 290.

3. Use of medical reports

Indicators: Use of Medical Reports

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

The Aliens Act provides the possibility for the CGRS to request a medical report relating to indications of acts of torture or serious harm suffered in the past, if the CGRS thinks this is relevant to the case. It can request such a medical examination as soon as possible, if necessary by a doctor assigned by the CGRS. In the medical report a clear difference should be made between objective observations and the observations which are based on the declarations of the applicant. The report can be sent to the CGRS only with the applicant's consent.²⁹³ However, refusal to undergo a medical examination shall not prevent the CGRS from deciding on the asylum application.²⁹⁴ The CGRS has stated that it has not yet made use of this possibility.²⁹⁵

If no such request is made by the CGRS and the applicant declares to have a medical problem, the CGRS should inform him or her of the possibility to provide such a report on his or her own initiative and expenses. In this case the medical report should be sent to the CGRS as soon as possible and the CGRS can request an advice concerning the report from a doctor appointed by them.²⁹⁶

The CGRS should evaluate the report together with all the other elements of the case.²⁹⁷

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

3.1. Mental state and credibility

As already mentioned, a "Psy Unit" at the CGRS existed until 2015, consisting of a psychologist and a reference person in every regional section to provide support services to protection officers upon request if they believe that the psychological situation of the asylum seeker might have an impact on the way the interview can be conducted as well as on the determination of protection needs and status.²⁹⁸ The purpose of the psychologist's intervention was clearly not to confirm or contradict certain elements of the asylum application. The Unit was shut down because of a lack of resources and the necessity to focus on other priorities.

Given that the burden of proof lies on the asylum seeker, the CGRS considers that it is his or her role to provide a psycho-medical attestation if he or she wants to justify his or her inability to recount his or her story in a coherent and precise way without contradictions. Although an attestation of a psychological problem will never suffice for the CGRS to grant a protection status, it always has to be taken into consideration in determining the protection needs.

²⁹³ Article 48/8(1) Aliens Act.

²⁹⁴ Article 48/8(3) Aliens Act.

²⁹⁵ Myria, *Contact meeting*, 16 January 2019, available in Dutch at: <https://bit.ly/2HeyRXu>, para 300.

²⁹⁶ Article 48/8(2) Aliens Act.

²⁹⁷ Article 48/8(4) Aliens Act.

²⁹⁸ CBAR-BCHV, *Trauma, geloofwaardigheid en bewijs in de asielpcedure*, August 2014, 74-80.

If an asylum seeker has psychological problems which impede him to have a normal interview or an interview at all, the CGRS expects the asylum seeker and/or his lawyer to provide a medical attestation. There is not yet a standardised procedure for these kind of cases but the CGRS evaluates on a case by case basis if an interview is possible or of special arrangements need to be made.²⁹⁹ In such cases the applicant will be asked - through the intermediary of his lawyer - to answer certain questions in writing so as to provide the CGRS with all the elements necessary for the processing of the asylum application. In such cases the CALL has referred to UNHCR's Handbook on Procedures and Criteria for Determining the Status of Refugees which recommends to adapt the fact-finding methodology to the seriousness of 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.³⁰⁰

In a judgment of 22 October 2020, the CALL annulled a decision of the CGRS in a case concerning a woman with important psychological problems. On the basis of 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 had frequently mentioned she felt unwell and she wanted a break. Each time, a break was allowed. However, the interview had lasted 6 hours in total, whereas the internal charter of the CGRS prescribes a personal interview of 4 hours, in exceptional cases to be prolonged with maximum 30 minutes. The CALL judged that given the psychological vulnerability of the woman, a personal interview of 6 hours was inadequate to properly assess the credibility of her story.³⁰¹

3.2. Medical evidence of past persecution or serious harm

Until now, medical reports demonstrating physical harm as evidence of past persecutions or inhuman treatments were mostly put aside by the CGRS, which argues that such reports cannot determine the exact cause of the harm, its perpetrator nor the reasons that lie behind it.³⁰² However, in some rare cases, the CGRS has been required by the CALL to further examine the circumstances surrounding the physical harm experienced by an asylum seeker. In presence of physical scars for example, the burden of proof is reversed and the CGRS is obliged to look further into the circumstances surrounding the causes of persecution or serious harm.³⁰³

This was the case in a judgement of July 2018 in which the applicant was given the benefit of the doubt and recognised as a refugee because of the medical attestation he had provided to the CGRS. In fact, the medical attestation demonstrated signs of torture and severe injuries. However, the CALL limited the recognition of mistreatment only to some of the existing scars of the applicant, while other signs (e.g. on the toe nails or the pulled fingers) were not providing concluding evidence of mistreatment according to the CALL.³⁰⁴

In March 2019 the Council of State annulled a judgment of the CALL because it had not sufficiently taken into account the medical attestations that were provided. In that case, the medical certificates submitted by the applicant in the context of his subsequent application included findings of physical and

²⁹⁹ Myria, *Contact meeting*, 18 January 2017, available at: <http://bit.ly/2kx93eZ>, para 25.

³⁰⁰ CALL, Decision No 222091, 28 May 2019.

³⁰¹ CALL, Decision No 242762, 22 October 2020.

³⁰² 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.

³⁰³ Article 48/7 Aliens Act.

³⁰⁴ CALL, Decision No 207 193, 25 July 2018.

psychological injuries which may have resulted from ill-treatment linked to the state of slavery. While the CALL had ruled that the evidence provided did not restore the credibility of the applicants account of his status as a slave, the Council of State found that the administrative judge did not carry out a detailed examination of the risk of persecution and violated the rights guaranteed by articles 3 and 4 ECHR.³⁰⁵

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

Some NGOs deliver free medical examinations and attestations. The main objective of the organisation 'Constat' is to defend and promote the full implementation of the Istanbul Protocol into the Belgian asylum procedure, in particular regarding the examination of physical and psychological consequences of torture and other cruel, inhuman and degrading treatments or punishments over asylum seekers. Another organisation acting in this specific field is 'Exil', which offers medical, psychiatric, psychological, psychotherapeutic and/or fascia-therapeutic consultations to victims of human rights violations and torture.

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.³⁰⁶ This application for protection based on medical reasons has been taken out of the asylum procedure and replaced with a completely separated procedure that entails less procedural guarantees. In the latter, a standardised medical form has to be filled out and communicated before the request is considered admissible and examined on its merits. A refusal can further only be subjected to an annulment (and suspension) appeal. The existence of this procedure is a way for the CGRS to avoid to have to take into consideration medical elements put forward during the asylum procedure, even if they could be relevant for the asylum application.

In *M'Bodj* and *Abdida*,³⁰⁷ two judgments delivered on 18 December 2014, the CJEU has ruled that this so-called "9ter procedure" is not a form of international protection, but a national protection measure on which the EU asylum rules do not apply because it does not entail a protection against harm caused by "actors of persecution or serious harm", in the meaning of the Qualification Directive. This jurisprudence was later implemented in Belgian jurisprudence.³⁰⁸ 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

³⁰⁵ Council of State, Judgment No 244 033, 26 March 2019, available in French at: <https://bit.ly/2uWoO57>.

³⁰⁶ Article 9-ter Aliens Act.

³⁰⁷ 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.

³⁰⁸ CALL, Decision No 168 897, 1 June 2016; Constitutional Court, Decision No 13/016, 27 January 2016.

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.³⁰⁹

Once identified as being a child, a guardian will be assigned to assist the child. The guardian represents his or her pupil in legal acts and has the responsibility to ensure that all necessary steps are taken during the unaccompanied child's stay in Belgium. The guardian has to arrange for the child's accommodation and ensure that the child receives the necessary medical and psychological care, attends school etc. The guardian has to see onto the child's asylum or other residence procedures, represent and assist the child in these and other legal procedures and if necessary find a lawyer. It is now legally possible to cumulate the specific procedures intended at finding a durable solution for unaccompanied children (family reunification, return or right to reside in Belgium) with the asylum procedure,³¹⁰ while - prior to 2015 - one had to choose between the two or conduct them consecutively. In practice the Immigration Office often postpones the specific procedure while awaiting the results of the asylum procedure.

The guardian also has to help in tracing the parents or legal guardians. If that has not been done yet, the guardian can also introduce an asylum application for his or her pupil.³¹¹ It should be noted, however, that a pending asylum procedure in practice could cause other procedures for finding a durable solution to be temporary suspended until a final decision is taken on the asylum application, since in that case Belgian authorities are not allowed to contact the authorities of the country of origin to assess whether return or family reunification is possible.

The guardian has to attend the different interviews at the Immigration Office and the CGRS, and should inform the child of the decisions taken in his or her regard in an understandable manner and language. In case of a negative decision the guardian should explain appeal possibilities and request the child to provide arguments to that end. He or she should also contact the lawyer to prepare the appeal, as well as the social worker in the reception centre to be able to prepare for possible consequences of the decision on the child's right to reception.³¹²

If necessary, a provisional guardian can be appointed immediately upon notice to the Guardianship Service; for instance when an unaccompanied child is detained, the directing manager of the Guardianship Service or his or her deputy shall take on guardianship.³¹³

On 31 December 2020 there were 2,946 guardianships, of which 2,022 were new guardianships.³¹⁴ One guardian can take on several guardianships.

³⁰⁹ Article 479 Title XIII, Chapter VI of Programme Law of 24 December 2002 (UAM Guardianship Law).

³¹⁰ Article 61/15 Aliens Act.

³¹¹ Article 479(9)(12) UAM Guardianship Law.

³¹² 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>.

³¹³ Article 479(6) UAM Guardianship Law.

³¹⁴ Myria, *Contact meeting*, 22 January 2020, available in French at: <https://bit.ly/2VhsVE6>.

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.³¹⁵ 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 that prioritises Dublin files.³¹⁶

After the application is transmitted, the CGRS first decides on the **Admissibility** of the claim by determining whether there are new elements, which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection.³¹⁷ The claim is deemed admissible where the previous application has been terminated on the basis of implicit withdrawal.³¹⁸

The CGRS should take this decision within 10 working days after receiving the application from the Immigration Office. Due to a high volume of subsequent applications, the 10 days delay is often not respected.³¹⁹ If the person is in detention, this decision should be taken within 2 working days.³²⁰ If the CGRS declares the application admissible, it continues with an examination of the merits under the **Accelerated Procedure**. The final decision should be made within 15 working days.³²¹ In 2019, significant delays in these procedures were noted in practice, from several months up to more than a year.

Where the subsequent application is dismissed as inadmissible, the CGRS should determine whether the removal of the applicant would lead to direct or indirect *refoulement*.³²²

An appeal to the CALL against an inadmissibility decision should be made within 10 days, or 5 days when the applicant is in detention.³²³ The appeal has automatic suspensive effect, except where:³²⁴

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

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

³¹⁵ Article 51/8 Aliens Act.

³¹⁶ Myria, *Contact meeting* of 21 November 2018, available in Dutch at: <https://bit.ly/2Rf4Sjo>, para 26.

³¹⁷ Article 51/8 Aliens Act.

³¹⁸ *Ibid*, citing Article 57/6/5(1)-(5) Aliens Act.

³¹⁹ Myria, *Contact meeting* 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 11.

³²⁰ Article 57/6(3) Aliens Act.

³²¹ Article 57/6/1(1) Aliens Act.

³²² Article 57/6/2(2) Aliens Act.

³²³ Article 39/57 Aliens Act.

³²⁴ Article 39/70 Aliens Act.

An applicant does not have a right to remain on the territory even before the CGRS pronounces itself on admissibility in cases where:³²⁵

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

A total of 3,805 applicants lodged subsequent applications in 2020:

Subsequent applicants by 6 main countries of origin: 2020	
Country	Number
Afghanistan	796
Iraq	460
Palestine	335
Syria	236
Guinee	200
Albania	177

Source: CGRS

The evaluation of new elements is strictly applied in practice according to multiple actors and lawyers. However, the Belgian State has avoided condemnations by the ECtHR through friendly settlements. On 7 March 2019 for example, a decision on a friendly settlement was issued in a case concerning an Afghan applicant who was denied international protection due to lack of credibility.³²⁶ His subsequent medical report had not been taken into account, leading to the rejection of his new application, as no new elements were found. The applicant complained of a violation of Article 3, in its procedural aspect, as well as Article 13, as the standard of proof required was excessive. He claimed the asylum authorities had failed to take his mental disorder into account, even though the lack of credibility was later based on this disorder. He also claimed that the CALL had placed the burden of proof entirely on him, regardless of the benefit of the doubt, and that the judge failed to duly examine available evidence (i.e. the medical report). The Belgian State successfully settled this case so as to avoid a (possible) negative decision by the ECtHR. The Belgian government guaranteed that the CGRS would take all evidence into account if a new asylum application is lodged, including the mental disorders of the applicant which seem to have been at the origin of a lack of credibility.

Another friendly settlement was found in a case of September 2019 regarding the evaluation of new elements in a subsequent application.³²⁷ This case was filed by a Pakistani asylum seeker whose application for international protection had been rejected in November 2017 by the CGRS. After having provided evidence of the risk of persecution he faced due to his religion, and because a family member was murdered for this reason, while other family members had obtained international protection in Canada, the applicant claimed before the ECtHR that the Belgian asylum authorities had not thoroughly examined his situation, as required by Article 3 and 13 ECHR. He claimed that the asylum authorities rejected his application although they did not question the authenticity of the additional documents. The Belgian government reached a friendly settlement and guaranteed that the CGRS would examine a possible new asylum application in accordance with the procedural obligations laid down in Article 3 ECHR.

³²⁵ Article 57/6/2(3) Aliens Act.

³²⁶ ECtHR *H.G.S. against Belgium*, Application No 26763/18, 7 March 2019.

³²⁷ ECtHR, *A.A. against Belgium*, Application No 51705/18, 26 September 2019.

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](#).³²⁸

According to the law, countries can be considered safe if the rule of law in a democratic system and the general political circumstances allow to conclude that in a general and durable manner there is no persecution or real risk of serious harm, taking into consideration the laws and regulations and the legal practice in that country, the respect for the fundamental rights and freedoms of the ECHR and for the principle of *non-refoulement* and the availability of an effective remedy against violations of these rights and principles.³²⁹

After having received a detailed advice of the CGRS, the government approves the list of safe countries of origin upon the proposal of the Secretary of State for Migration and Asylum and the Minister of Foreign Affairs. The list must be reviewed annually and can be adjusted.³³⁰ The Royal Decree of 14 December 2020 on Safe Countries of Origin reconfirmed the list of safe countries of origin that was adopted in 2017: **Albania, Bosnia-Herzegovina, Northern- Macedonia, Kosovo, Serbia, Montenegro, India and Georgia**.³³¹

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

In 2020, a total of 1,063 persons from safe countries of origin applied for asylum. The breakdown per nationality is as follows:

Country	2016	2017	2018	2019	2020
Kosovo	331	320	242	194	70
Albania	817	882	668	680	447
FYROM / North Macedonia	165	251	194	190	89
India	50	52	81	46	18
Bosnia-Herzegovina	56	44	23	45	34
Montenegro	14	5	8	20	5
Serbia	203	232	198	220	134
Georgia	:	468	695	563	266

³²⁸ Article 57/6/1(1)(b) Aliens Act.

³²⁹ Article 57/6/1(3) Aliens Act.

³³⁰ Article 57/6/1 Aliens Act.

³³¹ Royal Decree of 17 December 2017, available at: <http://bit.ly/2pi7CR2>.

Total	1,636	2,254	2,109	1,958	1,063
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Source: CGRS

2. Safe third country

Following the reform that entered into force on 22 March 2018, the Aliens Act contains the “safe third country” concept,³³² as a ground for inadmissibility.³³³ The CGRS has already stated that it will only apply this concept very exceptionally and that there will not be a list of safe third countries. This concept has been applied in 15 cases, mostly people having an international protection status in Switzerland.³³⁴

2.1. Safety criteria

A country may be considered as a safe third country where the following principles apply:³³⁵

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

2.2. Connection criteria

A third country can only be regarded as a safe third country if the applicant has such a relationship with the third country on the basis of which it can reasonably be expected of him or her to return to that country and to have access thereto.³³⁶ The existence of a connection should be assessed on the basis of “all relevant facts and circumstances, which may include the nature, duration and circumstances of previous stay”.³³⁷

The Explanatory Memorandum to the Law of 21 November 2017 gives examples of links, such as a previous stay in the third country (e.g. a long visit) or a family bond. The Explanatory Memorandum also states that for reasons of efficiency only a minimum check of access is required: it is sufficient that the authorities suspect that the applicant will be admitted to the territory of the third country concerned. In this regard the Explanatory Memorandum states that recast Asylum Procedures Directive does not demonstrate that the element of “access” should already be examined when applying the safe third country concept. “For reasons of efficiency”, the legislator opted to take this additional condition into account when examining whether a particular third country can be regarded as safe for the applicant. It is therefore necessary to be able to assume that the applicant will be given access to the territory of the third country concerned.

3. First country of asylum

Following the 2017 reform, the concept of “first country of asylum” is defined in Article 57/6(3)(1) of the Aliens Act as a ground for inadmissibility. A country can be considered as a first country of asylum where the asylum seeker is recognised as a refugee and may still enjoy such protection, or otherwise benefits

³³² Article 57/6/6 Aliens Act.

³³³ Article 57/6(3)(2) Aliens Act.

³³⁴ Myria, *Contact meeting*, 20 January 2020, available in French at: <http://bit.ly/3sE592s>.

³³⁵ Article 57/6/6(1) Aliens Act.

³³⁶ Article 57/6/6(2) Aliens Act.

³³⁷ *Ibid.*

from “other real protection” in that country, including *non-refoulement*, provided that he or she can again have access to the territory of that country.

This first country of asylum concept has been mainly applied to refuse asylum applications from Tibetans having lived in India before coming to Belgium, although India is not a signatory to the Refugee Convention. In the past, Rwandans and Congolese with (often Mandate UNHCR) refugee status in another African country had been refused international protection on this ground, but this practice has been halted due to some judgments of the CALL considering this protection status ineffective and/or inaccessible.³³⁸ 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.³³⁹

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 2020 the application of the first country of asylum led to the inadmissibility of the asylum application in 7 cases, mostly concerning Tibetans, having India as the first country of asylum.³⁴⁰

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 for an information brochure to be handed to the asylum seeker the moment he or she introduces the asylum application. The brochure is supposed to be in a language the asylum seeker can reasonably be expected to understand and should at least contain information about the asylum procedure, the application of the Dublin III Regulation, the eligibility criteria of the Refugee Convention and of subsidiary protection status, access to legal assistance, the possibility for children to be assisted during the interview, reception accommodation, the obligation to cooperate, the existence of organisations that assist asylum seekers and migrants and the contact details of the UNHCR representative in Belgium.³⁴¹

³³⁸ See e.g. CALL, Decision No 129 911, 23 September 2014; No 123 682, 8 May 2014.

³³⁹ Myria, *Contact meeting*, 19 April 2016, available at: <http://bit.ly/2jGUHTW>, para 28.

³⁴⁰ Myria, *Contact meeting*, 20 January 2021, available in French at: <http://bit.ly/3sE592s>.

³⁴¹ Articles 2-3 Royal Decree on Immigration Office Procedure.

1.2. Modes of information provision

A brochure entitled “Asylum in Belgium”, published by the CGRS and the reception agency, Fedasil, explains the different steps in the asylum procedures, the reception structures and rights and obligations of the asylum seekers. It was last updated in June 2019 and exists in three languages (Dutch, French, English,) and in a DVD version and is distributed at the dispatching desk of Fedasil, where people are designated to a reception accommodation place.³⁴² Asylum seekers also receive an extensive brochure on the day they make the application.

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

In March 2021, the CGRS launched a website www.asyluminbelgium.be. This new website provides information in nine languages about the asylum procedure in Belgium, tailored to the needs of asylum seekers. 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 drawn up for female asylum seekers and is translated in nine different languages. It not only contains information about the asylum procedure itself, but also on issues related to health, equality between men and women, intra-family violence, female genital mutilation and human trafficking. For unaccompanied and accompanied minors, the CGRS also created specific brochures explaining the asylum procedure.³⁴³ 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.³⁴⁴

Moreover, the CGRS has published several brochures on different aspects of the asylum procedures. There is a code of conduct for interpreters and translators and a so-called charter on interview practices that serves as the CGRS protection officers’ code of conduct (see [Regular Procedure: Personal Interview](#)). All these publications are freely available on the CGRS website.³⁴⁵

³⁴² 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>.

³⁴³ CGRS, Guide for non-accompanied minors who apply for asylum in Belgium and Guide for accompanied minors in the asylum procedure in Belgium, available at: <http://bit.ly/2kvQCpP>.

³⁴⁴ The leaflets can be consulted at: <http://bit.ly/2l019Xb>.

³⁴⁵ CGRS, *Publications*, available at: <http://bit.ly/2kvQCpP>.

Vluchtelingenwerk has published several guidelines for lawyers both in French and Dutch, for example on Dublin,³⁴⁶ and on subsequent applications.³⁴⁷

A procedural guide by Ciré was updated in 2019, but only available in French.³⁴⁸

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

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

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

Asylum seekers on the territory have easy access to NGO's. Specialised national, Flemish and French speaking NGOs such as Vluchtelingenwerk Vlaanderen, Coordination and Initiatives for Refugees and Aliens (Ciré), Association for Aliens Law (ADDE), JRS Belgium, Caritas International, Nansen – to name only some – as well as Myria have developed a whole range of useful and qualitative sources of information and tools, accessible on their respective websites or through their first line legal assistance helpdesks.³⁴⁹

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.³⁵⁰ However, there is no structural approach to this so it depends on the reception centre. Currently, we have no knowledge of any such arrangement at the moment.

