aida

Asylum Information Database

Country Report: Belgium

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Edited by:

CBAR - BCHV

ecre

European Council on Refugees and Exiles

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The information in this report is up-to-date as of 18 November 2015.

The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 16 EU Member States (AT, BE, BG, CY, DE, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

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Glossary & List of Abbreviations

127-bis Repatriation Centre	Detention centre near Brussels National Airport
Caricole	Detention centre near Brussels National Airport
Not taking into consideration	Negative decision of the CGRS declaring an application inadmissible
Pro Deo	Second line free legal assistance
Refusal of entry	Negative decision of the AO declaring that Belgium is not responsible for an application under the Dublin Regulation
Social integration	Financial assistance under social welfare | *intégration sociale* | *maatschappelijke integratie*
Transit group	Consortium of NGOs, comprising CBAR-BCHV, JRS, Caritas, Ciré and Vluchtlingenwerk, coordinating immigration detention monitoring visits

AO	Aliens Office | *Office des étrangers* | *Dienst Vreemdelingenzaken*
CALL	Council for Alien Law Litigation | *Conseil du contentieux des étrangers* | *Raad voor Vreemdelingenbetwistingen*
CBAR-BCHV	Belgian Refugee Council | *Comité belge d'aide aux réfugiés* | *Belgisch comite voor hulp aan vluchtelingen*
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*
CIV	Centre for Illegals of Vottem | *Centre pour les illégaux de Vottem* | *Centrum voor illegallen van Vottem*
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EMN	European Migration Network
Evibel	Registration database of the Aliens Office
Fedasil	Federal Agency for the Reception of Asylum Seekers
FGM	Female genital mutilation
INAD	Centre for Inadmissible Passengers
JRS	Jesuit Refugee Service
LGBTI	Lesbian, gay, bisexual, transsexual and intersex
LRI	Local reception initiative | *initiative locale d'accueil* (ILA) | *lokaal opvang initiatief* (LOI)
OOC	Observation and Orientation Centre for unaccompanied children
PCSW	Public Centre for Social Welfare | *Centre public d'action sociale* (CPAS) | *Openbaar centrum voor maatschappelijk welzijn* (OCMW)
RIZIV / INAMI	National Institute for Health and Disability Insurance | *Institut national d'assurance maladie-invalidité* | *Rijksinstituut voor ziekte- en invaliditeitsverzekering*

Statistics

Table 1: Applications and granting of protection status at first and second instance: 2015 (January-October)

	Applicants in 2015[1]	Pending applications in 2015	Refugee status	Subsidiary protection	Rejection[2]	Refugee rate	Subs. Prot. rate	Rejection rate
Total	27,076	20,210	5,281	1,059	6,279	41.8%	8.4%	49.8%

Breakdown by countries of origin of the total numbers (applications as of January-October 2015; decisions and rates as of January-August 2015)

Iraq	6,906	Not available	294	193	172	44.6%	29.3%	26.1%
Syria	5,651	Not available	1,363	69	46	92.2%	4.7%	3.1%
Afghanistan	3,414	Not available	308	267	295	35.4%	30.7%	33.9%
Somalia	1,745	Not available	17	188	84	30.1%	48.3%	21.6%
Undetermined[3]	671	Not available	432	1	106	80.1%	0.2%	19.7%
Russia	647	Not available	105	3	357	22.6%	0.6%	76.8%
Guinea	620	Not available	225	3	283	44%	0.6%	55.4%
DRC	512	Not available	64	3	290	18%	0.8%	81.2%
Kosovo	463	Not available	18	0	316	5.4%	0%	94.6%
Pakistan	412	Not available	35	0	179	16.4%	0%	83.6%
Eritrea	297	Not available	300	0	38	88.7%	0%	11.3%

Source: CGRS, *Monthly Asylum Statistics*, October 2015.
Total pending applications include pending applications at the AO: AO, *Monthly Statistics*, October 2015.

1 Excluding accompanying minors: 5,196 in 2015 (January-September).
2 Rejection should include *both* in-merit and admissibility negative decisions; this does not include Dublin decisions as there is no country breakdown: 1,125 so far in 2015.
3 Mainly Palestinians.

Table 2: Gender/age breakdown of the total numbers of applicants: 2015 (January-September)

	Number	Percentage
Total number of applicants	22,266	100%
Men	16,767	75.3%
Women	5,499	24.7%
Children	4,752	21.3%
Unaccompanied children	1,388	6.2%

Source: CGRS, *Monthly Asylum Statistics*, September 2015; Information provided by CGRS via email.