UNHCR's role during the asylum procedure should be highlighted, however. In Belgium, the law foresees that UNHCR may inspect all documents, including confidential documents, contained in the files relating to the application for international protection, throughout the course of the procedure with the exception of the procedure before the Council of State.³⁵¹ 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.³⁵²

³⁴⁶ Vluchtelingenwerk Vlaanderen, *Het Dublin-onderzoek: leidraad voor de advocaat*, available in French and Dutch at: <http://bit.ly/2kkX4Os>.

³⁴⁷ Vluchtelingenwerk Vlaanderen, *Nota pre-registratie en opvang bij meervoudige asielaanvragen*, available in French and Dutch at: <http://bit.ly/2jGWfNK>.

³⁴⁸ Ciré, *Guide de la procédure d'asile*, 2019, available in French at: <https://bit.ly/2tvuPFF>.

³⁴⁹ 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.

³⁵⁰ Article 33 Reception Act.

³⁵¹ Article 57/23 bis Aliens Act.

³⁵² 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?³⁵³ 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 December 2020.

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 and months. 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 of asylum applications from Gazan Palestinians,³⁵⁴ who were targeted by several dissuasion campaigns.³⁵⁵

To a large extent, the treatment of the request depends 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 who are not registered with the UNRWA are treated just like any other request for international protection, using the standard criteria and procedure from article 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 is not capable of protecting those whose individual safety is threatened following severe persecution and thus grants the refugee status to people in such conditions.³⁵⁶ 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 in four judgments that the UNRWA was, despite financial difficulties, still operational and that the security situation in Gaza was generally speaking precarious but did not amount to systematic persecution nor inhumane living conditions. In addition to that, it ruled that the situation at the border crossing point in Rafah was stable and that applicants could safely return to Gaza. Only in individual cases with exceptional circumstances could Gazan Palestinians with UNRWA-support still be eligible for international protection in Belgium.³⁵⁷

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. As a result, the CGRS could on the basis of that information not correctly assess whether UNRWA could still provide the necessary protection in Gaza. After an update of the country information by the CGRS in the beginning of 2021, the CALL has rendered several decisions in the course of February and March

³⁵³ Whether under the “safe country of origin” concept or otherwise.

³⁵⁴ CGRS Communication from 5 December 2018, available [here](#) on the website of the CGRS. Last access 13 January 2021.

³⁵⁵ 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>.

³⁵⁶ 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.

³⁵⁷ CALL, Decisions No 28889; 228888; 228946 and 228949; 18 and 19 November 2019.

2021 granting the refugee status to UNRWA-registered applicants from Gaza, stating that the difficulties UNRWA is currently facing makes the protection and assistance it is supposed to offer to refugees in Gaza ineffective.³⁵⁸

EI Salvador: for years, people fleeing EI 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 in general, Salvadorians were in need of international protection.

In October 2019, the CGRS announced a policy change on its website following an increase of arrivals from EI Salvador. The CGRS stated this could be the result of the reigning perception that Salvadorians automatically receive international protection in Belgium, which would no(t) (longer) be the case.³⁵⁹ 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. The new Secretary of State Sammy Mahdi also made it a priority to send more people back to their country of origin. In this framework, during his first two months in office, some 120 applicants from EI Salvador returned voluntarily after having received a negative result in their asylum procedure.³⁶⁰

On 5 November 2020, the CALL aligned its case law with the CGRS policy in three judgments rendered in Unified Chambers.³⁶¹ The CALL acknowledged that government protection in EI Salvador is not always available or effective, but is nevertheless not absent either. The standard of proof to demonstrate the lack of efficient government protection is therefore low, but should nonetheless be provided in every individual case.

Furthermore, it ruled that the situation in EI Salvador – though precarious and riddled with targeted violence – is not one of “indiscriminate violence” as defined in art. 15 (c) of the Qualification Directive as a condition to grant subsidiary protection. A fear for a return to EI Salvador is in itself not sufficient to grant an applicant protection in Belgium according to the CALL. Only in specific individual circumstances can that suffice to be granted asylum. However, in three judgements rendered on 25 January 2021, the CALL annulled the decisions of the CGRS refusing international protection to Salvadorian applicants, stating that the country information about the risk for Salvadorians upon return to their country after having left because of extortion by the gangs, is too general and does not allow a concrete assessment of the precise risk incurred by these applicants upon return.³⁶²

³⁵⁸ For example: CALL, Decision No 249 780, 24 February 2021; Decision No 249 955, 25 February 2021.

³⁵⁹ CGRS Communication from 10 October 2019, available [here](#) on the website of the CGRS. Last access 21 January 2021.

³⁶⁰ MO*, “België gooit de deur dicht voor asielzoekers uit EI Salvador”, 18 January 2021, available at: <http://bit.ly/3c7p2YY> .

³⁶¹ CALL judgments No 243 676; 243 704 and 243 705 of 5 November 2020.

³⁶² CALL judgments No 248 102; 248 104 and 248 105 of 25 January 2021.

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 28,000 reception places in total. The network comprises collective and individual reception structures. Collective reception consists of reception centres managed by Fedasil, the Belgian Red Cross or other partners. Individual reception consists of housing managed by the Public Social Welfare Centre ('local reception initiatives') or by 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 assigned to specialised NGO reception structures or individual structures.³⁶³

The reception centres are 'open', meaning the residents are free to 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 in order 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 that have 'open return places', where possibilities for voluntary return are discussed with them. 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. The latter centres are not managed by Fedasil, but by the Immigration Office.

³⁶³ Regeerakkoord, 9 October 2014, available at: <http://bit.ly/2k2yJfn>. See also 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.³⁶⁴

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.³⁶⁵ Expenses that have been provided in the context of reception can also be recovered in such cases.³⁶⁶ Nevertheless, no assessment of these financial resources or of the actual risk of destitution of the person concerned takes place at the moment of the intake. Also, in practice, the withdrawal of the material aid is only rarely applied, since Fedasil does not have the capacity to check the financial resources a person has. An exception applies to asylum seekers who have access to employment while being accommodated in reception centres, as they will have to contribute financially for their accommodation. A stable work contract can even lead to the withdrawal of the right to reception³⁶⁷. The concept and means used for calculating financial resources, as well as the part to be contributed, are determined in a Royal Decree of 2011 (see section on [Reduction or Withdrawal of Reception Conditions](#)).

The Aliens Act provides that “registration” and “lodging” are two different steps in the asylum procedure.³⁶⁸ The Reception Act, however, now clearly provides that an asylum seeker has the right to shelter from the moment he or she makes the asylum application, and not only from the moment where the asylum application is registered,³⁶⁹ in line with the recast Reception Conditions Directive.

³⁶⁴ Article 3 Reception Act.

³⁶⁵ Article 35/2 Reception Act.

³⁶⁶ Article 35/1 Reception Act.

³⁶⁷ In 2020, the right to reception was withdrawn because of the employment of the person concerned in 31 cases. Source: Fedasil.

³⁶⁸ Article 50/1 Aliens Act.

³⁶⁹ Article 6(1) Reception Act.

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 in the arrival centre: the Immigration Office to register the asylum applications, Fedasil to screen the newly arrived asylum seekers, to provide them with information on their right to reception conditions and to provide access to the reception system for those asylum seekers who want to. The arrival centre is also the place where asylum seekers who were already in the reception system but need to be reassigned to another centre – for example because they were excluded from the reception system temporarily because of a sanction – need to present themselves and where a new reception centre is designated.

All persons applying for asylum in the arrival centre need to pass the screening service of Fedasil. Here, they indicate whether they want to access the reception system or they intend to stay on a private address. Fedasil conducts a first social screening. For people with special needs (for example medical problems) a thorough social intake is conducted. All people who apply for international protection for the first time then pass the medical service, where they get vaccinated (optional) and undergo a tuberculosis test (compulsory).

Asylum seekers who want to access the reception system are first accommodated in the arrival centre for at least 3 days. Fedasil assesses any specific reception needs that might arise (e.g. medical needs) and designates a reception centre for the rest of the procedure.³⁷⁰ The document of designation by Fedasil is called a "Code 207". The length of stay in the arrival centre depends on how quickly Fedasil finds an adapted place in the reception network and on how many requests for international protection are made in one day. There are currently 878 places in the arrival centre (around 600 regular places and around 200 buffer capacity).³⁷¹

Asylum seekers who choose to stay at a private address will only be entitled to medical care. Their right to have the assistance of a pro bono lawyer may be affected as well in case they live with someone who has sufficient means and can afford a lawyer. These applicants can nonetheless always opt for material aid again, as long as their asylum procedure is pending.

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 had set a limited amount of asylum applications per day which was ruled to be in contradiction with national and international law by the Council of State.³⁷² After this judgement all asylum seekers were thus accommodated on the day they made their application for international protection.

However, in January 2020, the government decided again to limit the right to reception of certain categories of asylum seekers. Through its Instructions on the 'Modalities relating to the right to material assistance of applicants for international protection with an Annex 26quater or a protection status in another Member State' of 3 January 2020 (applicable from 7 January 2020 onwards), Fedasil limited the material reception to medical assistance for two categories of applicants:³⁷³

- applicants with a decision that designates another EU Member State as responsible for the asylum procedure on the basis of the Dublin III Regulation (Annex 26 quater), who have not been transferred to this competent Member State within the prescribed period, and who report back to

³⁷⁰ Chamber of Representatives, *Policy Note on asylum and migration*, October 2017, 24.

³⁷¹ 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.

³⁷² CE, Decision No 243 306, 20 December 2018

³⁷³ Vluchtelingenwerk Vlaanderen, *Legal note: Federal government refuses to grant reception to certain groups of asylum seekers*, available in Dutch at: <https://bit.ly/2w8fsUw>.

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 following important issues of overcrowding of the reception network as well as an increase of applications for international protection made by these groups. According to Fedasil, a large proportion of applicants with an annex 26quater also refuse to reside in the reception network or to go to the Dublin open return place, thus avoiding transfers to the competent Member State. Both categories were considered to be abusing the asylum procedure.

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

Although according to the instructions, the decision should be based on a circumstantial assessment of the situation of applicants, with particular attention to their individual background and needs, their network in Belgium and their availability for the asylum instances, practice has shown that after the instructions became applicable, the refusal to grant reception conditions to both categories of asylum seekers was categorical and of general nature. Most of these decisions did not take into account individual circumstances such as vulnerabilities nor whether a dignified standard of living would be ensured, in clear violation of article 4 of the Reception Act (see [Reduction or withdrawal of reception conditions](#)). Moreover, some of these decisions did not provide for a legal basis.

Many thus excluded asylum seekers appealed against these 'code 207 no show' before the presidents of the Labour Courts (urgent procedure). Some of these appeals led to the judges ordering Fedasil to grant reception to these asylum seekers (see [Right to reception: Dublin procedure](#)). After strict confinement orders were issued by the Belgian government due to the outbreak of COVID-19, all Labour Court presidents of both language roles ordered Fedasil, in cases brought before them by so-called 'unilateral request' (non-contradictory procedure in extreme urgency), to grant the applicants reception on a temporary base, for reasons of national health and security. However, in the meantime, Fedasil continued issuing 'code 207 no show' decisions. Consequently, applicants without a lawyer or whose lawyer refused to introduce a unilateral request on their behalf were left destitute during the pandemic.

In the meantime, several national, Flemish and French speaking NGOs (Vluchtelingenwerk Vlaanderen, CIRÉ, Médecins sans Frontières, NANSEN, ADDE, Liga voor Mensenrechten and Ligue des Droits Humains and the Order of French and German speaking bar associations (OBF)) had introduced an appeal with the Council of State aiming for the suspension and the annulment of the Fedasil instructions. In September 2020, right before the hearing before the Council of State was scheduled, Fedasil withdrew the instructions of 3 January 2020.³⁷⁴ Both categories of asylum seekers have thus since regained their full right to material assistance, including reception, during their asylum procedure.

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 mostly due to the

³⁷⁴ Myria, *Contact meeting*, 16 September 2020, available in French at: <https://bit.ly/3sE592s>, § 720.

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 aid 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.³⁷⁵ 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 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) had no access to the reception system either.³⁷⁶

In August 2020, a number of NGO's declared the Belgian state in default at the Brussels court of first instance thereby requesting for a suspension of the online registration system. On 5 October 2020, the court condemned the Belgian state, stating that the completion of 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. The Belgian state was given 30 days to change the registration system in a way that ensured 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. Applicants have since then regained immediate access to reception conditions. As for the re-integration in the reception system, Fedasil confirmed in October 2020 that it was possible for people having previously received a 'code 207 No Show' to make an appointment with the Dispatching service in order to receive a place in the reception system.³⁷⁷

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 to the (former) Immigration Office building. Many of them refuse to apply for asylum and are therefore not entitled to accommodation under the Reception Act. 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. 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 in the Brussels port and continues to provide aid.³⁷⁸ During winter months, 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.³⁷⁹

In February 2019, MSF further demonstrated in a report that the mental health of the migrants that are resident in the Maximilian Park and at the Northern train station is negatively affected by a combination of fear of Dublin transfers and police interventions, inhumane living and reception conditions, discrimination and violence, and the lack of opportunities and support.³⁸⁰ These problems also prevent them to start an asylum procedure, or to try to obtain another legal status, according to a report written by Vluchtelingenwerk Vlaanderen, Ciré, Nansen vzw, Caritas International and Plateforme des citoyens.³⁸¹

³⁷⁵ 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>; Vluchtelingenwerk Vlaanderen, *700 men, women and children on the streets: online coronaproof asylum procedure is failing*, 9 July 2020, available in Dutch at: <http://bit.ly/30slxak>.

³⁷⁶ Myria, *Contact meeting*, 6 May 2020, available in French at: <https://bit.ly/3sE592s>, 27.

³⁷⁷ Myria, *Contact meeting*, 21 October 2020, available in French at: <https://bit.ly/3sE592s>, 21.

³⁷⁸ Bruzz, *Humanitarian hub for migrants opens in Port Avenue*, available in Dutch at: <http://bit.ly/3t4ZO4E>.

³⁷⁹ Red Cross, *New day centre*, 15 December 2020, <http://bit.ly/3v3ruZr>.

³⁸⁰ 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>.

³⁸¹ Vluchtelingenwerk Vlaanderen and others, *Migrants in transit in Belgium*, February 2019, available in French at: <https://bit.ly/2I1ivR3>.

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.³⁸² This is unless Fedasil is informed that they have a pending or granted request for a prolongation of the reception.³⁸³ Between the moment of the subsequent application and the admissibility decision by the CGRS, asylum seekers who were 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 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 with regard to vulnerable persons. Health care and a dignified standard of living should be ensured at all times. According to the Constitutional Court this decision is only legal in cases of abuse of the asylum procedure, e.g. when the person applies for asylum for the sole purpose of extending the right to reception.³⁸⁴

In practice however Fedasil almost systematically refuses to assign a reception place to subsequent applicants until their asylum application is declared admissible by the CGRS. Labour Courts have ordered Fedasil at multiple occasions to motivate such decisions individually and to consider all elements of the case.³⁸⁵ As a result, subsequent applicants often obtain reception after challenging such decisions in front of courts. The Federal Mediator also drew attention to this problem in his annual report of 2015 and 2016.³⁸⁶ Although Fedasil motivates the decisions better - more individually – since the last months of 2017 it is clear that the policy is still to not grant reception in most cases and that vulnerability is still mostly not taken into account.³⁸⁷ The Federal Mediator continues to receive complaints, 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.³⁸⁸

1.3. Right to reception: Dublin procedure

During the examination of the Dublin procedure by the Immigration Office, asylum seekers are entitled to a reception place. 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 to leave the territory, mentioned on the annex, 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

³⁸² Article 4(1)(3) Reception Act.

³⁸³ 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>.

³⁸⁴ Constitutional Court, Decision No 95/2014, 30 June 2014.

³⁸⁵ Labour Court of Brussels, Decision No 17/1762/A, 8 February 2018. See also Labour Court of Brussels, Decision of 17 February 2015, available in French at: <http://bit.ly/1Q3cOBn>; Labour Court of Brussels, Decision No 16/1384/A, 14 November 2016; Labour Court of Bruges, Decision No 16/8K, 11 October 2016.

³⁸⁶ Federal Mediator, *Annual Report 2016*, available at: <https://bit.ly/2udKLvX>; *Annual report 2015*, available at: <http://bit.ly/2jAm6f7>.

³⁸⁷ Orbit, 'Fedasil zet asielzoekersgezin eerst op straat en herziet na 14 dagen foute beslissing', 20 November 2017, available in Dutch at: <http://bit.ly/2G2nP3L>.

³⁸⁸ Federal Mediator, *Annual Report 2019*, available at: <https://bit.ly/3u2VaFi>.

documents within the delay to leave the territory for reasons beyond his or her own will).³⁸⁹ Fedasil considers this practice in line with the *Cimade and Gisti* judgement of the CJEU.³⁹⁰ The Labour Courts of Brussels and Antwerp have overruled these instructions in individual cases, as they rely on a strict interpretation of the *Cimade* judgment, by ordering Fedasil to provide shelter until the Belgian state effectively executes this transfer decision itself, unless it gives clear instructions as to when and where the asylum seeker has to present him or herself for this.³⁹¹ In a July 2015 judgment in the *V.M. v Belgium* case, the ECtHR found that Belgium had violated Article 3 ECHR because (back in 2011) it had not provided for adequate material reception conditions for a particularly vulnerable family (asylum seekers, children, disabled, Roma) during the (non-automatically suspensive) appeal procedure against an Immigration Office transfer decision under the Dublin Regulation.³⁹²

Currently, asylum applicants subject to a Dublin transfer decision (annex 26quater) are accommodated in an open return place and the return track procedure will apply, as described below (see “[Return track and assignment to an open return centre](#)”).³⁹³

After the maximum time 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](#)).

As described above (see [Right to shelter and assignment to a centre](#)), following the introduction of new instructions on 3 January 2020, Fedasil refused to accommodate many persons who fall under the responsibility of the Belgian state by default due to the failure to carry out the Dublin transfer in time.

Many thus excluded asylum seekers appealed against these “code 207 no show” before the presidents of the Labour Tribunals (urgent procedure). At first instance, the outcome of these appeal procedures depended on the individual circumstances of the case – for example, any alternative shelter the applicant had to his or her disposal, particular vulnerabilities... – but also on the assessment of the respective judges and their view on the nature and the precise extent of the right to reception conditions.

For example, in a decision of 22 January 2020, the French-speaking Labour tribunal of Brussels condemned Fedasil for applying these new instructions to an applicant subject to a Dublin transfer decision. He had left the shelter after receiving the annex 26quater and had communicated his new address to the Immigration Office. When the six months deadline for the transfer expired, the applicant reported back to the Immigration Office. Fedasil’s decision referred to article 4(1) of the Reception Act, which foresees that Fedasil may limit or withdraw the material assistance if an applicant refuses, does not use, or leaves the assigned mandatory place of registration without informing Fedasil or, if permission is required, without having obtained it. The Labour tribunal ordered Fedasil to accommodate the concerned individual given that his application for international protection was re-opened by the Immigration Office and that he is thus entitled to reception. There are no provisions in the Reception Act or in the recast Reception Directive which allow an indefinite exclusion from the material reception because an applicant

³⁸⁹ 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.

³⁹⁰ 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.

³⁹¹ 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>.

³⁹² 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>.

³⁹³ 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.

left a designated reception location earlier. Fedasil's decision was not individually motivated and did not take into account the specific needs of the applicant. Given that the applicant had been living on the street since this decision, Fedasil did not guarantee the right to a dignified standard of living, as recently clarified by the European Court of Justice.³⁹⁴ The Labour tribunal ruled that the saturation of the reception network is not a reason to limit or withdraw the right to reception foreseen in article 4 of the Reception Act.³⁹⁵

However, in a judgment of 24 February 2020, the Dutch-speaking Labour tribunal of Brussels rejected a similar appeal against a decision of Fedasil taken on the basis of these new instructions towards an applicant having reported back to the Immigration Office after the expiry of the 6-month Dublin transfer period. The judge reproached the applicant to have left the reception network after having received an annex 26quater, instead of going to the open return place that was offered to him by Fedasil, in order to avoid the application of the Dublin III Regulation. The judge refused to treat the case as an urgent matter, the applicant having created the urgency himself by leaving the reception network.³⁹⁶

After strict confinement orders were issued by the Belgian government in the middle of March due to the outbreak of COVID-19, all Labour tribunal presidents of both language roles ordered Fedasil, in cases brought before them by so-called 'unilateral request' (non-contradictory procedure in extreme urgency), to grant the applicants reception on a temporary base, for reasons of national health and security. However, in the meantime, Fedasil continued issuing 'code 207 no show' decisions. Consequently, applicants without a lawyer or whose lawyer refused to introduce a unilateral request on their behalf were left destitute during the pandemic.

In the meantime, by the end of January 2020, several national, Flemish and French speaking NGOs (Vluchtelingenwerk Vlaanderen, CIRÉ, Médecins sans Frontières, NANSEN, ADDE, Liga voor Mensenrechten and Ligue des Droits Humains and the Order of French and German speaking bar associations (OBFG)) had introduced an appeal with the Council of State aiming for the suspension and the annulment of the Fedasil instructions. In September 2020, right before the hearing before the Council of State was scheduled, Fedasil withdrew the instructions of 3 January 2020. Both categories of asylum seekers have thus since regained their full right to material assistance, including reception, during their asylum procedure.³⁹⁷

Asylum seekers who are sent back to Belgium following a Dublin procedure are often considered as subsequent applicants (see [Situation of Dublin Returnees](#)). As a consequence, they often only get shelter after their asylum application is taken into consideration by the CGRS. In the case where an asylum seeker has left Belgium before the first interview, he or she will have gotten a "technical refusal" in his or her first asylum procedure. When this asylum seeker is then sent back to Belgium following a Dublin procedure and lodges his or her asylum application again, the CGRS is legally obliged to take it into consideration.³⁹⁸ Nonetheless, these asylum seekers often are still considered as subsequent applicants and therefore are without shelter until this decision is officially taken.

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

On the basis of Fedasil's new instruction (see [Right to shelter and assignment to a centre](#)), 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 to be completed by each applicant for international protection on the day they make the application. In this questionnaire, the Immigration Office asks *inter alia* whether the applicant has already obtained

³⁹⁴ CJEU, C-233/18 *Haqbin*, 12 November 2019.

³⁹⁵ Labour tribunal of Brussels, Decision N° 2020/000899, 22 January 2020.

³⁹⁶ Labour tribunal of Brussels, Decision N°20/7/C, 24 February 2020.

³⁹⁷ Council of State, Decision No 249163, 7 December 2020.

³⁹⁸ Article 57/6/2 Aliens Act.

international protection in another EU Member State. In addition to the questionnaire, the Immigration Office checks through EURODAC whether applicants have already received protection in another EU Member State. If, based on the applicant's declarations or on the EURODAC results, it appeared that the applicant had 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 was 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 strict confinement orders were issued by the Belgian government in the middle of March due to the outbreak of COVID-19, the Labour tribunals - stating on unilateral request - 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.³⁹⁹

After the withdrawal of 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.

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

The law foresees a so-called "return track" for asylum seekers.⁴⁰⁰ This is a framework for individual counselling on return set up by Fedasil which promotes voluntary return to avoid forced returns.⁴⁰¹

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

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

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

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.

³⁹⁹ For example: Labour tribunal of Brussels, 30 March 2020, N° 20/105/K.

⁴⁰⁰ Article 6/1 Reception Act.

⁴⁰¹ Fedasil, Instruction concerning the return track and the assignment to an open return place, 20 October 2015, available in Dutch at: <http://bit.ly/1Nof30n>, and Instruction concerning the modification of the reception place of asylum seekers who have received a negative decision on the basis of the Dublin Regulation, 20 October 2015.

In November 2019 Fedasil published instructions specifically addressed to persons who cannot be accommodated in open return centres due to medical reasons which would render the accommodation inadequate.⁴⁰² A specific track has thus been established for them by the “voluntary return” service of Fedasil. This service foresees the possibility to set up 3 appointments during which possibilities for voluntary return are discussed and which can take place in the reception centre of the asylum seeker, if necessary. The decision to further prolong the right to reception of the concerned person will depend on his or her medical situation as well as on his or her cooperation.

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

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

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

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

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 right of the applicants to an effective appeal. In 2020, Belgian judges have referred to the Court of Justice of the EU (CJEU) for a preliminary ruling in several cases in order to clarify this question of an effective appeal in the context of a Dublin transfer decision.⁴⁰³ Until now, the CJEU has closed these cases without responding to the preliminary questions by lack of interest of the persons concerned, since Belgium had in the meantime become responsible for the treatment of their asylum request. On 3 February 2021, the president of the Labour tribunal of Liège (division of Namur) judged that the appeal procedure in Belgian law provides against a decision of refusal of residence with order to leave the territory in execution of the Dublin III Regulation (annex 26quater) cannot be considered an effective appeal as required by European and international legislation, and should have automatic suspensive effect in cases where a violation of article 3 ECHR or article 4 EU-Charter is invoked. The judge decided that the transfer decision to an open return place taken by Fedasil was thus invalid and the applicants had to be further accommodated in their original reception centre, the latter providing stronger guarantees as to their right to reception.⁴⁰⁴

1.6. End of the right to reception

The right to material reception ends when:⁴⁰⁵

- ❖ 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.

⁴⁰² Fedasil, *Instructions on Return assistance – medical exceptions for open return places*, November 2019, available in French at: <http://bit.ly/3baE7qJ>.

⁴⁰³ 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>.

⁴⁰⁴ Labour Tribunal Liège (div. Namur), 3 February 2021, N° 21/1/C available in French at: <https://bit.ly/2PHUS7a> and discussion available in Dutch at: <http://bit.ly/3qAfivN>.

⁴⁰⁵ Article 6 Reception Act.

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

- a decision of the Immigration Office (like a Dublin decision or an order to leave the territory),
- a negative decision on the asylum application or a decision to grant subsidiary protection of the CALL after a first suspensive appeal.

During these 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.⁴⁰⁶ The time limit of the order to leave the territory will vary between 0 and 30 days (see [Procedures](#)).⁴⁰⁷

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.⁴⁰⁸ When the period for voluntary return as determined in the order to leave the country expires and there is no willingness to return voluntarily, the right to reception ends and the Immigration Office can start the procedure to forcibly return the person, including by using administrative detention. In practice, the police may come to the open return centre and arrest a person whose right to reception has ended and who is not willing to return voluntarily.⁴⁰⁹

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

- to end the school year (from the beginning of April until the end of June);
- during the last 2 months of pregnancy until 2 months after giving birth;
- when a family reunification procedure with a Belgian child has been started up;
- when it is impossible for the person to return to their country of origin for reasons beyond their own will;
- for medical reasons, when an application for legal stay has been made on this ground at the Immigration Office; or
- whenever respect for human dignity requires it.⁴¹⁰

Fedasil has adopted internal instructions about these possibilities and how to end the accommodation in the reception structures in practice.⁴¹¹

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

⁴⁰⁶ Article 52/3 Aliens Act; Article 6 Reception Act.

⁴⁰⁷ Article 74/14 Aliens Act.

⁴⁰⁸ Article 6/1 Reception Act and Article 52/3 Aliens Act.

⁴⁰⁹ Myria, *Contact Meeting*, September 2019, available in Dutch at: <https://bit.ly/32Bz939>.

⁴¹⁰ Article 7 Reception Act.

⁴¹¹ Fedasil, Instructions on the termination and the prolongation of the material reception conditions, 15 October 2013.

months), the person concerned can stay for a maximum of 2 more months in the reception place.⁴¹² These 2 months should allow the person to look for another place to live and to transit to financial help of the PCSW if necessary. Persons staying in collective structures at the moment of recognition (or other legal stay) will be offered the choice between moving to an individual reception structure for 2 months or leave the collective structure within 10 working days. In the last case they will receive food cheques during one month. The deadline of two months can be extended.⁴¹³ In general a prolongation of one month is common; in exceptional cases - e.g. finishing the school year from April onwards or having a signed lease which 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.⁴¹⁴ This is not specified in the Reception act but Fedasil has adopted internal instructions allowing such rules to be put in place.⁴¹⁵

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 2021 (in original currency and in €):

❖ 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 to legal representation, access to training, access to a voluntary return programme, and a small daily allowance (so-called pocket money). Nevertheless, the help can be partially delivered in cash, as is the case in the Local Reception Initiatives (LRI), as discussed below. The whole reception structure is coordinated by the Federal Agency for the Reception of Asylum Seekers, Fedasil. Fedasil regularly issues internal instructions on how to implement specific rights provided for in the Reception Act, as referred to throughout this report.

Only in exceptional cases, the social welfare services provided by the PCSW deliver financial aid to asylum seekers.⁴¹⁶ This could be the case for example when the asylum seeker wants to live together with his or her partner who already has a legal stay in Belgium. However, this is only exceptional and can only be the case after explicit permission of Fedasil. To obtain this permission the asylum seeker should ask for an abrogation of the designated reception place (“Code 207”).⁴¹⁷

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

⁴¹² 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.

⁴¹³ Ibid.

⁴¹⁴ Source: Fedasil.

⁴¹⁵ Ibid.

⁴¹⁶ Article 3 Reception Act.

⁴¹⁷ Article 13 Reception Act.

assigned to specialised NGO reception structures or LRI.⁴¹⁸ In the collective centres most conditions are delivered in-kind.

For the assignment to a specific centre, Fedasil should legally take into consideration the occupation rate of the centre, the family situation of the asylum seeker, his or her age, health condition, vulnerability and the procedural language of his or her asylum case. There are no monitoring or evaluation reports about the effective assessment of all these elements in practice. Albeit legally binding criteria, these do not seem to be always taken into consideration. In theory, an asylum seeker or his or her social assistants can ask to change centre at any given time during the procedure, based on these criteria. Fedasil itself can also decide to change the location of reception, on the basis of these criteria. Currently, the possibilities to change centre on the request of the asylum seeker are limited to the situations enlisted by Fedasil in its internal instructions (see below [Transfers to more adapted reception places](#)).

According to the law, all asylum seekers can apply to be transferred to an individual accommodation structure after 6 months in a collective centre.⁴¹⁹ 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.⁴²⁰ 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 following countries had a high chance of recognition:⁴²¹
 - Burundi
 - Eritrea
 - Yemen
 - Syria
 - China
 - Somalia

- ❖ Persons staying in collective structures at the moment they are granted a legal stay of more than 3 months, for example refugee status, will be offered the choice between moving to an individual reception structure for 2 months or leave the collective structure within 10 working days. In this case they will receive meal vouchers during one month.⁴²²

The Court of Auditors (*Rekenhof / Cour des comptes*) conducted a financial and qualitative audit of the functioning of Fedasil in 2017.⁴²³ It found that the average duration of stay in collective reception centres was too long and that refusals to transfer asylum seekers after 6 months not only has negative consequences for their well-being and psychological health of the individuals concerned but also for the management and personnel of centres, as it causes tensions and conflicts. The Court of Auditors also found that reception in collective centres is more expensive than individual accommodation, although a lot more individual accommodation places were empty at the time of the report. It recommended the government to take into account criteria such as cost-effectiveness and quality in prospective closures of reception places. To this end, and according to the Court of Auditors, Fedasil should continue its efforts

⁴¹⁸ Regeerakkoord, 9 October 2014, available at: <http://bit.ly/2k2yJfn>. See also Myria, *Contact meeting*, 21 June 2016, available at: <http://bit.ly/2k3obi9>.

⁴¹⁹ Article 12 Reception Act.

⁴²⁰ Information provided by Fedasil.

⁴²¹ Fedasil, Instruction concerning transfers from collective reception to a Local reception Initiative (LRI) – designation of asylum seekers with a high rate of recognition - update, 20 July 2020, <https://bit.ly/3c8Q1oM>.

⁴²² Meal vouchers are vouchers that can be used in almost any supermarket to buy food or food related items. Employees (in all kind of sectors) often receive meal vouchers as part of their salary as well.

⁴²³ Court of Auditors, *Opvang van asielzoekers*, October 2017.

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. According to Fedasil, an evaluation of the reception model is planned in 2021 but the exact scope and evaluation method have yet to be determined.⁴²⁴

In July 2019 Fedasil was ordered by the labour tribunal to transfer an asylum seeker to an individual reception place. The asylum seeker had stayed in collective centres for more than 3 years. His transfer requests were regularly refused by Fedasil for no reason and without adequate motivation.⁴²⁵

Fedasil shelters refugees who were resettled for 6 to 8 weeks in a collective reception centre. After this they will go to an LRI for 6 months maximum. This delay can be prolonged by 2 months. During this period the LRI will help to find their own place to live, which could be in the same commune of the LRI, or in another.⁴²⁶

2.3. Transfers to more adapted reception places

Within 30 days after the arrival in the assigned reception place, an evaluation should be made to see if the individual reception needs of the asylum seeker are met. After that, a regular evaluation is made – at least every six months - during the entire stay of the asylum seeker in the reception system.⁴²⁷ The Reception Act allows to change an asylum seeker's reception place if the assigned place turns out to be not adapted to the individual needs.⁴²⁸

In two instructions Fedasil enlisted specific criteria which need to be met before a transfer to another more adapted place is made possible.⁴²⁹ The newly assigned place can be located both in a collective reception centre or an individual place. The request to benefit from transfer can be done either by the asylum seeker or by the reception facility in agreement with the asylum seeker, but the actual sending of the request always needs to be done by the reception facility.

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

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

⁴²⁴ Information provided by Fedasil, January 2021.

⁴²⁵ Labour court, Decision No 2019/859, 12 July 2019.

⁴²⁶ 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.

⁴²⁷ Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

⁴²⁸ Article 22 Reception Act

⁴²⁹ 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>.

- 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. If the asylum seeker is categorised as vulnerable, the term “family member” can be broadened.
- Employment: the asylum seekers has been employed (at least a half-time position and not a student job) for at least one month and has paid contributions. He or she should not have been excluded from shelter
- Training or education: the asylum seeker has subscribed to higher education or to a training provided by VDAB or Forem
- The asylum seeker feels isolated because he or she is the only person in the centre belonging to a certain nationality, or he or she is the only one speaking a certain language, and this has a clear impact on his/her psychological wellbeing.

Fedasil takes into consideration the procedural situation of the asylum seeker when deciding on such requests. Decisions refusing a transfer can be challenged in front of the Labour Court within 3 months.

2.4. Financial allowance

Pocket money

All asylum seekers receive a fixed daily amount of pocket money in cash, so those who reside in collective reception centres as well.⁴³⁰ In 2021 adults and all children from 12 years on who attend school receive 8.10€ a week, younger children and children 12 years of age or older who do not attend school receive 4.90€ a week, and unaccompanied children during the first phase of shelter (in the “observation and orientation centres”) receive 6.10€ a week⁴³¹.

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 2021, 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:⁴³²

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€

⁴³⁰ Article 34 Reception Act.

⁴³¹ Information provided by Fedasil.

⁴³² Extrapolated from the weekly amount, times 4: Information provided by Fedasil.

Unaccompanied child	180-212€	244-280€
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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.⁴³³ The applicant would then obtain the full amount of the financial social welfare allowance, equally and in the same way as every national or other legal resident of the country. This is also the case when the obligatory designated reception place (Code 207) is abrogated officially by Fedasil because of exceptional circumstances, for example when Fedasil allows the asylum seeker to live with a partner who already has a legal stay in Belgium. Since 1 March 2020, a person receives following amounts per month:⁴³⁴

Monthly amounts of “social integration” for Belgian nationals	
Category	Monthly amount
Single adult	958,91
Cohabitant	639,27
Person with family at charge	1.295,91

In practice, most asylum seekers who presented themselves to the PCSW after having been turned down at the Fedasil dispatching desk during the reception crisis of 2009-2012 were refused this financial allowance and had to take their request to the Labour Courts. In its February 2014 judgment in *Saciri*,⁴³⁵ the CJEU ruled that in case the accommodation facilities are overloaded, asylum seekers may be referred to the PCSW, provided that this system ensures the minimum standards laid down in the Reception Conditions Directive. In particular, the total amount of the financial allowances shall be sufficient to ensure a dignified standard of living and should provide enough to ensure their subsistence. That general assistance should also enable them to find housing, if necessary, meeting the interests of persons having specific needs, pursuant to Article 17 of that Directive.

Since several years Fedasil hasn't referred to the PCSW because of a lack of reception capacity, however.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

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

⁴³³ Article 11(4) Reception Act.

⁴³⁴ Article 14 Law on Social Integration, available at: <http://bit.ly/2kopTt5>.

⁴³⁵ CJEU, Case C-79/13 Federaal agentschap voor de opvang van asielzoekers (Fedasil) v Selver Saciri and OCMW Diest, Judgment of 27 February 2014.

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 rooms⁴³⁶
- A ministerial decree on common house rules in reception centres⁴³⁷

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

The common obligatory house rules include:

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

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

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

The procedures on how to apply these sanctions can be found in a Royal Decree.⁴³⁸

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.⁴³⁹ This measure was taken against 271 persons in 2020, for an average duration of 14 days.⁴⁴⁰

The law makes it possible to withdraw reception permanently.⁴⁴¹ 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. Six applicants were permanently excluded from reception in 2020.⁴⁴²

⁴³⁶ Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018

⁴³⁷ Ministerial Decree on house rules in reception centers, 21 September 2018

⁴³⁸ Royal Decree of 15 May 2014 on the procedures for disciplinary action, sanctions and complaints of residents in reception centres.

⁴³⁹ Article 45(8) Reception Act.

⁴⁴⁰ Information provided by Fedasil, February 2021.

⁴⁴¹ Article 45(9) Reception Act.

⁴⁴² Information provided by Fedasil, February 2021.

Sanctions are taken by the managing director of the centre and have to be motivated. The person who received the sanction has to be heard prior to the decision. Most sanctions can be appealed before the managing authority of that reception centre (the Director-General of Fedasil, the NGO partner or the administrative council of the PCSW). An onward non-suspensive appeal is possible in front of the Labour Court.⁴⁴³ As with every other administrative or judicial procedure, the asylum seeker is entitled to legal assistance, which will be free of charge if he or she has no sufficient financial means. In all of these cases, the reception conditions will be reinstated as soon as the sanction – mostly temporary in nature – has elapsed. During 2020, six appeal procedures against exclusions decisions taken by Fedasil were introduced before the Labour tribunals.⁴⁴⁴

The sanctions that exclude the asylum seeker from the reception facilities (one month or permanently) have to be confirmed within 3 days by the Director-General of Fedasil. If they are not confirmed, the sanction is lifted. During the time of exclusion, the asylum seeker still has the right to medical assistance from Fedasil. The applicant has the legal right to ask Fedasil for a reconsideration of this sanction, in case he or she can demonstrate that there is no other possibility to ensure living conditions in accordance with human dignity. Fedasil should answer this request within 5 days, after which an onward appeal is again possible in front of the Labour Court.⁴⁴⁵ In 2020, only two requests for reconsideration of the exclusion from the reception facilities were made. In one case, the request was refused, whereas in the other case, the duration of the exclusion was lowered.⁴⁴⁶

Before its adoption, the permanent exclusion sanction was met with criticism by UNHCR who highlighted that Article 20(1)-(4) of the recast Reception Conditions Directive only allows a limited amount of situations in which reception facilities can be withdrawn or reduced, and that exclusion as a sanction is not one of them. UNHCR recommended that attention should be given to Article 20(5) of the Directive which guarantees an individual, impartial and objective decision which takes into account the particular situation of the person (e.g. the vulnerability) and the principle of proportionality. Health care and a dignified standard of living should at all times be ensured. Further recommendations were to make sure the law mentions the possibilities on how to ensure dignified living conditions explicitly and to describe clearly in which situations this sanction applies.⁴⁴⁷

The Council of State advised as well that there should be an explicit guarantee in the law on how to ensure dignified living conditions for those excluded from the reception facilities.⁴⁴⁸

The possibilities on how to ensure dignified living conditions were in the end not clearly mentioned in the law, although during the preparatory works of the law Fedasil made clear that it has a cooperation with an organisation that works for homeless people to which it could refer some of those excluded from shelter. In practice when they communicate the decision to the asylum seeker they inform him/her about the refund of medical costs and about shelter possibilities for homeless people, but “guarantees for dignified living conditions” are not used as a criteria during the decision-making.

In March 2018 the Brussels Labour Court has referred questions to the CJEU for a preliminary question regarding the circumstances under which material reception conditions under the Reception Conditions Directive may be reduced or withdrawn and the need to examine the consequences of such decisions,

⁴⁴³ Article 47 Reception Act.

⁴⁴⁴ Information provided by Fedasil, February 2021.

⁴⁴⁵ Article 45 Reception Act.

⁴⁴⁶ Information provided by Fedasil, February 2021.

⁴⁴⁷ 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>.

⁴⁴⁸ Council of State, Opinion 59/196/4, 27 April 2016, available at: <http://bit.ly/2kVBgvT>.

particularly with regard to unaccompanied children.⁴⁴⁹ The case concerned an unaccompanied minor who was refused the right to an accommodation during 15 days. He therefore had to live on the street and at a relative's place. After 15 days, he was finally accommodated by Fedasil again. In its decision *Haqbin* of 12 November 2019, the CJEU ruled that, where house rules of an accommodation are breached or where a violent behaviour occurs, the sanction cannot be the withdrawal of material reception conditions relating to housing, food or clothing, even if it is temporary. Such sanctions must be taken with even more precaution when they involve vulnerable applicants such as unaccompanied minors. According to the CJEU, even the most severe sanction should not deprive the applicant of the possibility of meeting his most basic needs. Member States should ensure such a standard of living on an ongoing basis and without interruption. They should grant access to material reception conditions in an organised manner and under their own responsibility, including when they call upon the private sector to fulfil that obligation. It is therefore not sufficient for them to provide a list of private homeless centres which could be contacted by the applicant, as Fedasil did in the present case. The competent authorities must always ensure that a sanction complies with the principle of proportionality and does not affect the dignity of the applicant.⁴⁵⁰

Following this judgment, Fedasil has decided to establish several measures, including a night reception during the exclusion sanction and the issuing of meal checks. However, due to the Covid-19 outbreak, these measures have not yet been put into practice. In the meantime, Fedasil examines case by case if excluded applicants would be deprived of their most basic needs during the exclusion sanction.⁴⁵¹

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. Since January 2020 Fedasil applies a new instruction based on this provision (see [Right to reception: Dublin procedure](#)).
2. The asylum seeker does not attend interviews or is unwilling to cooperate when asked for additional information in the asylum procedure. This ground was inserted with the 2017 reform. Worryingly, Fedasil is not required to await an official decision of the Immigration Office, CGRS or CALL on the asylum procedure in order to take such a decision. In early 2020 Fedasil published instructions applying this possibility.⁴⁵² If an asylum seeker doesn't lodge the application for international protection after he/she made it (on the appointment date the Immigration Office gave on "the certificate of declaration") and he/she didn't present himself to the new appointment date obtained with the help of the social worker in the centre, the centre will end the material reception. The asylum seeker will only have the right to ask for the reimbursement of medical costs, until he/she regularises his/her situation and lodges an application at the Immigration Office. Once the 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;

⁴⁴⁹ Labour Court Brussel No 2017/AB/277, 22 March 2018, available at: <https://bit.ly/2Thk6dM>.

⁴⁵⁰ CJEU, Case C-233/18 *Haqbin*, Judgment of 12 November 2019.

⁴⁵¹ Information provided by Fedasil, February 2021.

⁴⁵² 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.

- 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.

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.⁴⁵³ Until now, only the withdrawal of the reception place assigned to the asylum seeker has been decided in case of a proven sufficient and sufficiently stable income in practice.

If an asylum seeker resides in a reception facility (LRI or collective centre) and is employed, he or she has an obligation to contribute with a percentage of his or her income to the reception facility (from 35% on an 80€ monthly income to 75% on a monthly income of more than 500€) and is excluded from any material reception conditions if his or her income is higher than the social welfare benefit amounts mentioned above and the working contract is sufficiently stable.⁴⁵⁴ The applicant also has an obligation to inform the authorities. Although a control mechanism is provided for in the abovementioned Royal Decree, Fedasil did not dispose of the necessary means or control mechanisms at the time of writing. Most of the local PCSWs' have the resources to carry out such controls, however. In 2020, 31 persons had their reception rights suspended on the basis that they have obtained sufficient means through their employment, while Fedasil received contributions that amount to a total of 310,655€.⁴⁵⁵

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

4. Freedom of movement

Indicators: Freedom of Movement

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

Asylum seekers who stay in an open reception centre enjoy freedom of movement across the national territory without restrictions (as long as they are not detained). If the asylum application is refused, the rejected asylum seeker is transferred to a so called “open return place” in a regular centre, where he or she can enjoy full reception rights until the end of the right to reception 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.⁴⁵⁶

⁴⁵³ Articles 35/1 and 35/2 Reception Act.

⁴⁵⁴ 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).

⁴⁵⁵ Information provided by Fedasil, January 2021.

⁴⁵⁶ Article 4 Reception Act.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

- | | |
|--|--------|
| 1. Number of collective reception centres: ⁴⁵⁷ | 98 |
| 2. Total number of places in the collective reception centres: | 21,269 |
| 3. Total number of places in LRI: | 6,389 |
| 4. Total number of places in open return places: | 400 |
| 5. Type of accommodation most frequently used in a regular procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other | |
| 6. Type of accommodation most frequently used in an accelerated procedure: | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other | |

Accommodation may be collective i.e. a centre, or in individual reception facilities i.e. a house, studio or flat,⁴⁵⁸ 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](#)).

The Federal Agency for the Reception of Asylum Seekers (Fedasil) was established in 2001 to manage the network of reception centres in an efficient and coordinated way and has fallen under the competence of the Secretary of State for Migration and Integration since the end of 2011. Fedasil is in charge of the management and coordination of the network, which includes collective and individual reception places, in addition to other responsibilities such as coordinating the voluntary return programs, the observation and orientation of unaccompanied children and the integration of reception facilities in the municipalities.⁴⁵⁹ 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.⁴⁶⁰ Currently, the partners for collective reception are Croix Rouge, Rode Kruis, AGAJ, AJW, Caritas International, Mutualité Socialiste, Privé and Samu Social.⁴⁶¹ The communal PCSW are important partners for individual reception.

During 2016 and 2017 the government closed 10 000 reception places, a lot of which were created during 2015 when Belgium had a large influx of asylum seekers. In the beginning of 2018 the government decided to close an additional 2,500 collective reception places and 4,000 individual places. By the summer of 2018 it became clear that, due to these closures and a growing number of asylum requests in comparison to the previous year, there would not be enough places left. The government then decided – at the end of September 2018 - to keep 7 collective centres open that were initially supposed to close. At the end of 2018, the capacity of the reception system was still too limited, forcing the immigration office to refuse the applications for international protection of asylum seekers and thus their access to the reception system (see [Right to shelter and assignment to a centre](#)). In order to be able to provide more accommodations, the closure of many individual places was postponed as well.

During 2019 this precarious situation persisted and the lack of staff at the Immigration Office and the CGRS resulted in lengthy asylum procedures, thus forcing Fedasil to continuously open new places throughout the year. Amongst these new places, many places included tents and containers which were

⁴⁵⁷ Information provided by Fedasil, January 2021; Statistics Fedasil available at: <https://bit.ly/2Une7k6>.

⁴⁵⁸ Article 16, 62 and 64 Reception Act.

⁴⁵⁹ Article 56 Reception Act.

⁴⁶⁰ Article 62 Reception Act.

⁴⁶¹ Information provided by Fedasil, January 2021.

not adequate to meet the needs of certain applicants.⁴⁶² 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](#)).⁴⁶³ It should further be noted that the saturation of the Fedasil reception network has put resettlement operations on hold since July 2019.

In the course of 2020, 14 new reception centres were opened, while 3 centres were closed down.⁴⁶⁴ Combined with a significant decrease of asylum applications of 39% in 2020, this led to a decrease of occupancy rate of the reception system to 85% as of 1 January 2021. In his policy note, the current Secretary of State for migration aims to develop a stable, but flexible reception system.⁴⁶⁵ Fedasil announced it would continue to look for new reception places in 2021, in order to ensure flexibility in case of fluctuations of the influx of asylum seekers⁴⁶⁶.

As of January 2021, the 70 main collective reception centres were mainly managed and organised by:

Collective reception centres: Management and capacity		
Partner	Number of centres	Total capacity
Fedasil	28	8,767
Croix Rouge	23	6,695
Rode Kruis	19	4,066

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

The individual reception initiatives are mainly run by the PCSW and by NGO partners. As of 1 January 2021, the PCSW had 5,955 places in LRI, while NGO partners currently have 434 places.

The entire reception system had a total 28,133 places, out of which 85% were occupied on 1 February 2021.⁴⁶⁷

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

⁴⁶² Myria, *Contact Meeting*, September 2019, <https://bit.ly/397g0sz>; *Contact Meeting*, October 2019, <https://bit.ly/2TmOrEN>; *Contact Meeting*, November 2019, <https://bit.ly/3af2qDg>; *Contact Meeting*, December 2019, <https://bit.ly/385AZL0>.

⁴⁶³ Fedasil, 'Sluiting 7 centra uitgesteld', 2 October 2018, available in Dutch at <https://bit.ly/2RfAANv>; Vluchtelingenwerk Vlaanderen, 'Staatssecretaris zet limiet op asielaanvragen: vandaag al 60 mensen op straat', 23 November 2018, <https://bit.ly/2DAo7R7>; De Morgen, 'Opvangcentra zitten overvol door grotere instroom: tenten voor asielzoekers weer in beeld', 16 November 2018, available in Dutch at: <https://bit.ly/2Wzhu91>; Fedasil, 'Druk op opvangnetwerk steeds hoger', 8 November 2019, available in Dutch, <https://bit.ly/384yGry>; Vluchtelingenwerk Vlaanderen, 'Opnieuw asielzoekers op straat, kroniek van een aangekondigde opvangcrisis', 18 November 2019, available in Dutch at: <https://bit.ly/2TptTdM>; Vlaamse Vereniging voor Steden en Gemeenten, 'Lokale besturen zijn jojo-effect federaal opvangbeleid beu', 13 November 2019, available in Dutch at: <https://bit.ly/2VuNEV9>.

⁴⁶⁴ Fedasil, *Key figures for 2020*, available in Dutch/French at: <https://bit.ly/3cb5qEY>.

⁴⁶⁵ Chamber of Representatives, Doc 1580/014, *Policy Note on asylum and migration*, 04 November 2020, available in Dutch/French at: <https://bit.ly/3c9hy9z>.

⁴⁶⁶ Fedasil, *Daling van de instroom in 2020*, 19 January 2021, <http://bit.ly/38Ve9t6>.

⁴⁶⁷ Statistics of Fedasil, available at: <http://bit.ly/3rzB8kr>.

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
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

2.1. Average duration of stay

As of 31 December 2020, the average length of stay of applicants for international protection in the reception system was 14,3 months.⁴⁶⁸

Most of the 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,⁴⁶⁹ but in practice places are mostly assigned according to availability and preferences under the reception model introduced in 2015. It was then decided that reception should mainly be provided in collective centres, while only certain cases would benefit from individual accommodation (see [Forms and Levels of Material Reception Conditions](#)).

2.2. Overall conditions

The minimum material reception rights for asylum seekers are described in the Reception Act, mostly in a very general way.⁴⁷⁰ Fedasil puts them into 4 categories of aid:⁴⁷¹

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

Many of those aspects such as the social guidance during transition to financial aid after a person has obtained a legal stay, or the legal guidance during the asylum procedure and the quality norms for reception facilities have not yet been regulated by implementing decrees as the law has stipulated. Until then, those are left to be determined by the individual reception facilities themselves or in a more coordinated way by Fedasil instructions.⁴⁷²

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

In 2015 Fedasil started setting up a framework to conduct quality audits on the basis of these uniform standards. Developing minimum standards and an audit mechanism was a difficult process as different partners, such as the Red Cross, have developed their own norms and standards over the years. Moreover, some partners criticised the possibility to have audits being performed by Fedasil instead of an independent authority.⁴⁷³

⁴⁶⁸ Information provided by Fedasil, January 2021.

⁴⁶⁹ Articles 11, 22, 28 and 36 Reception Act.

⁴⁷⁰ Articles 14-35 Reception Act.

⁴⁷¹ Fedasil, *About the Reception Centres*, available at: <http://bit.ly/1IuvC6u>.

⁴⁷² Vluchtelingenwerk Vlaanderen, *Annual Report 2013*, available at: <http://bit.ly/1dvBxgS>, 7-8.

⁴⁷³ Court of Auditors, *Opvang van asielzoekers*, October 2017, 47-48.

As of today, these audits are performed by Fedasil and there is still no independent and external monitoring system put in place. Fedasil conducted 10 audits in 2018, but their outcome is unknown. In 2019, 40 audits were conducted at all levels of the reception system (both by Fedasil and partners, and both in collective and individual shelters). In 2020, 30 audits were conducted. The findings are not public and only communicated to the reception facility concerned. In 2021, 40 audits are planned by Fedasil, 17 of which in collective reception facilities.⁴⁷⁴

In October 2018, a Royal Decree was adopted to regulate the system and operating rules in reception centres as well as on the modalities for checking the rooms.⁴⁷⁵ This contains several general rights for the asylum seeker, such as:

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

The extensive closure and re-opening of reception places in the past years caused many problems throughout 2019. This 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](#)).⁴⁷⁶

The unavoidable consequence of the governmental crisis management that focuses on providing material aid – “bed, bath, bread” – and stimulating (voluntary and forced) return, is that immaterial assistance (for example legal, psychological, social aid) risks being seriously underfunded, especially when it comes to non-governmental services. Organisations such as Vluchtelingenwerk Vlaanderen and the Belgian Refugee Council (CBAR-BCHV) have lost substantial parts of their public funding, or, in case of the latter, the organisation has disappeared altogether. In 2017, the government has also decided to cut the budget of the Integration Agency (*Agentschap Inburgering en Integratie*) which provides *inter alia* legal advice and integration courses.⁴⁷⁷

⁴⁷⁴ Information provided by Fedasil, January 2021.

⁴⁷⁵ Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018.

⁴⁷⁶ 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>.

⁴⁷⁷ De Standaard, ‘Mogelijk 170 banen op de tocht bij Agentschap Integratie en Inburgering’, 2 October 2017, available in Dutch at: <http://bit.ly/2siiZNH>; ‘Onzichtbare wachtrij voor cursus inburgering’, 7 February 2018, available in Dutch at: <http://bit.ly/2G1bTyZ>.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

The access to the labour market of asylum seekers is regulated by the Law of 9 May 2018⁴⁷⁸ and its implementing Royal Decree of 2 September 2018. Asylum seekers who have not yet received a first instance decision on their asylum case within 4 months following the lodging of their asylum application are allowed to work. By Royal Decree of 29 October 2015, the federal government reduced this period from 6 to 4 months.⁴⁷⁹ Until the end of 2018, asylum seekers needed a work permit C to be able to work, but since January 2019 the right to work is mentioned directly on their temporary residence permit (orange card). A separate work permit is no longer needed and asylum seekers can work in the area he or she chooses.

After the outbreak of COVID-19 in Belgium, the 4-month waiting period was temporarily suspended by the Special Powers Decree of 27 April 2020⁴⁸⁰ until 30 June 2020, in order to mitigate a shortage of workers in certain sectors due to the border closure. This measure enabled recently registered asylum seekers to work without observing the 4-month waiting period, provided that their asylum application had been registered on 18 March 2020 at the latest and that their employer ensured accommodation. This measure was not extended after 30 June 2020.

Asylum seekers have the right to work until a decision is taken by the CGRS, or in case of an appeal, until a negative decision has been notified by the CALL. However, they are not allowed to work during the appeal procedure before the CALL if the procedure at the CGRS did not last longer than 4 months.⁴⁸¹ Due to the recent legal reforms, asylum seekers who lodge a subsequent asylum application are further not able to work until the CGRS declares the application admissible and until they receive an orange card.

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

⁴⁷⁸ 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>.

⁴⁷⁹ Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers (published in the Belgian State Monitor of 9 November 2015), available at: <http://bit.ly/1MAdXxY>.

⁴⁸⁰ Article 3 Special Powers Decree nr. 14 (see <https://bit.ly/3pkNawL>)

⁴⁸¹ Article 18, 3° and article 19,3° Royal Decree on Foreign Workers, 2 September 2018.

amounts mentioned above and the working contract is sufficiently stable (see [Reduction or Withdrawal of Reception Conditions](#)).⁴⁸²

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

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

Community services

Asylum seekers are also entitled to perform certain community services (maintenance, cleaning) within their reception centre as a way of increasing their pocket money.⁴⁸³

2. Access to education

Indicators: Access to Education

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

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

In practice, the capacity of some local schools is not always sufficient to absorb all asylum-seeking children entitled to education. Also, transfers of families to another reception centre or to a so-called “open return place” after having received a negative decision might entail a move to another (sometimes even linguistically different) part of the country, which can have a negative impact on the continuity in education for the children. In that respect, it is noteworthy to recall that courts have endeavoured to guarantee asylum seeking children the right to education. In a ruling of 6 May 2014, for example, the Labour Court of Charleroi found that the transfer of a family to the family centre of the Holsbeek open 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.⁴⁸⁴

In reception centres for asylum seekers, all residents can take part in activities that encourage integration and knowledge of the host country. They have the right to attend professional training and education courses.⁴⁸⁵ The regional Offices for Employment organise professional training for asylum seekers who are allowed to work with the purpose of assisting them in finding a job. Also, they can enrol in 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.

⁴⁸² 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).

⁴⁸³ Article 34 Reception Act.

⁴⁸⁴ Labour Court of Charleroi, Judgment of 6 May 2014, available at: <http://bit.ly/1F5Hyqq>.

⁴⁸⁵ Article 35 Reception Act.

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

The material aid an asylum seeker is entitled to includes the right to medical care necessary to live a life in human dignity.⁴⁸⁶ This entails all the types of health care enumerated in a list of medical interventions that are taken charge of financially by the National Institute for Health and Disability Insurance (RIZIV/INAMI). For asylum seekers, some exceptions have explicitly been made for interventions not considered to be necessary for a life in human dignity, but also they are entitled to certain interventions that are considered to be necessary for such a life albeit not enlisted in the nomenclature.⁴⁸⁷

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.⁴⁸⁸

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 10 centres of Fedasil. This doctor may refer asylum seekers to a specialist where necessary. Fedasil stated they are planning to hire a doctor for an 11th centre. The other reception centres rely on the system of working with external doctors.⁴⁸⁹

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

⁴⁸⁶ Article 23 Reception Act.

⁴⁸⁷ Article 24 Reception Act and Royal Decree of 9 April 2007 on Medical Assistance.

⁴⁸⁸ 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.

⁴⁸⁹ Myria, *Contact Meeting*, 17 October 2018, available in Dutch at: <https://bit.ly/2FNSKEW>, paras 96-101.

2009, however, thereby causing disparities in costs refunded for asylum seekers in LRI and those refunded in other reception places.⁴⁹⁰

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,⁴⁹¹ although accessing medical care can be difficult in practice. Asylum seekers who are not staying in a reception structure (by choice or following a sanction) have to ask for a promise of repayment (*requisitorium*⁴⁹²) before going to a doctor. This can be a very time-consuming process. When the workload is high, it can take up to a few weeks before the medical service of Fedasil answers.⁴⁹³

Once the asylum application has been refused and the reception rights have come to an end, the person concerned will only be entitled to emergency medical assistance, for which he or she must refer to the local PCSW.⁴⁹⁴

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 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.⁴⁹⁵

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. The centre 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.⁴⁹⁶

On 29 October 2019, the Federal Knowledge Centre for Health Care (KCE) published the results of a field survey on the provision of health care to applicants for international protection. It shows that the organisation of health care in Belgium is unequal and not efficient. This leads to 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

⁴⁹⁰ Court of Auditors, *Opvang van asielzoekers*, October 2017, 57-58; Information provided by VVSG, February 2018.

⁴⁹¹ Article 45 Reception Act.

⁴⁹² Document in Dutch/French available via: <http://bit.ly/3poDlxS>

⁴⁹³ Court of Auditors, *Opvang van asielzoekers*, October 2017, 58.

⁴⁹⁴ Articles 57 and 57ter/1 of the Organic Law of 8 July 1976 on the PCSW.

⁴⁹⁵ Court of Auditors, *Opvang van asielzoekers*, October 2017, 55-56.

⁴⁹⁶ Brochure of the CIBA program available in Dutch via: <https://bit.ly/2Yillnz>

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.⁴⁹⁷ 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 has been developed. Currently, it is waiting for the approval of the budget necessary to roll out the project.⁴⁹⁸

At the time of writing, there was no publicly available information on the place of asylum seekers in the COVID-19 vaccination strategy. It has, however, been communicated that everyone present on the Belgian territory will have the opportunity to be vaccinated.

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.⁴⁹⁹ This is a non-exhaustive list, but there is no other definition of vulnerability available.

1. Detection of vulnerabilities

At the Dispatching Desk of Fedasil, the specific situation of the asylum seeker (family situation, age, health, medical condition) should be taken into consideration before assigning him or her to a reception centre, since some are more adapted to specific needs than others. The Dispatching has access to the “Evibel” database in which the Immigration Office can register the elements that indicate a specific vulnerability that has become apparent at the moment of the registration of the asylum application. Since August 2016 the Immigration Office uses a registration form in which they should indicate if a person is a (non-accompanied) minor, + 65 years old, pregnant, a single woman, LGBTI, a victim of trafficking, victim of violence (physical, sexual, psychological), has children, or has medical or psychological problems (for more information see [Guarantees for vulnerable groups](#)).

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

In fact, the evaluation of dispatching mostly focuses on medical grounds. A medical worker of the Dispatching desk meets personally with the asylum seeker if the Immigration Office has mentioned that the person was vulnerable during the registration, if the workers of the dispatching desk notice a medical

⁴⁹⁷ KCE, *Asylum seekers: options for more equal access to health care. A stakeholder survey*, 29 October 2019, available at: <https://bit.ly/2T8Ef3G>.

⁴⁹⁸ Information provided by Fedasil, January 2021.

⁴⁹⁹ Article 36(1) Reception Act.

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.⁵⁰⁰ The obtained medical information is then forwarded to the assigned reception centre. As regards other vulnerabilities, they are mostly identified by social workers in the reception centres.

A legal mechanism is put in place to assess specific needs of vulnerable persons once they are allocated in the reception facilities. Within 30 calendar days after having been assigned a reception place, the individual situation of the asylum seeker should be examined to determine if the accommodation is adapted to his or her personal needs. Particular attention has to be paid to signs of vulnerability that are not immediately detectable.⁵⁰¹ 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.⁵⁰² A finding of vulnerability may lead to a transfer to more adequate accommodation, if necessary.

In practice, a transfer is often not possible due to insufficient specialised places or to political preferences for a collective rather than individual accommodation model. The evaluation mechanism is often insufficiently implemented, if at all, and almost never leads to a transfer to a more adapted place.⁵⁰³ 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.⁵⁰⁴ These include a lack of time, language and communication barriers, a lack of information handover and a lack of training and experience related to vulnerable persons. The report also found that the identification tools are not applied in a coordinated manner and strongly influenced by the reception context. In terms of communication, adapted means of communication with deaf and blind persons are lacking, as well as specialised interpreters. The study concluded that the way in which reception is organised can have an impact on vulnerable persons due to location (remote small villages), size (less privacy in big centres) and facilities (lack of adapted sanitary facilities).

Fedasil's end report of December 2018 concludes that there is a significant difference between the identification conducted at the very beginning of the procedure by the Immigration Office and the Dispatching desk, and the one conducted once the asylum seeker is placed in an assigned reception centre. In fact, whereas the first identification is purely "categorical" (as it focuses on needs that can be detected quickly in order to assign an adapted reception place), the identification undertaken by social workers in the reception facilities is much more complex and multi-dimensional. Consequently, the second identification process diverges substantially amongst the different reception facilities, including regarding the different categories that are defined as vulnerable by the Immigration Office and the Dispatching desk.⁵⁰⁵

⁵⁰⁰ Information provided by Fedasil, February 2018.

⁵⁰¹ Article 22 Reception Act.

⁵⁰² Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

⁵⁰³ Court of Auditors, *Opvang van asielzoekers*, October 2017, 63.

⁵⁰⁴ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

⁵⁰⁵ Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available at: <https://bit.ly/2S7NtO5>, 25.

Since 2016 Fedasil has set up cooperation with two organisations specialised in prevention against and support in case of female genital mutilation (FGM): **Intact** and **GAMS**. In the framework of the project FGM Global Approach, funded by the Asylum, Migration and Integration Fund, they set up a process in the reception centres for early detection of FGM and social, psychological and medical support, and for the protection of girls who are at risk of FGM. In each collective Fedasil centre there is a reference person trained by these organisations. Each social assistant and the medical service of the centre need to conduct the identification within the first 30 days after the person's arrival in the centre. A checklist was created to guide the personnel of the centre through each step of the process. Each victim of FGM should be informed of this but can choose to take part in it or not. These guidelines were created both for collective reception centres and for individual shelters.⁵⁰⁶

2. Specific and adapted places

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

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

There are also 385 specialised medical reception places or specific medical individual accommodation initiatives for:

- ❖ Persons with limited mobility, for example when they are in wheelchairs;
- ❖ Persons who are unable to take care of themselves (prepare food, hygiene, eat, take medication) without help;
- ❖ Persons with a mental or physical disability;
- ❖ Persons who receive medical help in a specific place for example dialysis, chemotherapy;
- ❖ Persons with a serious psychological dysfunction;
- ❖ Persons for who it is necessary to have adapted conditions of reception due to medical reasons, for example special diet, a private toilet, a private room.

Given the fact that one room sometimes covers several medical places which are used by family members of the person with medical issues, these 385 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.⁵⁰⁷

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

⁵⁰⁶ Fedasil, Note on the FGM trajectory in the framework of the Gamsproject, steps and tasks for implementation within federal centre, 20 September 2017; GAMS, Traject VGV, available in Dutch at: <https://bit.ly/2VGZTe7>.

⁵⁰⁷ Information provided by Fedasil, January 2021.

to the needs of the specific child.⁵⁰⁸ Currently, there are 278 places in OOC, 254 of which concern regular places and 24 of which have been created as crisis capacity. On 31 December 2020, the OOC places were occupied at 93,2%.⁵⁰⁹

2. **Specific places in reception centres:** There are some specialised centres and specific places in regular reception facilities such as collective centres, NGO centres and LRI. There are 1,406 places in collective reception centres, occupied at 95,5%. Due to a lack of places for adults in the second half of 2018, Fedasil started sheltering adults in the wing of the collective centres that is normally reserved to minors. Fedasil selected these adults and they usually are young adults who still go to school, or families who agreed to be sheltered in that part of the centre. This practice ended in August 2019, however.⁵¹⁰ In 2020, this practice was not applied.⁵¹¹
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 283 places in individual reception facilities, occupied at 76,7%.⁵¹²

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

For minor pregnant girls or young girls with children there are specific places in **Rixensart**, which currently has 30 places.

Children with behavioural problems or minors who need some time away from their reception place can be temporarily transferred to "time-out" places: in the reception centres of **Sint-Truiden**, **Synergie 14**, **Pamex-SAM asbl Liège**, and **Oranje Huis**. There were 34 of these places available by the end of 2020 which were occupied at 19,4%.

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 2019.⁵¹³ Unaccompanied children whose asylum procedure end with a negative decision can apply for specific assistance in the collective centres in **Bovigny** (which is a residential support) and **Arendonk** (which is a project called "4myfuture" and enables unaccompanied minors to focus on their future perspectives during a one-week residency in Arendonk). These centres help them to take decisions for their future, e.g. regarding voluntary return and the situation in which they would be if they stay illegally. Currently, these places are still available but Fedasil signals increasing difficulties in orienting minors to these centres after their asylum procedure, partly due to the increasing length of the procedure during which the minors often establish a strong social network in their region. Fedasil now aims to distribute the expertise built up in Bovigny and Arendonk to the other, regular collective reception centres.⁵¹⁴

⁵⁰⁸ Article 41 Reception Act; Royal Decree of 9 April 2007 on the centres for the orientation and observation of unaccompanied minors.

⁵⁰⁹ Information provided by Fedasil, January 2021.

⁵¹⁰ Information provided by Fedasil, January 2020.

⁵¹¹ Information provided by Fedasil, January 2021.

⁵¹² Information provided by Fedasil, January 2021.

⁵¹³ Information provided by Fedasil, January 2020, confirmed in January 2021.

⁵¹⁴ Information provided by Fedasil, January 2021.

2.2. Reception of families

There are currently 276 places for vulnerable and pregnant women: 86 in Louvranges and 190 in different centres run by Fedasil, Rode Kruis and Croix Rouge.⁵¹⁵

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.⁵¹⁶ The open return centre in **Holsbeek** operated to this effect. This open return centre for families has been harshly criticised by the Federal Ombudsman, together with the Commissioners for children's rights, in his annual report of 2013. Major criticisms relate to violations of the United Nations Convention on the Rights of the Child and the Belgian Constitution, because the right to education is not guaranteed and social assistance focusses mainly on return assistance. Additionally, it is the Immigration Office, and not Fedasil, which delivers material assistance, thus making this assistance conditional on the collaboration of the children's parents with the return.

In a Judgment of 24 April 2015, the Council of State declared the agreement of 2013 between Fedasil and the Immigration Office concerning the reception conditions of families with minor children in the Holsbeek open return centre in violation of the 2004 Royal Decree. The argument was that it only provides in accommodation for 30 days instead of accommodation according to the needs, health and development of the child. Nevertheless, the judgment allowed Fedasil to subcontract their obligation to the Immigration Office.⁵¹⁷ The families are now sheltered in "open return houses" organised by the Immigration Office. These houses are used as an alternative for detention for families with children as well. Holsbeek is currently being used as a detention centre for single women (see [Detention: General](#)).

2.3. Reception of victims of trafficking and traumatised persons

There are specialised centres such as **Payoke**, **Pagasa**, **Surya**, which are external to the Fedasil-run reception network, for victims of trafficking, and for persons with mental issues (currently 40 places in the Croix Rouge **Carda** centre, out of which 5 are places for children and another 40 places in the Rode Kruis **Ciba** centre, out of which 5 are places for minors above 16).⁵¹⁸ 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 about 385 "medical places" 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 385 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.⁵¹⁹

⁵¹⁵ Information provided by Fedasil, January 2021.

⁵¹⁶ 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.

⁵¹⁷ Council of State, Judgment No 230.947 of 23 April 2015, available in French at: <http://bit.ly/1RZgJg8>.

⁵¹⁸ Information provided by Fedasil, January 2021.

⁵¹⁹ Information provided by Fedasil, January 2021.

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](#)).⁵²⁰ The brochure “Asylum in Belgium” currently distributed is available in ten different languages⁵²¹ and in a DVD version. These brochures are being distributed in the reception facilities.

As for the specific rights and obligations concerning reception conditions, the asylum seeker also receives a copy of the house rules, also available in different languages. According to the Reception Act this should be a general document applicable in all reception facilities and regulated by Royal Decree.⁵²² In 2018 a Royal decree and a Ministerial Decree were published to this end. (See [Sanctions for violation of house rules](#)).

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

The law foresees that asylum seekers accommodated in one of the reception structures should have access to the interpretation and translation services to exercise their rights and obligations.⁵²³ In practice in many reception structures there are not enough interpreters available, however.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

The Reception Act provides for a guaranteed access to first- and second-line legal assistance.⁵²⁴ 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 and in the contact with his or her lawyers.⁵²⁵ 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.⁵²⁶

⁵²⁰ Article 14 Reception Act.

⁵²¹ 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>.

⁵²² Article 19 Reception Act.

⁵²³ Article 15 Reception Act.

⁵²⁴ Article 33 Reception Act.

⁵²⁵ 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.

⁵²⁶ Article 21 Reception Act; Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018

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

G. Differential treatment of specific nationalities in reception

In the Reception Act, there is no difference in treatment with regard to reception based on nationality. Asylum seekers from safe countries of origin and EU citizens are not excluded by the Reception Act.

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.⁵²⁷ EU citizens applying for asylum can challenge the formal refusal decision of Fedasil (known as "non-designation of a code 207") before the Labour Court.

In the current reception model, those asylum seekers with a nationality which has a recognition rate above 80% are entitled to be transferred from collective asylum centres to individual places after 2 months. (see [Forms and levels of material reception conditions](#)).

⁵²⁷ Federal Ombudsman, *Annual Report 2013*, available at: <http://bit.ly/1AZrewH>, 30-35.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2020:	Not available
2. Number of asylum seekers in detention at the end of 2020:	Not available
3. Number of detention centres:	6
4. Total capacity of detention centres:	700

During 2020, a total of 3,022 migrants were detained.⁵²⁸ Since the Immigration Office has not published statistics on the total number of detained asylum seekers since 2018, a detailed breakdown of the statistics of 2020 is not available. In the course of 2019, a total of 8,555 migrants, including asylum seekers, were detained. According to Myria, this number includes asylum seekers at the border (2%) and asylum seekers who applied for asylum on the territory (12%).⁵²⁹ However, this breakdown must be read with caution as it does not include the number of persons who were detained and subsequently applied for asylum, nor the persons detained for the purpose of a Dublin transfer. Given that these categories of persons receive an order to leave the territory, they are no longer registered as asylum seekers⁵³⁰.

Belgium has a total of 6 detention centres, commonly referred to as “closed centres”.⁵³¹ the **127bis** repatriation centre, to which the closed family units have been attached; the “**Caricole**” near Brussels Airport; and 4 Centres for Illegal Aliens located in **Bruges** (CIB), in **Merksplas** near Antwerp (CIM), in **Vottem** near Liege (CIV) and in **Holsbeek** (near Leuven) In addition to the Caricole building, there are also some smaller Centres for Inadmissible Passengers (INAD centres) in the five regional airports that are Schengen border posts. Unlike the open reception centres, the detention centres fall under the authority of the Immigration Office. The provisions of the Reception Conditions Directive are still not applicable to them.

The government decided on 14 May 2017 to maximise the number of places in existing detention facilities. In 2019 the open reception centre (**Holsbeek**) has thus been turned into a closed centre for 60 women. The new government-coalition, that was inaugurated on 1 October 2020, has confirmed the construction of additional places. The construction of two additional detention centres in Zandvliet (200 places) and Jumet (120 places) is planned by the end of its legislation.⁵³² Together with plans for the expansion of the number of places in the centres 127bis and Merksplas, these plans will bring Belgium’s detention capacity up to 1,066 places.⁵³³ Additionally, the new Government has announced the replacement of the centre in Bruges, as the condition of the current centre is deemed ‘very bad’.⁵³⁴

In August 2018, the government opened five family units in the **127bis** repatriation centre, as a result of which families with children were being detained again. Detention is applied where the family manifestly refuses to cooperate with the return procedure.⁵³⁵ The royal decree allowing this practice was suspended

⁵²⁸ Information provided by the Immigration Office, January 2021.

⁵²⁹ Myria, ‘Myriatics 11, Terugkeer, detentie en verwijdering van vreemdelingen in2018’, January 2020, available in Dutch and French at: <https://bit.ly/3agjidg>.

⁵³⁰ Whereas under the stipulation of art 2 c) the Dublin-III regulation people are deemed applicants until a final decision on their application for international protection has been taken.

⁵³¹ For an overview, see Getting the Voice Out, ‘What are the detention centres in Belgium?’, available at: <http://bit.ly/1GxZAJd>.

⁵³² De Morgen, Regering-De Croo bouwt gesloten centra in Zandvliet en Jumet, 8 October 2020, available in Dutch at: <https://bit.ly/2Y2sPjF>.

⁵³³ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>.

⁵³⁴ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French, available at: <https://bit.ly/3sJdgMd>, p. 34.

⁵³⁵ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French, available at: <https://bit.ly/2sJL8uz>,34.

by the Council of State in April 2019. Between August 2018 and April 2019 a total of 9 families were detained.⁵³⁶ The current procedure is still pending as the Council of State still needs to decide whether there are grounds for annulment.

The current government, however, 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 that this measure would be abused to make return impossible.⁵³⁷

While in detention, the CGRS prioritises the examination of the asylum application, although no strict time limit is foreseen.⁵³⁸ The appeal must be lodged within 10 days after the first instance decision.⁵³⁹

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.”⁵⁴⁰

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

In practice, standard motivations for the detention of asylum seekers at the border are being used, without properly taking into account their individual situation. This confirms the concerns on arbitrary detention formulated by UNHCR. Recent legislative changes have not been able to properly address this issue.⁵⁴¹

⁵³⁶ Council of State, Decision No 244190, 4 April 2019.

⁵³⁷ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French, available at: <https://bit.ly/3sJdgMd>, p. 34.

⁵³⁸ Article 57/6(2) Aliens Act.

⁵³⁹ Articles 39/57 and 39/77 Aliens Act.

⁵⁴⁰ Article 74/5(1) Aliens Act.

⁵⁴¹ 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>.

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.⁵⁴²

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

Before the entry into force of the law, asylum seekers who had served a sentence or been placed at the disposal of the government were also detained during the asylum procedure, which had its legal basis in a specific article in the Aliens Act attributing this power to the Minister.⁵⁴³ With the new law this article has been withdrawn and this possibility is translated into Article 74/6(1)(4).

Asylum seekers can also be detained during the Dublin procedure if there are indications that another EU Member State might be responsible for handling their asylum claim, but before their responsibility has been accepted by that state.⁵⁴⁴ Until the entry into force of the law in 2018, there was no objective criteria indicating a risk of absconding in case a Dublin transfer was specified in Belgian law, as required by Article 2(n) of the Dublin III Regulation. As a result of the *Al Chodor* ruling of the CJEU,⁵⁴⁵ the Immigration Office stopped issuing detention orders on the basis of a risk of absconding in the context of Dublin procedures in 2017, while detention remains possible if other grounds are met.⁵⁴⁶

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

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

⁵⁴² Article 74/6(1) Aliens Act.

⁵⁴³ Article 74/8 Aliens Act.

⁵⁴⁴ Article 51/5 Aliens Act.

⁵⁴⁵ CJEU, Case C-528/15 *Al Chodor*, Judgment of 15 March 2017.

⁵⁴⁶ Information provided by the Immigration Office: Myria, *Contact meeting*, 21 June 2017, available at: <http://bit.ly/2BVIncU>.

The reform has been heavily criticised by civil society organisations for laying down overly broad criteria for the determination of a risk of absconding.⁵⁴⁷ 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 20 December 2017, the Court of Cassation ruled in the case of a Sudanese national who was detained in Belgium pending his expulsion to Sudan, while the detention decision explicitly stated that the applicant had to be detained “in order to issue a take back request to Italy”, where he had previously lodged an asylum application. The Court of Appeal of Brussels had followed the government’s argumentation that, in the absence of a new asylum application, the Dublin III Regulation was not applicable in relation to the detention of the asylum applicant. The Court of Cassation disagreed with the Court of Appeal and ruled that, in accordance with Article 18(2) of the Dublin III Regulation, the responsible Member State must take back “an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document”. Therefore, the Court of Cassation concluded that the provisions of the Dublin III Regulation are applicable even in cases where a new application for asylum has not been introduced in the requesting Member State, including the provisions regarding the detention of an asylum applicant who is subjected to a take charge or take back request.⁵⁴⁸

On 19 July 2019, Article 51/5/1 of the Aliens Act entered into force and implements the relevant articles on detention of the Dublin III Regulation for applicants who did not apply for asylum in Belgium, yet could be subject to a take-back decision because of a previous application that was registered in another Member State.⁵⁴⁹

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 led 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 the fact that they had contacted the Sudanese authorities to conduct an identification-mission in Belgian detention centres and the fact 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.⁵⁵⁰

When asked about the implications of this judgement for the Belgian practice, the current Secretary of State has responded as following:

⁵⁴⁷ 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>.

⁵⁴⁸ Court of Cassation, Decision No 9.17.1192.F, 20 December 2017.

⁵⁴⁹ Before this legal amendment, such decisions could not be delegated by the Minister to a staff member of the Immigration Office.

⁵⁵⁰ ECtHR, 27 October 2020, *M.A. v. Belgium*, available in French: <https://bit.ly/2KJRPcw>

“In light of the very specific facts of this case, I have decided not to request a referral to the Grand Chamber. I am thinking of the factual ambiguities surrounding the voluntary departure declaration and the situation created by the specific circumstances of the Sudanese identification mission.

Of course, I also take into account that in the meantime several changes have been made to the procedure. For example, after the facts to which this judgment relates, the practice of implicit asylum applications was already introduced, whereby the CGRS, at the initiative of the Immigration Office', still conducts an investigation into international protection in a very limited number of cases in which the person concerned does not apply for asylum. Moreover, I will continue to support and expand the recently founded specialised unit of the Immigration Office which is responsible for supporting its personnel in the examination of art. 3 ECHR. In addition, I will examine with my services how we can be sure to meet the other elements cited by the Court, such as ensuring that, in practice, every person concerned receives correct and comprehensible information about their rights and rapid access to a lawyer.”⁵⁵¹

These ‘implicit asylum applications’, which are mentioned as a solution and whereby the authorities consider that an application has been “implicitly” lodged by people, who refuse to file for asylum, yet proclaim to fear return, can in fact, themselves, 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 expressed doubts as regards the compliance of this practice with the recast Asylum Procedures Directive.⁵⁵²

2. Alternatives to detention

Indicators: Alternatives to Detention

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

Articles 74/6 (detention on the territory) and 51/5 (detention under Dublin) of the Aliens Act refer to the need for less coercive alternative measures to be considered before imposing detention. These alternatives were supposed to be defined by Royal Decree, which has still not been adopted.

The current Secretary of State claims to prioritize the development of these less coercive measures.⁵⁵³

⁵⁵¹ Information received by email from the cabinet of the State Secretary for Asylum and Migration.

⁵⁵² “While we fully understand the challenges that this situation creates for Belgium, the Commission finds it difficult to share the interpretation that the claims by third country nationals of a risk of violation of non-refoulement in the context you describe can be considered as the “making” of an application for international protection within the meaning of Directive 2013/32/EU. However there is no case-law on this specific matter and only the Court of Justice of the European Union can provide a final and binding interpretation of the EU acquis.”; see: Letter from EU Commissioner for Migration Avramopoulos to Belgian Secretary of State Francken, 2 July 2017.

⁵⁵³ “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 organized policy of tolerance. 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>, p. 35.

For families with (minor) children, two types of less coercive measures were set up: home accommodation in the context of an agreement under Article 74/9(3), and return homes.

Despite the introduction of these measures, the government opened five family units in August 2018 in the **127bis** repatriation centre as a result of which families with children were being detained again. Detention is applied where the family manifestly refuses to cooperate with the return procedure.⁵⁵⁴ The royal decree allowing this practice was suspended by the Council of State in April 2019, however. Between August 2018 and April 2019 a total of 9 families have been detained.⁵⁵⁵

The current government, however, 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 that this measure would be abused to make return impossible.⁵⁵⁶

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.⁵⁵⁷ 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](#)).⁵⁵⁸

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 Frequently Rarely Never

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

Following the ECtHR's *Kanagaratnam*,⁵⁵⁹ and *Muskhadzhiyeva* judgments,⁵⁶⁰ the Secretary of State decided that from 1 October 2009 onwards families with children that are arriving at the border and that are not removable within 48 hours after arrival should be accommodated in a family unit.

⁵⁵⁴ Chamber of Representatives, *Policy Note on asylum and migration*, 26 October 2018, available in Dutch and French at: <https://bit.ly/2sJL8uz>, 34.

⁵⁵⁵ Council of State, Decision No 244190, 4 April 2019.

⁵⁵⁶ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French, available at: <https://bit.ly/3sJdgMd>, p. 34.

⁵⁵⁷ 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/2iiDJj3>.

⁵⁵⁸ See also: Marjan Claes, Vasthouding van personen met een mogelijke nood aan internationale bescherming als uitzonderingsmaatregel na de wet van 21 november 2017, December 2019, available in Dutch at: <https://bit.ly/39kotIE>.

⁵⁵⁹ 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.

⁵⁶⁰ 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.

However, in August 2018, Belgium opened detention facilities for families with children. Article 74/9(3)(4) of the Aliens Act allows for a limited detention of the families with children in case they do not respect the conditions they accepted in a mutual agreement with the Immigration Office to stay in their own house, and/or absconded from the return homes. The closed centre for families is located next to the **127bis** repatriation centre near the Brussels National Airport. The Royal Decree of 22 July 2018 (amending the Royal Decree of 2 August 2002) establishes the rules for the functioning of the closed family units near Brussels International airport.⁵⁶¹ While the Royal Decree was suspended by the Council of State in April 2019,⁵⁶² the latter must still issue a decision on the annulation of the Royal Decree.

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 that this measure would be abused to make return impossible.⁵⁶³ However, the government has not retracted the aforementioned suspended Royal Decree yet, the procedure to annul the Royal Decree is still pending before the Council of State.

The detention of unaccompanied children is explicitly prohibited by law.⁵⁶⁴ 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.⁵⁶⁵ This only applies to those unaccompanied children with regard to whom no doubts were raised about the fact that they are below 18 years of age and are identified as such by the Guardianship Service (see [Asylum Procedure: Identification](#)). Also, this OOC is legally considered to be a detention centre at the border, which means that the unaccompanied child is not considered to have formally entered the territory yet.⁵⁶⁶ Within 15 calendar days, the Immigration Office has to find a durable solution for the child, which may include return after an asylum application has been refused. Otherwise access to the territory has to be formally granted.

Unaccompanied minors who are caught on the territory without residence permit are sometimes held in detention for the duration of their age assessment procedure. This can sometimes take more than a week before this is rectified. In 2019, 3 children whose age was tested during detention were considered 15 years old after the test and had thus wrongly been held in detention.⁵⁶⁷ 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. This practice has in the meantime been adapted and in 2021, most minors have been released in 6 days after their arrival.

No other vulnerable categories of asylum seekers are excluded from detention by law. Besides the consideration of the minority of age, no other vulnerability assessment is made whatsoever before deciding on the detention of asylum seekers, especially at the border. In practice, the detention of vulnerable persons remains problematic.

Organisations visiting detention centres have reported the presence of pregnant women and persons with physical and mental health conditions in detention, who do not always have access to the necessary mental health assistance. In 2018 for example, Myria, the Federal Migration Centre, reported the detention

⁵⁶¹ Arrêté royal du 22 juillet 2018 | Koninklijk besluit van 22 juli 2018

⁵⁶² Council of State, Decision No 244.190, 4 April 2019.

⁵⁶³ Chamber of Representatives, *Policy Note on asylum and migration, 4 November 2020, available in Dutch and French, available at : <https://bit.ly/3sJdgMd>, p. 34.*

⁵⁶⁴ Article 74/19 Aliens Act.

⁵⁶⁵ Article 40 Reception Act.

⁵⁶⁶ 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.

⁵⁶⁷ Figures confirmed by the Immigration Office in January 2020.

of a woman who was 22 weeks pregnant. She was being detained with a view to conduct a Dublin transfer to Poland (a transfer that ultimately did not take place).⁵⁶⁸

In 2019 a report was published by several NGOs based on the testimonies of visitors. One case reported concerned an Eritrean man, with clear signs of torture on his body, who committed suicide before being sent back to Bulgaria. Another case concerned a person who committed self-harm while being detained. He was subsequently followed by a psychologist and released upon recognition of the refugee status.⁵⁶⁹

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.⁵⁷⁰ Detention can be prolonged for another 2 months for reasons of national security or public order.⁵⁷¹ Where extended for these reasons, a one-month prolongation if possible each time. The maximum duration of detention on territory therefore cannot exceed 6 months (2+2+1+1). The detention at the border may not exceed 5 months. However, the period of detention is suspended for the time provided to appeal the decision on the asylum application.

Since the entry into force of the law in 2018, asylum seekers in the Dublin procedure may be detained in order to determine the responsible Member State and in order to secure a transfer. In both cases detention may not exceed 6 weeks.

On 19 July 2019, Article 51/5/1 of the Aliens Act entered into force and implements the relevant articles on detention of the Dublin III Regulation for applicants who did not apply for asylum in Belgium, but who could be subject to a take-back decision because of a previous application that was registered in another Member State.⁵⁷²

Contrary to the Dublin III Regulation, the law does not mention that the detention should be as short as possible. Furthermore, when a transfer decision is being appealed through an extremely urgent necessity procedure, the detention period starts again. This means that a new period of six weeks will start after the rejection of the appeal in the extremely urgent necessity procedure.

When detained at the border, asylum seekers generally spent more time in detention than other migrants in detention. Since 2018, asylum seekers are admitted to the territory if the CGRS has not taken a decision within four weeks, or when the CGRS decides that further investigation is necessary.⁵⁷³ However, being admitted to the territory does not automatically mean that the asylum seeker will be set free. As shown in practice, the Immigration Office can take a new detention decision based on one of the grounds set out in article 74/6(1), which regulates detention on the territory.

⁵⁶⁸ Myria, 'Myriadoc 8: Retour, détention et éloignement', December 2018, available in French at: <https://bit.ly/2FPAo6t>, 45.

⁵⁶⁹ Caritas, Ciré, JRS Belgium, Plateforme Mineurs en Exil, Point d'appui and Vluchtelingenwerk Vlaanderen, *Vulnerabilité et Détention en Centres Fermés*, October 2019, available in French at : <https://bit.ly/2Guh7ps>.

⁵⁷⁰ Articles 74/5 and 74/6 Aliens Act.

⁵⁷¹ Ibid.

⁵⁷² Before this legal amendment, these decisions could not be delegated by the minister to a staff member of the Immigration Office.

⁵⁷³ Article 74/5(4)(4) and (5) Aliens Act, as amended by the Law of 21 November 2017.

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 42 hours in 2020.⁵⁷⁴

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.⁵⁷⁵ The Criminal Procedures Act, as well as the Aliens Act, provide for a strict separation of persons illegally entering or residing on the territory and criminal offenders or suspects.⁵⁷⁶ Asylum seekers can be detained with other third-country nationals and the same assistance is given to them as to irregular migrants in detention centres. However, in practice, some people who find themselves in prison as a result of criminal charges have also applied for international protection. After completing their sentence/or upon early release they can thus be transferred to a closed detention centre, if legal conditions are met.

1.1. Closed centres

The following table gives an overview of the detention centres and their respective capacity⁵⁷⁷:

Detention centre	Capacity
127 bis (Steenokkerzeel)	29
Caricole	96
Centrum voor 'illegalen' Brugge (CIB)	9
Centrum voor 'illegalen' Merksplas (CIM)	23
Centrum voor 'illegalen' Vottem (CIV)	30
Gesloten Gezinsunits bij 127bis	0

Since 2017, the government has been steadily increasing the number of places in existing detention facilities. In 2019, the open reception centre (**Holsbeek**) has been turned into a closed centre for women. Two additional detention centres will be established in **Zandvliet** and **Jumet**. These plans will bring Belgium's detention capacity to 1,066 places by the end of the current legislation in 2024.

1.2. Return houses

As regards families with children, the family or housing units in the return homes are individual houses or apartments that are provided for a temporary stay. When they are being transferred from the border, these persons are legally speaking not considered to have entered the territory. In practice however, although

⁵⁷⁴ 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.

⁵⁷⁵ Article 4 Royal Decree on Closed Centres, referring to Articles 74/5 and 74/6 Aliens Act.

⁵⁷⁶ 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.

⁵⁷⁷ Information provided by the Immigration Office, January 2021; concerns the situation at the end of 2020.

they are detained, these families enjoy a certain liberty of movement, under the control of a so-called “return coach”.⁵⁷⁸ Children are able to go to school and adults can go out if they get permission to do so.⁵⁷⁹

In 2020, there were 5 sites with 32 housing units with a capacity of 169 persons spread over the communes of **Zulte, Tielt, Tubize, Sint-Gillis-Waas** and **Beauvechain**. A total of 178 persons resided in the housing units throughout that year, compared to 497 persons in 2019. Out of the 178 persons in 2020, 73 were adults and 105 were children. Moreover, 41 families were released in 2020.⁵⁸⁰

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

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

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

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

The 2002 Royal Decree on Closed Centres provides for the legal regime and internal organisational guidelines. The closed centres are managed by the Immigration Office, not by Fedasil as are the open reception centres. The “Transit Group”, a group of several Belgian human rights organisations, released a report on the state of closed centres for administrative detention in Belgium. Caritas, Vluchtelingenwerk Vlaanderen, Ciré and others worked together to produce this report, which is the first of its kind in 10 years.⁵⁸¹ In 2019 the same group also published a report focusing on vulnerability in detention.⁵⁸² It does not concern the detention conditions as such but addresses certain relevant topics such as the profiles of the detainees, the legality control on detention, the right to family life etc.

2.1. Overall conditions

The most essential basic rights of the asylum seeker are guaranteed by the Royal Decree on Closed Centres, including its amendment by the Royal Decree of 7 October 2014 which has established a complaints mechanism. The managing director of the centre has broad competences to limit or even refuse the execution of most of these rights if he or she deems this necessary for the public order or safety, to prevent criminal acts or to protect the health, morality or the rights of others. A whole range of measures of internal order, disciplinary measures, measures of coercion and body search can be imposed by the managing director of the centre, and in some case by other staff members.⁵⁸³ The Immigration Office organises training for the security personnel at the detention centres on the use of coercion, as provided for by law.⁵⁸⁴ 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

⁵⁷⁸ 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.

⁵⁷⁹ Royal Decree on Closed Centres, amended in October 2014.

⁵⁸⁰ Information provided by the Immigration Office, January 2021.

⁵⁸¹ Vluchtelingenwerk Vlaanderen *et al.*, *Closed centres for foreigners in Belgium*, January 2017, available in French at: <http://bit.ly/2k3PIQD> and in Dutch at: <http://bit.ly/2klkWRy>.

⁵⁸² Caritas, Ciré, JRS Belgium, Plateforme Mineurs en Exil, Point d'appui and Vluchtelingenwerk Vlaanderen, *Vulnerabilité et Détention en Centres Fermés*, October 2019, available in French at : <https://bit.ly/3aaUHGg>.

⁵⁸³ Articles 85-111/4 Royal Decree on Closed Centres.

⁵⁸⁴ Article 74/8 Aliens Act and Royal Decree on the Use of Coercion for Security Personnel.

instructor. Also, training sessions on dealing with aggression and on intercultural communication are organised.

The Royal Decree on Closed Centres characterises daily life in the closed centres as being collective during daytime. Detention facilities have separated rooms or wings for families and single women, including at the border. Women and men are separated in the sleeping and sanitary facilities and only assisted by staff members from the same sex.⁵⁸⁵ 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”.

3 meals a day are provided, special diets can be delivered on medical prescription, pork meat is never to be served and alcohol is prohibited.⁵⁸⁶ The asylum seekers get the opportunity to wash themselves on a daily basis and toiletries are at their disposal free of charge.⁵⁸⁷ 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.⁵⁸⁸

In practice, conditions vary from one centre to another. The new Government has announced the replacement of the centre in Bruges, as the condition of the current centre is deemed ‘very bad’.⁵⁸⁹

During the initial phase of the covid-19 pandemic in March 2020, the group regime in the closed centres, together with the shutting down of most international traffic, gave rise to the adoption of drastic measures by the Immigration Office. First and foremost, between 13 March 2020 and 10 April 2020, a large number of detainees were released in order to better organise social distancing within the facilities. The Federal Migration Centre, Myria, ascertained that only after this initial phase, the necessary stocks of protective equipment was stocked up, which caused additional stress to those people that remained detained.⁵⁹⁰ Myria researched the living conditions in the detention centres after it had received complaints from people in detention. During its visits in the centres of Merksplas, Brugge and Vottem between 10 April and 14 May 2020, Myria also observed that the medical facilities were not always adequate (a fortiori when isolation-cells were used to organise medical isolation), access to telecommunication for detainees is not always adequate and the internal procedures varied between the different centres.⁵⁹¹

By the end of 2020 the closed centre of Bruges faced a covid-19 outbreak after which the detainees were moved to a different centre.

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.⁵⁹²

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.⁵⁹³

⁵⁸⁵ Article 83 Royal Decree on Closed Centres.

⁵⁸⁶ Articles 79-80 Royal Decree on Closed Centres.

⁵⁸⁷ Article 78 Royal Decree on Closed Centres.

⁵⁸⁸ Article 76 Royal Decree on Closed Centres.

⁵⁸⁹ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French, available at : <https://bit.ly/3sJdgMd>, p. 34.

⁵⁹⁰ 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*, p. 12, available in Dutch at: <https://bit.ly/2Ye1J9y> , p. 12

⁵⁹¹ 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*, p. 12, available in Dutch at: <https://bit.ly/2Ye1J9y> , p. 12

⁵⁹² Article 82 Royal Decree on Closed Centres.

⁵⁹³ Articles 46-50 Royal Decree on Closed Centres.

The asylum seeker has an unlimited right to entertain correspondence during the day. Writing paper is provided in the centre, as is assistance with reading and writing by staff members.⁵⁹⁴ 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.⁵⁹⁵ Calls can be made at the asylum seekers' own expenses during daytime to an unlimited extent.⁵⁹⁶

The social service of the centre has to organise sport, cultural and recreational activities.⁵⁹⁷ Every centre has a library at the disposal of the inhabitants and newspapers and other publication can be purchased at their own expense.⁵⁹⁸

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.⁵⁹⁹ The doctor attached to the centre can decide that a person has to be transferred to a specialised medical centre.⁶⁰⁰ 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.⁶⁰¹ At the same time, the quality of the health care available depends a lot on the medical infrastructure and individual doctor in the centre; in some cases it might even be better than the one dispensed at some open reception centres.

When the medical doctor finds a person not suited for detention or forced removal because it could damage his or her mental or physical health, the managing director of the centre has to transfer these observations to the Director-General of the 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.⁶⁰² After every failed attempt of removal, the doctor has to examine the person concerned.⁶⁰³ There have been no reports of the way this is applied in practice to date. No other procedures to identify other vulnerable individuals in detention is provided for by law.

Following Belgium's conviction by the ECtHR in its *Paposhvili* judgment,⁶⁰⁴ 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.⁶⁰⁵

This new informal procedure foresees that, for each newcomer to a detention centre, the centre's doctor fills out a medical certificate stating whether or not the person concerned suffers from an illness that could subject him/her to a risk of inhuman or degrading treatment in the context of return (which is contrary to Article 3 of the ECHR), or if additional medical examinations have to be carried out to determine this. If

⁵⁹⁴ Articles 19, 22 and 23 Royal Decree on Closed Centres.

⁵⁹⁵ Articles 20-21/2 Royal Decree on Closed Centres.

⁵⁹⁶ Article 24 Royal Decree on Closed Centres.

⁵⁹⁷ Articles 69-70 Royal Decree on Closed Centres.

⁵⁹⁸ Articles 71-72 Royal Decree on Closed Centres.

⁵⁹⁹ Article 53 Royal Decree on Closed Centres.

⁶⁰⁰ Article 54-56 Royal Decree on Closed Centres.

⁶⁰¹ 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.

⁶⁰² Article 61 Royal Decree on Closed Centres.

⁶⁰³ Article 61/1 Royal Decree on Closed Centres.

⁶⁰⁴ ECtHR, *Paposhvili v. Belgium*, Application no. 41738/10, 13 December 2016.

⁶⁰⁵ Myriadoc, *Terugkeer, detentie en verwijdering van vreemdelingen in België*, December 2018, available in Dutch: <https://bit.ly/2S3ooBM>, 30.

such a risk is identified by the doctor, a second examination will be conducted. The medical certificate is binding for the central service of the Immigration Office (MedCOI) which must ensure that the recommended treatments are available and accessible in the country of return. If this is the case, return will be carried out. If this is not the case, the person concerned can appeal to the 'special needs' programme or be released. In 2017, several information requests were addressed to the MedCOI service in this regard, which led to the release of three persons.⁶⁰⁶

In 2017, 156 applications were made under this new 'special needs' procedure. Out of them, five persons were admitted to psychiatric care before return; 49 persons were provided medical treatment and medicine; two cases required a follow-up during the return procedure, and 59 cases required the provision of re-integration support upon return. The total number of repatriations of persons with 'special needs' amounted to 76 in 2017.⁶⁰⁷

Finally, the Royal Decree of 9 April 2007 on OOC regulates the functioning of the OOC for unaccompanied children. Specific measures are adopted to protect and accompany the children. During their stay of maximum 15 days, their contacts are subject to special surveillance. During the first 7 days of their stay, they are not allowed to have any contact with the outside world other than with their lawyer and their guardian. The modalities of the visits, outside activities, telephone conversation and correspondence are strictly determined in the house rules. When a child is absent for more than 24 hours or where vulnerable children (i.e. aged below 13 years, children with psychological problems or victims of human trafficking) are absent without informing the staff, the police and the guardian or the Guardianship Service are alerted.⁶⁰⁸

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.⁶⁰⁹

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.⁶¹⁰

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.⁶¹¹ Access is granted to UNHCR, the Children's Rights Commissioner, Myria and to supranational human rights institutions.⁶¹² NGOs need to get the approval from the Immigration Office's managing director in advance to get access to the detention

⁶⁰⁶ Ibid.

⁶⁰⁷ Interim report by the commission for the evaluation of the policies concerning voluntary and forced returns of foreign nationals, 22 February 2019, available in Dutch at: <https://bit.ly/2WCijN9>, 84

⁶⁰⁸ Articles 10 and 11 Royal Decree on OOC.

⁶⁰⁹ Ciré, *Vulnerabilité et détention en centre fermé*, October 2019, available in French at : <https://bit.ly/2J6ucGR>.

⁶¹⁰ 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*, p. 12, available in Dutch at: <https://bit.ly/2Ye1J9y> .

⁶¹¹ Article 64 Royal Decree on Closed Centres.

⁶¹² Article 44 Royal Decree on Closed Centres.

centres.⁶¹³ 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. 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.⁶¹⁴ 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.⁶¹⁵

From 13 March 2020 until 15 July 2020, due to the covid-19 pandemic, visits from NGO's and other instances were suspended. In April 2020 Myria was authorised to reprise their visits. Individual parliamentarians could continue their visits to the centre during this period, yet were denied access to the common area's and detainees.⁶¹⁶

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.⁶¹⁷ 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.⁶¹⁸ 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.⁶¹⁹ At the time of writing (March 2021), family visits are somewhat restricted because of the Covid-19 sanitary measures. All detained asylum seekers have the right to a visit by one adult person a week, minors can accompany an adult when visiting. The visit takes place behind a screen and while wearing masks, touching each other is strictly prohibited.

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. 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.

National legislation does provide for judicial review of the lawfulness of detention. No habeas corpus writ is automatically brought before a judge when an asylum seeker is being detained, but he or she can lodge a request to be released with the Council Chamber of the Criminal Court every month.⁶²⁰ The Council Chamber has to decide within 5 working days, and if this time limit is not respected, the asylum seeker

⁶¹³ Article 45 Royal Decree on Closed Centres.

⁶¹⁴ Articles 33, 42 and 43 Royal Decree on Closed Centres.

⁶¹⁵ Articles 37 and 40 Royal Decree on Closed Centres.

⁶¹⁶ Internal memo of the Immigration Office dated April 22, 2020. For example, in terms of external visits, that memo states that to "staff, companies and external suppliers, embassies, consulates, lawyers, interpreters..., the Complaints Commission, the Federal Ombudsman, Myria" will be granted access.

⁶¹⁷ Article 34 Royal Decree on Closed Centres.

⁶¹⁸ Article 36 Royal Decree on Closed Centres.

⁶¹⁹ Articles 29-30 Royal Decree on Closed Centres.

⁶²⁰ Article 71 Aliens Act.

has to be released from detention.⁶²¹ An appeal can be lodged against the decision of the Council Chamber before the Indictment Chamber at the Court of Appeal (*Chambre des mises en accusation / Kamer van Inbeschuldigingstelling*) within 24 hours. Against this final decision, a purely judicial appeal can be introduced in front of the Court of Cassation.

When the Immigration Office decides to prolong the detention for another month after the applicant has spent already 4 months in detention, an automatic review by the Council Chamber of the Criminal Court takes place.⁶²²

The scope of judicial review of detention remains very restrictive. Only the legality of the detention can be examined, not its appropriateness nor its proportionality. This means that only the accuracy of the factual motives of the detention order can be scrutinised i.e. whether the reasons for detention are based on manifest misinterpretations or factual errors or not. The logic behind this is that the competence to decide on the removal of the foreigner, and as such on the appropriate measures to execute such a decision, lays with the Immigration Office and the CALL, not with the criminal courts. However, an appeal against a “*refoulement* decision” issued when applying for asylum at the border by the CALL will only be done once the execution becomes imminent, which is only the case once the asylum application has been refused (see [Border Procedure](#)).

The scope of the judicial review on the legality of detention measures is almost arbitrary and the Court of Cassation is ambiguous about the interpretation of such legality in its own jurisprudence, by including assessments of conformity of detention with the Return Directive or the ECHR, following the ECtHR’s ruling in *Saadi v. United Kingdom*.⁶²³ 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.⁶²⁴ The law that entered into force on 22 March 2018 states that an asylum seeker can be detained if no other less coercive alternative measures can be applied and if it is deemed necessary based on an individual assessment. These less coercive measures have not yet been listed by way of Royal Decree. This recent reform remains to be evaluated in practice.

The procedure before the courts is determined in the Law on the Provisional Custody that applies in criminal law proceedings.⁶²⁵ In practice, the time limits set in the law are respected, unless an appeal at the Court of Cassation is introduced against a judgment ordering release by the Court of Appeal. Since this cassation appeal suspends the detention period and it is not commonly treated within a reasonable time period, the detention period can exceed the legal maximum and result in the asylum seeker remaining in detention for prolonged periods. This practice has repeatedly been found by the ECtHR to be a violation of Article 5(4) ECHR.⁶²⁶

The policy note of the new 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.*”⁶²⁷

⁶²¹ Article 72 Aliens Act.

⁶²² Article 74 Aliens Act.

⁶²³ ECtHR, *Saadi v. United Kingdom*, Application No 13229/03, Judgment of 29 January 2008.

⁶²⁴ See for examples of jurisprudence and more on this issue, BCHV-CBAR, *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen*, January 2012.

⁶²⁵ Law of 20 July 1990 concerning pre-trial detention, available in French at: <http://bit.ly/1B626nE> and Dutch at: <http://bit.ly/1KpjZzR>.

⁶²⁶ ECtHR, *Firoz Muneer v. Belgium*; *M.D. v. Belgium*.

⁶²⁷ Chamber of Representatives, *Policy Note on asylum and migration*, 4 November 2020, available in Dutch and French at: <https://bit.ly/3sJdgMd>, p. 35.

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 to not have financial means to pay for legal assistance (see section on [Regular Procedure: Legal Assistance](#)). The Royal Decree on Closed Centres also explicitly guarantees legal assistance for every resident of a closed centre and free and uninterrupted contact between him or her and his or her lawyer.⁶²⁸

In the closed centres in **Vottem and Bruges**, a judicial permanence is organised by the bureau for legal assistance of the bar association. Their service is mainly limited to assigning a “pro-Deo” lawyer who is not present but has to ensure free legal assistance. The other centres have no first line legal assistance service and the assignment of a lawyer depends entirely on the social services in the centre.⁶²⁹ The “Transit group” coordinates a system of regular visitors that monitors migrants entering detention, provides them with free first line advice and refers them to an NGO for more specialised assistance if necessary.

In practice, asylum seekers are often referred to inexperienced lawyers. Even if some bar associations, like the Brussels one, use short lists of lawyers that have expressed interest in assisting detained asylum seekers, these lists do not have specific qualification requirements. The system organised by the law does not offer sufficient means to enable lawyers to specialise themselves in migration and asylum law. Due to recent changes in the way pro-deo lawyers are remunerated, a decline in the number of beneficiaries of legal assistance by experienced lawyers had been noticed. There is a structural shortage of qualified legal aid.

A report of December 2016 from the “Transit Group” shows that access to quality legal aid remains difficult. It reiterated that access to quality legal aid remains one of the basic principles that should be respected.⁶³⁰ The concerns about the variable quality of legal aid in closed centres were reiterated in 2019 in a report published by UNHCR.⁶³¹

E. Differential treatment of specific nationalities in detention

In 2018, the Secretary of State for Asylum and Migration announced that finding a solution for migrants in transit was one of his top priorities. This resulted in an increase of detention for so-called ‘migrants in transit’. The Secretary of state presented a nine-point plan of action, which later became a 10-point plan of action. The main purpose was to fight migrant smuggling and to discourage migrants from passing through Belgium. This resulted in regular police actions during which migrants residing near Brussels North station were apprehended and transferred to a detention centre. Médecins du Monde published a report documenting police violence against these migrants.⁶³² The reception capacity of the 127bis detention centre was extended to that end. Many of the concerned migrants, especially Eritreans, seemed

⁶²⁸ Articles 62 and 63 Royal Decree on Closed centres.

⁶²⁹ UNHCR Belgium, *Juridische Begeleiding van verzoekers om internationale bescherming in België*, September 2019, available in Dutch at: <https://bit.ly/38NjQWZ>, 25 and 43.

⁶³⁰ The full report can be consulted in French at: <http://bit.ly/2k3PIQD>, or in Dutch at: <http://bit.ly/2kkWRY>.

⁶³¹ UNHCR Belgium, *Juridische Begeleiding van verzoekers om internationale bescherming in België*, September 2019, available in Dutch at: <https://bit.ly/38NjQWZ>, 38.

⁶³² Médecins du Monde, “Violences policières envers les migrants et les réfugiés en transit en Belgique”, available in French at: <https://bit.ly/2Wm3GhR>.

to have protection needs, but had been fingerprinted in another Member State in which they had already applied for asylum.⁶³³ In 2019 these measures were continued and in practice the capacity of the 127bis detention centre (and to a large extent of the detention centre in **Bruges**) was still dedicated to this specific target-group.

Because of the covid-19 sanitary measures, the detention of migrants in transit was no priority throughout 2020 since the available detention capacity was limited.⁶³⁴ However, the new Secretary of State has ordered the opening of more confinement places in the detention centres in order to be able to detain more migrants without residence permit.⁶³⁵

⁶³³ Vluchtelingenwerk Vlaanderen, "Migranten op doortocht in België – aanbevelingen voor een meer menselijke aanpak", January 2019, available in Dutch at: <https://bit.ly/2TjA5I7>.

⁶³⁴ HLN, *Transport company finds illegal migrants in shipping container, police immediately releases them: "Apparently, they could not be detained"*, 17 April 2020, available in Dutch at: <http://bit.ly/3rB9Fid>

⁶³⁵ HLN, *Increase of confinement places in detention centres*, 22 February 2021, available in Dutch at: <http://bit.ly/3qAtlvU>

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.⁶³⁶ 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.⁶³⁷ 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.⁶³⁸ 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.⁶³⁹

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”.⁶⁴⁰

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.

⁶³⁶ Article 49 Aliens Act.

⁶³⁷ Article 76 Aliens Decree.

⁶³⁸ Article 49/2(2)(3) Aliens Act.

⁶³⁹ Article 77 Aliens Decree.

⁶⁴⁰ 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.⁶⁴¹

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](#),

⁶⁴¹ 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.⁶⁴² 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 2020: N/a

The criteria and conditions for obtaining long-term resident status are laid down in Chapter IV of the Aliens Act, which refers to the Long-Term Residence Directive.⁶⁴³ Some modalities can be found in the Aliens Decree.

Refugees and subsidiary protection beneficiaries are included in the scope of the Long-Term Residence Directive since 2011 and thus circumvent the first condition of being a third-country national. Other conditions to be cumulatively fulfilled are that the person concerned has to have:

- ❖ Stayed legally and continuously within Belgium for 5 years immediately prior to the submission of the relevant application;
- ❖ Stable and regular resources which are sufficient to maintain himself/herself and the members of his or her family, without recourse to the social assistance system of the Member State concerned. For 2020 the required amount was set at 862 € per month, plus 288 € per dependent person.⁶⁴⁴
- ❖ 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.⁶⁴⁵ The municipal authorities confirm this by issuing a certificate of receipt (“Annex 16-bis”).⁶⁴⁶ The municipal authorities afterwards transfer the request to the Immigration Office, which takes a decision within 5 months. In the event of a positive decision, or the absence of a decision after 5 months, the applicant will be included in the civil register and receive an electronic D-card with a validity of 5 years and the mention “EC – long-term resident”. In addition to this the mention “international protection granted by Belgium on [date]” is written on the residence permit for

⁶⁴² Article 5 Belgian Nationality Code.

⁶⁴³ 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.

⁶⁴⁴ More info available at: <http://bit.ly/2jAyqvU>.

⁶⁴⁵ Article 29(1) Aliens Decree.

⁶⁴⁶ Article 29(2) Aliens Decree.

long-term residents.⁶⁴⁷ The duration of validity of long-term residence status is unlimited, contrary to the residence card D itself.⁶⁴⁸

In the event of a refusal, the municipal authorities will notify the applicant with a so-called Annex 17.⁶⁴⁹ Against this decision an appeal procedure is available. The possibilities for appeal are listed on the refusal document and are listed in Article 39/82 and 39/2(2) of the Aliens Act.

Article 18(3) of the Aliens Act holds the exception that in case the protection status a beneficiary of international protection is revoked on the basis of Article 55/3/1(2) or 55/5/1(2) Aliens Act, the Minister or his delegate hold the right to revoke the long-term residence status. Should this be the intent of the Minister or his delegate, several things such as the family bonds, the duration of stay in Belgium and the family, cultural and social ties to the country of origin have to be taken into account.

4. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	5 years
2. Number of citizenship grants to aliens in 2019:	40,588

There are multiple systems for acquiring the Belgian nationality available for aliens. The main system is named “declaration of nationality”, whereas an exceptional system named “naturalisation” is also available for certain categories of aliens.

In 2019, 40,588 aliens were granted citizenship.⁶⁵⁰

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:⁶⁵¹

- ❖ The applicant has to be 18 years or older;
- ❖ The applicant has to stay legally in Belgium;
- ❖ The applicant must have achieved great things which shed a favourable light on the Kingdom of Belgium.

This achievement (i.e. *honoris causa*) can be either scientific, sportive or cultural and social. Since the Law of 4 December 2012 amending the Code of Belgian Nationality, this possibility is not available anymore for recognised refugees or beneficiaries of subsidiary protection.⁶⁵² Legal stay implies a right to residence of unlimited duration.⁶⁵³

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.⁶⁵⁴

⁶⁴⁷ Article 30(2) Aliens Decree.

⁶⁴⁸ Article 18(1) Aliens Act.

⁶⁴⁹ Article 30(1) Aliens Decree.

⁶⁵⁰ Myria, Annual Report 2019, available in French at: <https://bit.ly/2RCjUC7>, Chapter nationality, 108.

⁶⁵¹ Article 19 Code of Belgian Nationality and Circular of 8 March 2013, published on 14 March 2013.

⁶⁵² 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.

⁶⁵³ Article 7-bis(2)(1) Code of Belgian Nationality.

⁶⁵⁴ Article 19(2) Code of Belgian Nationality.

4.2. Declaration of nationality

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

- ❖ 5 years of legal stay and integration;⁶⁵⁵
- ❖ 10 years of legal stay.⁶⁵⁶

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.⁶⁵⁷ Since July 2018 the duration of the asylum procedure leading to the recognition of refugee status (for recognised refugees) are again taken into account when calculating the length of legal residence (5 or 10 years) preceding the declaration of nationality.

The Code of Belgian Nationality provides for several options in order to prove social integration, such as having completed vocational training of 400 hours, having followed successfully an integration course, having been employed or working as an entrepreneur for 5 years or having obtained a degree. The language requirement is automatically fulfilled if integration is proved. Documents that prove sufficient knowledge of the national languages are listed in Article 1 of the Royal Decree 2013.⁶⁵⁸ 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.⁶⁵⁹ *In casu* a woman unable to speak any of the three national languages, was able to provide the document referred to in Article 1(5)(a) of the Royal Decree, which led to the conclusion that she satisfied the language condition. The court thus confirmed that the Belgian legislator opted for a documentary system and is not allowed to test the language condition in a conversation.

Economical participation can be proven by either having worked as an employee for 468 days during the past 5 years, or by having paid social contribution during at least 6 quarters in the past 5 years as an entrepreneur. The duration of either obtaining a degree or completing vocational training, as mentioned in the social integration condition can be subtracted from the 468 days or 6 quarters. Examples of this subtraction are provided in the circular March 2013.⁶⁶⁰ Specific details on the documents available to prove social integration, knowledge of languages and economic participation are provided for in the March 2013 Circular.⁶⁶¹

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

⁶⁵⁵ Article 12-bis(1)(2) Code of Belgian Nationality.

⁶⁵⁶ Article 12-bis(2)(5) Code of Belgian Nationality.

⁶⁵⁷ Article 7-bis(2)(1) Code of Belgian Nationality.

⁶⁵⁸ 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.

⁶⁵⁹ Court of Appeal Ghent, 2014/AR/1095, 24 December 2015.

⁶⁶⁰ 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).

⁶⁶¹ Circular of 8 March 2013, para IV A(1)(1.2).

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.⁶⁶² The circular also specifies that participation to life in the receiving society can be proven by any means. Some indications mentioned in the circular are school attendance, vocational training and participation in associations.

Procedure

The details of the procedure are laid down in Article 15 of the Code of Belgian Nationality. For each of these possibilities a registration fee of 150 € has to be paid. Proof of payment of the registration fee is an essential condition for the treatment of a file. After completing the payment, the applicant has to make the actual declaration at the municipal services of his/her current place of residence. The civil servant will issue a document proving that the applicant has made the declaration. Within 30 days of the making of the declaration, the civil servant has to check the file for incompleteness and if so, the civil servant flags the missing documents and gives the applicant 2 months' time to complete the file. If the file is complete, the civil servant issues a certificate of receipt within 35 days of the declaration. If the file was previously incomplete, the civil servant only has 15 days to issue the certificate of receipt after the 2 months of extra time given to the applicant. In the event that the file would still be incomplete, the civil servant issues a document within 15 days stating that the application is inadmissible.

If the file is complete, the civil servant has 5 days to send the file to the prosecutor of the first instance courts, the Immigration Office and National Security. The prosecutor of the court of first instance has to notify the civil servant of receipt promptly. The prosecutor has 4 months after the issuance of the certificate of receipt to issue a binding advice on the declaration of nationality. Several situations can occur at this stage:

- ❖ **The prosecutor does not respond at all:** In the case where the court does not even issue a certificate of receipt it is expected that the file did not arrive at the court, which leads to an automatic dismissal of the declaration of nationality. The applicant can appeal this by sending a registered letter to the civil servant asking that the file be resent to the court of first instance.
- ❖ **The prosecutor issues a certificate of receipt but does not issue an opinion:** The declaration is automatically accepted. The civil servant will notify the applicant and register the applicant. The applicant is a Belgian citizen from the day of registration.
- ❖ **The prosecutor does not stand against the declaration:** If the prosecutor does not stand against the declaration the civil servant notifies and registers the applicant. The applicant is a Belgian citizen from the day of registration.
- ❖ **The prosecutor stands against the declaration:** If the prosecutor stands against the declaration it issues a registered letter to the civil servant and the applicant. The applicant can appeal this decision by sending a registered letter to the civil servant asking that the file be resent to the court of first instance.

In the two situations where the applicant can appeal to the court of first instance, the applicant has 15 days, starting from receiving the negative advice or the notification of the civil servant, to demand the civil servant to transfer the case to the court of first instance. The judge in the court of first instance will have to make a motivated decision on the negative advice and will hear the applicant. The registry of the court of first instance will notify the applicant of the decision.

⁶⁶² Circular of 8 March 2013, para IV A(1)(1.1)(4).

A second appeal is available with the court of appeal for both the applicant and the prosecutor. The time limit is again 15 days. The procedure however is expensive and can take a long time. The court will rule after advice from the general prosecutor and the applicant will be heard. In the event of a positive decision the prosecutor will send the outcome to the civil servant. The civil servant will subsequently notify and register the applicant. The applicant is a Belgian citizen from the day of registration. In the event of a negative outcome, the procedure ends there.

Both appeal possibilities come with an additional registration fee of 100 €. This used to be only 60 € but a legislative change in 2015 increased the fee.⁶⁶³

5. Cessation and review of protection status⁶⁶⁴

Indicators: Cessation	
1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3. Do beneficiaries 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

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

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

From 2016 to 2018, the Immigration Office sent a request to the CGRS⁶⁶⁵:

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

For 2019 and 2020 no similar statistics were made available.

⁶⁶³ Law of 28 April 2015 changing registration, mortgage and registrar fees in order to reform registrar rights, 26 May 2015, 2015003178.

⁶⁶⁴ 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.

⁶⁶⁵ EMN, Beneficiaries of international protection travelling to their country of origin challenges, policies and practices in Belgium, July 2019, available at: <https://bit.ly/2NIHhbP>, 42 and 55.

The grounds for cessation of **refugee status** are laid down in Article 55/3 of the Aliens Act. The article refers to the situations in Article 1C of the 1951 Convention.

If a refugee falls under Article 1C(5) or 1C(6), the authorities have to check whether the change in circumstances in connection with which the refugee has been recognised is sufficiently significant and of a non-temporary nature. During the 5-year period of temporary residence granted to recognised refugees, the Immigration Office can ask the CGRS to cease refugee status on the basis of actions that fall under Article 1C of the Refugee Convention.⁶⁶⁶ The CGRS can also decide this *ex officio*. There is no time limit in this situation. The possibility of cessation of the refugee status was included in the Aliens Act after a legislative amendment in 2016.⁶⁶⁷ 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.⁶⁶⁸

As mentioned above, travelling back to the country of origin can lead to the cessation of the refugee status. The government strongly focuses on the control of refugees who travel to their country of origin. For this purpose, it has created a procedure to detect such travellers together with the Federal Police at the airport. Belgium has also concluded agreements with a number of neighbouring countries, such as the Netherlands and Germany, in order to exchange information about the travel behaviours of refugees to their country of origin.⁶⁶⁹ 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.⁶⁷⁰ A main finding was that the UNHCR Handbook is being used, but there are no formal internal guidelines with criteria. Determination is done on a case-by-case basis. However, there is internal supervision and support by the central legal service of the CGRS on such cases. The study gives an overview of the main considerations and criteria the CGRS uses to make a decision: amongst others, this is the length of the stay, the frequency of the traveling, the time span between the travel and the granting of the protection status and the circumstances during the stay.

Moreover, contacting the authorities of the country of origin – e.g. consulates, embassies, or other official representations of the country of origin - as a refugee can lead to the cessation of the refugee status. This is not explicitly foreseen in law (similarly to the fact of traveling to the country of origin), but in practice it can be considered as a change in personal circumstances and/or a re-availment of the protection from the authorities of the country of origin.⁶⁷¹ 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.⁶⁷²

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.⁶⁷³

⁶⁶⁶ Article 49(1) Aliens Act.

⁶⁶⁷ Article 49(2) Aliens Act.

⁶⁶⁸ Article 11(3)(1) Aliens Act.

⁶⁶⁹ Commissie voor de Binnenlandse Zaken, de Algemene Zaken en het Openbaar Ambt, Integraal verslag, 5 December 2017, 13, CRIV 54 COM 774.

⁶⁷⁰ 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>.

⁶⁷¹ See also Article of the 1951 Convention.

⁶⁷² 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.

⁶⁷³ CALL, 24 February 2017, No 182.917; CALL, 13 September 2017, No 191.961; CALL 13 September 2017, No 191.956.

In relation to individual conduct, the CGRS has stated that, in principle, cessation is not inferred from the sole fact that a beneficiary contacts his or her embassy, when subsidiary protection is granted on the basis of Article 15(c) of the recast Qualification Directive.⁶⁷⁴ However, in the case of subsidiary protection, travelling or even returning to the country of origin may also lead to the cessation of the protection status, as it could imply that the circumstances and the overall situation have evolved positively there. A return to the country of origin can also indicate that there are flight alternatives and therefore lead to the removal of the subsidiary protection status. In fact, the CALL confirmed the cessation of the subsidiary protection of an Afghan national who turned back to Kabul for two months right after having received its status. The fact that he turned back demonstrated that there were flight opportunities that were safe and that the overall circumstances, on which the protection was granted, changed.⁶⁷⁵

Cessation of status is possible during the 5 years of temporary residence as provided for in Article 49/2 of the Aliens Act.⁶⁷⁶ 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.⁶⁷⁷ 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.⁶⁷⁸

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.⁶⁷⁹ 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.⁶⁸⁰

In 2020, the CGRS took 85 cessation decisions.⁶⁸¹ In 50 cases it concerned the cessation of the refugee status: Russian Federation (14), Undetermined (12), Iraq (10), Montenegro (8), Afghanistan (3), Serbia (3). In 35 cases, it concerned the cessation of subsidiary protection: Iraq (18), Afghanistan (14), Armenia (1) and the Central African Republic (1).

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

⁶⁷⁴ Myria, *Contact meeting*, 22 November 2017, para 23.

⁶⁷⁵ CALL, 27 October 2017, No 194.465.

⁶⁷⁶ Article 49/2(3) Aliens Act.

⁶⁷⁷ Article 11(3)(1) Aliens Act.

⁶⁷⁸ Article 35/2 Royal Decree on CGRS Procedure.

⁶⁷⁹ Article 11(3)(1) Aliens Act.

⁶⁸⁰ Myria, *Contact meeting*, 20 September 2017, para 22.

⁶⁸¹ Information provided by the CGRS, February 2020.

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.

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.⁶⁸² The exclusion clause refers to Articles 1 D, E and F of the 1951 Convention.⁶⁸³

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.⁶⁸⁴

There is an active exchange of information between the various government agencies. For example, the exchange of information about an application for family reunification of family members in the country of origin may lead to a withdrawal of the refugee status of an LGBTI person, if after a re-examination it is established that it is no longer possible to consider the applicant's statements on his or her the sexual orientation credible. The protection status can also be withdrawn after receiving new element, as was the case in 2019 for a couple that had presented an Iraqi passport to the municipality (in the context of a procedure to acquire Belgian nationality) which had not been presented to the CGRS and contained elements contrary to the claims made during the asylum procedure. Moreover, the stamps in the passport showed that the couple had travelled back to Iraq for almost two months. Based on these new elements, and the lack of credible explanations by the couple, the CGRS could conclude they came from another region than the one that they had claimed, and therefore the need for protection had wrongly been examined in regard to the other region. The CALL thus confirmed both the lack of a protection need and the withdrawal of the subsidiary protection status which had been granted based on false declarations.⁶⁸⁵

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.⁶⁸⁶ This ground for revocation was added in 2015 and is not limited in time.⁶⁸⁷ 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.⁶⁸⁸

⁶⁸² Article 55/3/1(2) Aliens Act.

⁶⁸³ Article 55/2 Aliens Act.

⁶⁸⁴ CALL, 11 March 2016, No 163942.

⁶⁸⁵ CALL, 27 February 2019, Decision No 217584.

⁶⁸⁶ Article 55/3/1(1) in conjunction with Article 49(2) Aliens Act.

⁶⁸⁷ 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.

⁶⁸⁸ Myria, *Contact meeting*, 20 September 2017, para 24.

The Immigration Office sends the CGRS every element that could justify a revocation of the refugee status on the basis of Article 55/3/1 Aliens Act. The CGRS will take a decision within 60 days and inform the Immigration Office of the outcome. However, this time limit is not enforceable and not respected in practice. In the event of a revocation of refugee status on the grounds of Article 55/3/1(1) or 55/3/1(2)(2) 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.⁶⁸⁹ This ground for revocation was only included in 2015 and is not limited in time.⁶⁹⁰

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.⁶⁹¹ The subsidiary protection status can also be revoked any time when the beneficiary is considered to be a threat for society or national security.⁶⁹² 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.⁶⁹³ 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.⁶⁹⁴ 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.⁶⁹⁵

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

⁶⁸⁹ Article 55/5/1(1) Aliens Act.

⁶⁹⁰ Article 10 Law of 10 August 2015.

⁶⁹¹ The crimes listed in Article 55/4(1) Aliens Act are also known as the 'exclusion clause' 1F of the 1951 Refugee Convention.

⁶⁹² Article 55/4(2) Aliens Act.

⁶⁹³ Article 55/5/1(2)(2) Aliens Act.

⁶⁹⁴ 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.

⁶⁹⁵ 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.

if the danger is still present, the steps taken to rehabilitation and reintegration often do not detract from the observation that the fact that a person was convicted of a particularly serious crime is sufficient to demonstrate the danger to society. The risk of recidivism plays a role in the assessment of the CAL in certain cases, but it does not seem to be a necessary element.

A 2016 amendment changed the wording of the Aliens Act, thereby allowing the Immigration Office to end the right to residence of a person whose protection status is revoked on the grounds of Article 55/3/1(1) or 55/5/1(1) Aliens Act. A person can also be ordered to leave the territory if the protection status is revoked on the grounds of Article 55/3/1(2) or 55/5/1(2) Aliens Act. In the event of a revocation on the aforementioned grounds, the Immigration Office has to assess the proportionality of an expulsion measure. This requires the Immigration Office to take the duration of residence in Belgium, the existence of family, cultural and social ties with the country of origin and the nature and stability of the family into account.

In 2020, the CGRS withdrew the protection status in 77 cases.⁶⁹⁶ Out of them, 60 concerned the refugee status of beneficiaries originating from Iraq (20), Other countries (15), Guinea (8), Russia (7), Albania (6) and China (4) The other 17 withdrawals concerned the subsidiary protection of persons originating from Afghanistan (9) and Iraq (8).

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.⁶⁹⁷ The legal basis for family reunification is Article 10 of the Aliens Act.

In 2018, UNHCR and the Federal Migration Centre (Myria) published a report illustrating the main obstacles that beneficiaries of international protection currently face in the context of family reunification. These include:⁶⁹⁸

- obstacles encountered in submitting a visa application;

⁶⁹⁶ Information provided by the CGRS January 2020.

⁶⁹⁷ 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>.

⁶⁹⁸ UNHCR and Myria, '*Le regroupement familial des bénéficiaires d'une protection internationale en Belgique*', June 2018, available in French at: <https://bit.ly/2GdKJIF>.

- the 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.

Following the outbreak of the Covid-19 pandemic, applicants for family reunification faced additional difficulties meeting the conditions as consulates and visa posts were temporarily closed and people were prevented from introducing their application in time. The Immigration Office announced it would take into consideration these exceptional circumstances having prevented the submission of applications at a time when a family member had a right to family reunification or was required to meet less stringent conditions. It also announced it would take into consideration the possible impact of the health crisis on the situation of the sponsor, since a temporarily unemployed sponsor may momentarily have difficulty providing the proof of a stable, regular and sufficient income, housing or insurance. The **period of validity of certain certified documents (for example *civil status records*)** is prolonged.⁶⁹⁹

1.1. Eligible family members

Four categories of persons may join a beneficiary in Belgium.

- ❖ A spouse, equalled partner,⁷⁰⁰ 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.⁷⁰¹ 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.⁷⁰² 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.⁷⁰³

The conditions for a registered partner are largely similar but require proof of a “stable and lasting” relationship.⁷⁰⁴ Evidence of this can either be a common child, having lived together in Belgium or abroad for at least 1 year before applying or proof that both partners have known each other for at least 2 years and have regular contact by telephone or have met at least 3 times, amounting to a total of at least 45 days, during the 2 years preceding the application. The registered partners also have to be unmarried and not be in a lasting relationship with another person.

Underage children wishing to join their parents residing in Belgium as a beneficiary of international protection have to be unmarried and set to live under the same roof as the parents. If a child wishes to

⁶⁹⁹ More information on the webpage of the Immigration Office: <http://bit.ly/391S4sg>.

⁷⁰⁰ 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.

⁷⁰¹ Article 10(1)(4) Aliens Act.

⁷⁰² Children from a polygamous marriage are not excluded if they meet the general conditions: Constitutional Court, Decision No 95/2008, 26 June 2008.

⁷⁰³ Articles 11(2) and 12-bis Aliens Act.

⁷⁰⁴ Article 10(1)(5) Aliens Act.

join only 1 of his parents in Belgium, the situation depends on the custody arrangement. In the event of sole custody, a copy of the judgment granting sole custody will have to be provided. If custody is shared, consent of the one parent that the child can join the other parent in Belgium is required.

Children of age with a disability or handicap have the possibility to join their parent(s) with international protection if they provide a document certifying their state of health. In order to be considered disabled, the person concerned has to be unable to provide for his/her own needs as a result of the disability. The child also has to be unmarried and come and live with the beneficiary.

If the beneficiary of international protection is an unaccompanied child, the beneficiary's parents can enter Belgium through the family reunification mechanism.⁷⁰⁵ Until April 2018, family reunification with an unaccompanied minor was only possible when he or she was recognised as a refugee or was granted subsidiary protection status.⁷⁰⁶ 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*,⁷⁰⁷ that the date of introduction of the asylum application of the unaccompanied minor is decisive for the right to family reunification, the Immigration Office has adapted its practice and allows the benefit of family reunification even if the unaccompanied minors turned 18 during the asylum procedure. The parents must however apply for family reunification within 3 months after the child has obtained the protection status. The Immigration Office extended this practice to beneficiaries of subsidiary protection.⁷⁰⁸

To establish family ties, Belgian law foresees a cascade system.⁷⁰⁹ Ties are preferably proven by official documents, other valid proof or an interview or supplementary analysis (i.e. a DNA test). If an applicant is unable to produce official documents, the inability has to be "real and objective", meaning contrary to the applicant's own will, such as Belgium not recognising the country concerned, an inability to enter into contact with the authorities or a specific situation in the country of origin such as not functioning authorities or authorities that no longer exist. If this inability is established, the Immigration Office can take other valid proof into account.⁷¹⁰ In the absence of other valid proof, the Belgian authorities may conduct interviews or any other inquiry deemed necessary, such as a DNA test.⁷¹¹ In practice the Immigration Office makes little use of this cascade system and will often require the expensive DNA-testing.⁷¹²

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 to be fulfilled. This however does not apply to parents of unaccompanied children wishing to join them in Belgium.⁷¹³

⁷⁰⁵ Article 10(1)(7) Aliens Act.

⁷⁰⁶ Art. 10 of the Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens.

⁷⁰⁷ CJEU, Case C-550/16, *A and S v Staatssecretaris van Veiligheid en Justitie*, 12 April 2018

⁷⁰⁸ Myria, *Contact meeting*, 16 May 2018, , available at: www.myria.be, para. 6-9.

⁷⁰⁹ Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, Belgian Official Gazette, 2 July 2009.

⁷¹⁰ Article 12-bis(5) Aliens Act.

⁷¹¹ Article 12-bis(6) Aliens Act.

⁷¹² UNHCR and Myria, 'Gezinshereniging van begunstigden van internationale bescherming in België: vaststellingen en aanbevelingen', June 2018, available in Dutch at: www.myria.be, p.19.

⁷¹³ Constitutional Court, Decision No 95/2008 of 26 June 2008.

1.3. Family reunification procedure

The normal procedure requires the applicant to apply for family reunification at the Belgian embassy or consulate in the country where the applicant resides. In practice, family members of recognised refugees and subsidiary protection beneficiaries, alternatively, can submit the application form in any Belgian embassy which is authorised to apply for long-term visa applications. At the Belgian embassy they have to apply for a D visa for family reunification and provide certain documents to complete the file.

All applicants require a valid travel document (national passport or equivalent), a visa application form (including proof of payment of the handling fee of €180), a birth certificate, a copy of the beneficiary's residence permit in Belgium, a copy of the decision granting protection status, a medical certificate no more than 6 months old and an extract from the criminal record.

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

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

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

After submitting all the certified and translated documents, the file is complete and the applicant will receive proof of submission of the application (a so-called "Annex 15quinquies"). The file then gets sent to the Immigration Office for examination. When the proof of submission is delivered, a 9-month period starts during which the Immigration Office must take a decision on the visa application. This period can be prolonged with a 3 month 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 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.

In the context of the Covid-19 pandemic, during which the consulates were/are prevented from issuing visa and the beneficiaries from travelling, the Immigration Office has announced that:

- ❖ The period of validity of the decisions of the Immigration Office is automatically extended by 3 months. Until further notice, a decision is therefore valid for 9 months (6 months + 3 months). As a result, diplomatic or consular posts that received positive decisions but were unable to enforce them due to travel restrictions are allowed to issue the visa if the decision was made less than 9 months ago;
- ❖ People having received a D type visa but who were prevented from travelling before the expiry of this visa, can apply for a new visa at the competent Belgian diplomatic or consular post, which can issue the new visa automatically under certain conditions.⁷¹⁴

⁷¹⁴ More information on the webpage of the Immigration Office: <http://bit.ly/391S4sg>

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.⁷¹⁵ 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.⁷¹⁶ 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.⁷¹⁷ Proof of domestic violence suffices, a conviction is not required. Psychological violence also suffices, but the Immigration Office requires more proof for this type of violence.

An applicant can lodge a suspensive annulment appeal with the CALL against the revocation of the right to residence by the Immigration Office within 30 days. The municipality will then issue an Annex 35. This is a temporary right to residence that is monthly extended for the duration of the appeal. In the absence of an appeal, the applicant's residence in Belgium is unlawful.

If the person still fulfils the conditions for family reunification after 5 years, the right to residence becomes unlimited in duration. The person concerned has to apply for an electronic B card at the municipality during the duration of his electronic A card. If the applicant still fulfils the conditions, he/she receives a definitive, unconditional and unlimited right to residence. The municipality will issue an electronic B card valid for 5 years.

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

⁷¹⁵ 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.

⁷¹⁶ Article 13(3) Aliens Act.

⁷¹⁷ Articles 375, 398-400, 402, 403 and 405 Penal Code.

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.⁷¹⁸

Resources are considered sufficient when they are 120% of the living wage of the category 'person with a dependent family'.⁷¹⁹ Currently this amounts to € 1.555,092 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.⁷²⁰ 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.⁷²¹ On the basis of that analysis the Immigration Office can adjust the threshold.

C. Movement and mobility

1. Freedom of movement

Beneficiaries of international protection are allowed to freely move within Belgium. Their freedom of movement is not restricted in any way. In October 2016, the Reference Point Migration-Integration released statistics showing that recognised refugees or beneficiaries of international protection often move after their recognition.⁷²² Preferred destinations are major cities such as **Antwerp**, **Brussels** or **Ghent**, whereas **Wallonia** in general and smaller towns in Flanders are places often left behind.⁷²³

2. Travel documents

Belgium issues travel documents for both refugees and beneficiaries of subsidiary protection.⁷²⁴ The duration of validity of both documents is 2 years.⁷²⁵ 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".⁷²⁶ Every member of the family who is a recognised refugee in Belgium must carry their own "blue passport".

⁷¹⁸ 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.

⁷¹⁹ Article 10(5) Aliens Act.

⁷²⁰ Constitutional Court, Decision No 121/2013, 26 September 2013.

⁷²¹ Article 12-bis(2) Aliens Act.

⁷²² Reference Point Migration-Integration, *Monitoring movements*, October 2016, available in Dutch at: <http://bit.ly/2kWCldt>.

⁷²³ De Standaard, 'Vluchtelingen vluchten weg uit Wallonië', 3 November 2016, available in Dutch at: <http://bit.ly/2jx04dh>.

⁷²⁴ Article 57(3) Consular Code.

⁷²⁵ Circular on travel documents for non-Belgians, 7 September 2016.

⁷²⁶ CGRS, 'You are recognised as a refugee in Belgium', January 2018, available at: <http://bit.ly/2BjIRbd>.

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.⁷²⁷

Travel documents for beneficiaries of subsidiary protection are issued only if beneficiaries are unable to obtain one from their national authorities.⁷²⁸ 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.

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.⁷²⁹

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 2020 (including 130 non-accompanied minors) ⁷³⁰ | 675 (including |

When a person who is staying in a reception centre receives a decision granting a protection status, he or she has the option to:

- Move to a LRI for a maximum of 2 more months, where he or she will get assistance in finding a place to live, and generally in transitioning to financial assistance if needed. These 2 months can be prolonged for one month, or in exceptional cases for up to 3 months; or

⁷²⁷ Myria, *Contact Meeting*, 19 September 2018, available in Dutch at: <https://bit.ly/2MvKKc8>, para 15-16.

⁷²⁸ CGRS, ‘You are eligible for subsidiary protection in Belgium’, November 2017, available at: <http://bit.ly/2n2fFBj>.

⁷²⁹ For more information: Foreign Affairs Office, ‘Titre de voyage pour réfugié, apatride ou étranger’, available in French at : <https://bit.ly/2UzuQQW>.

⁷³⁰ Myria, *Contact meeting*, 20 January 2020, available in French at: <http://bit.ly/3sE592s>

- 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](#)).⁷³¹

In case the asylum seeker receives a decision granting a protection status while he or she is already staying in an LRI or an individual place of a NGO, the 2-month deadline will be afforded in this place.

Several civil society organisations describe the current situation as a "housing crisis". There is not only a shortage in social housing, but there is also a general shortage of qualitative and affordable housing for vulnerable groups. Discrimination also plays an important role in the difficulties that beneficiaries of international protection experience in finding affordable housing.⁷³² Finding affordable and adequate housing is even more problematic for beneficiaries of international protection, that are reunited with their family.⁷³³

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.

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.⁷³⁴ They are equally exempt from a professional card.⁷³⁵ These exemptions are based on the status as a refugee and are therefore not affected by the recent limitation of the duration of the residence permit and the subsequent change from an electronic B card to an electronic A card for the first five years. No labour market tests or sector limitation are applied. These rules apply to work as an employee or as an entrepreneur.

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

Beneficiaries of subsidiary protection need a professional card if they wish to work as an entrepreneur. Apart from possessing an electronic A card to prove the right to residence, some other conditions have to be fulfilled related to the activity the beneficiary wishes to pursue.⁷³⁶ The activity has to be compatible

⁷³¹ 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.

⁷³² To find more information on the housing issue (and recommendations) please consult: 'Vluchtelingenwerk Vlaanderen, 'Mensen voorop: de weg naar een echt asielbeleid. Voorstellen voor de verkiezingen 2019: Vlaams-Federaal-Europees, November 2018, available in Dutch at: <https://bit.ly/2MNTL0o>, 30.

⁷³³ Vluchtelingenwerk Vlaanderen en Orbit VZW, *Beleidsnota Gezinshereniging en Wonen*, August 2019, available in Dutch at: <https://bit.ly/2Rev4ht>.

⁷³⁴ 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.

⁷³⁵ Article 1(4) Royal Decree on the professional card.

⁷³⁶ 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.

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.⁷³⁷ The researchers compared the cohorts of persons granted a protection status in the periods 2001-2006 and 2007-2009 with persons granted a protection status in the period 2010-2014, in order to evaluate their respective participation to the labour market. Five years after they received protection status, 37% of the persons granted international protection in 2001-2006 and 2007-2009 were effectively working, compared to only 29% for those granted protection between 2010-2014. Where this could be verified, especially for the first two categories of persons, the labour market participation continued to increase. For example: 10 years after their recognition, approximately 50% of the persons granted international protection in the period 2001-2006 were effectively employed. The proportion of persons who have worked at least once was much higher, as 81% of them worked at least during a quarter of a year. This means that the majority of them had a formal job during their stay, after their recognition, and despite the vulnerability inherent to their group. Initial and subsequent periods of employment often last less than a year, indicating short working periods and a high degree of instability. Therefore, a sustainable integration in the labour market still needs to be improved according to the study.

2. Access to education

The access to education for child beneficiaries is equal to that of child asylum-seekers. This means that children immediately have the right to go to school and are obliged to receive schooling from 6 years old

⁷³⁷ EMN, *Socio-economic trajectories of beneficiaries of international protection*, 4 July 2019, available at <https://bit.ly/2x8vZbl>.

until their 18th birthday. Children have to be enrolled in a school within 60 following their registration in the Aliens Register. Classes with adapted course packages and teaching methods, the so-called “bridging classes” (in the French speaking Community schools) and “reception classes” (in the Flemish Community schools), are organised for children of newly arrived migrants, a category which includes children of beneficiaries of international protection. Those children are later integrated in regular classes once they are considered ready for it.

F. Social welfare

Beneficiaries of international protection have access to social welfare under the same conditions as nationals from the moment the protection status awarded to them becomes final. In practice they have such access immediately after the issuance of the protection status. They can apply for social welfare with the attestation confirming their status, which they receive from the CGRS. The PCSW has 30 days to take a decision.

Before the beneficiaries of international protection can effectively receive the social welfare, they 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 or if no extension has been granted, beneficiaries have to leave the shelter even if they have not found a place to stay.

G. Health care

Recognised refugees and beneficiaries of subsidiary protection can get health insurance as soon as their status is confirmed by the CGRS. The beneficiary will have to show the electronic A or B card or the Annex 15 with proof of recognition by the CGRS if the electronic card is not issued yet.

There are two ways to get health insurance in Belgium 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.⁷³⁸ As an employee, the beneficiary needs proof of social security submission filled in by the employer, a written declaration of the employer mentioning the social security number (an employment contract for instance) and proof of payment of social security. As an entrepreneur the only document required is a certificate of enrolment with the social insurance fund for self-employed entrepreneurs.

The other way to get health insurance as an entitled person is on the basis of the right to residence. This is possible when the person concerned is allowed to stay over 3 months and registered in the Aliens Register, allowed to stay for over 6 months or has an unlimited right to residence and is registered in the Aliens Register. Both an electronic A and B card are therefore valid possibilities.

Dependent persons of an entitled persons include the spouse, (grand)child, (grand)parent and cohabitant.⁷³⁹ To be registered as a spouse both the marriage certificate and proof of living together have to be provided.⁷⁴⁰ 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.⁷⁴¹ 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.⁷⁴²

⁷³⁸ Article 32 Law of 14 July 1994 on insurance for medical care and benefits, 27 August 1994, 1994071451, 21524.

⁷³⁹ Article 123 Royal Decree of 3 July 1996 implementing the Law of 14 July 1994 on insurance for medical care and benefits, 1996022344, 20285.

⁷⁴⁰ Article 124(3) Royal Decree 1996.

⁷⁴¹ Article 123(3) Royal Decree 1996.

⁷⁴² Circular Letter of 14 March 2014 on the minimum conditions for a social investigation in the light of the Law of 26 May 2002 on the right to societal integration and in the light of societal integration by PCSWs which is paid back by the State according to provisions in the Law of 2 April 1965, 4 July 2014, 2014011203, 51594.

ANNEX I – Transposition of the CEAS into national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	1 September 2013	Law of 8 May 2013 amending the Aliens Act	http://bit.ly/1GmsxXT (FR)
		3 September 2015	Law of 10 August 2015 amending the Aliens Act	
		21 November 2017	Law of 21 November 2017 amending the Aliens Act	
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	21 November 2017	Law of 21 November 2017 amending the Aliens Act	http://bit.ly/2FEqrZU (FR) http://bit.ly/1GmsxXT (FR)
		17 December 2017	Law of 17 December 2017 amending the Aliens Act	
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	21 November 2017	Law of 21 November 2017 amending the Aliens Act	http://bit.ly/1GmsxXT (FR)