Table 3: Comparison between first instance and appeal decision rates: 2015 (January-June)

	First instance		Appeal	
	Number	**Percentage**	**Number**	**Percentage**
Total number of decisions	1,550	100%	3,419	100%
Positive decisions	669	43.1%	177	5.2%
• *Refugee status*	538	34.7%	160	4.7%
• *Subsidiary protection*	131	8.4%	17	0.5%
Negative decisions	455	29.3%	2,817	82.4%

Source: CGRS, *Monthly Asylum Statistics*, June 2015; Information from the CALL and CGRS via email.
The total number of appeals only includes full jurisdiction appeals. Annulment appeals against inadmissibility decisions or Dublin decisions cannot be disaggregated from the overall numbers on the migration *contentieux* annulment appeals. In another 461 judgments (13.5%), the first instance decision was quashed and the case was reverted back to the CGRS.

Table 4: Applications processed under the accelerated procedure in 2015 (January-September)

	Number	Percentage
Total number of applications	22,266	100%
Applications treated under accelerated procedure at first instance	5,175	23.2%

Source: Information provided by CGRS via email.

Table 5: Subsequent applications lodged in 2015 (January-October)

	Number	Percentage
Total number of subsequent applications	3,724	100%
Main countries of origin		
Afghanistan	466	12.5%
Russia	353	9.4%
China	272	7.3%
Guinea	225	6%
Iraq	196	5.2%

Source: CGRS, *Monthly Asylum Statistics*, October 2015.

Table 6: Number of applicants detained per ground of detention: 2013-2015 (January-September)

Ground for detention	2013	2014	2015
Application in pre-removal detention centre	486	690	497
Application at the border	502	437	287
Pending a Dublin transfer	625	657	556
Awaiting a Dublin decision	91	129	84
Subsequent application	2	84	68
Total number of applicants detained	**1,884**	**1,868**	**1,492**

Source: Information from AO in monthly contact committees organised by CBAR-BCHV, http://bit.ly/1PKTpnf.

Table 7: Number of applicants detained and subject to alternatives to detention

Alternatives are only applied in respect of vulnerable groups exempted from detention. See Detention of Vulnerable Applicants.

Overview of the legal framework

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

Title (EN)	Original Title (FR/NL)	Abbreviation	Web Link
Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens	Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen	Aliens Act (AA)	<http://bit.ly/1Iq1MCC> (FR) <http://bit.ly/1GmqyU0> (NL, unofficial consolidattion)
Amended by: Law of 19 January 2012	Loi du 19 janvier 2012 | Wet van 19 januari 2012		<http://bit.ly/1AMmhas> (FR)
Amended by: Law of 8 May 2013	Loi du 8 mai 2013 | Wet van 8 mei 2013		<http://bit.ly/1EYd49X> (FR)
Amended by: Law of 10 April 2014 containing several provisions concerning the procedures before the CALL and the Council of State	Loi du 10 avril 2014 portant des dispositions diverses concernant la procédure devant le Conseil du Contentieux des étrangers et devant le Conseil d'Etat Wet van 10 april 2014 houdende diverse bepalingen met betrekking tot de procedure voor de Raad voor Vreemdelingenbetwistingen en voor de Raad van State		<http://bit.ly/1G99rD7> (FR) <http://bit.ly/1KQ052h> (NL)
Amended by: Law of 26 February 2015 concerning the grant of a residence authorisation to foreign unaccompanied minors	Loi du 26 février 2015 modifiant la loi du 15 décembre 1980 en ce qui concerne l'octroi d'une autorisation de séjour temporaire au mineur étranger non accompagné | Wet van 26 februari 2015		http://bit.ly/1P1zSA5 (NL) http://bit.ly/1M16DYl (FR)
Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens	Loi de 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers Wet van 12januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen	Reception Act	<http://bit.ly/1MA7uD0> (FR) <http://bit.ly/1MKlTbo> (NL)
Law of 30 April 1999 concerning employment of foreign workers	Loi de 30 avril 1999 relative à l'occupation des travailleurs étrangers Wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers	Law on Foreign Workers	<http://bit.ly/1MHzmTK> (FR) <http://bit.ly/1FQUuRV> (NL)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.

Title (EN)	Original Title (FR/NL)	Abbreviation	Web Link

Royal Decree of 8 October 1981 regarding the entry on the territory, residence, settlement and removal of aliens	Arrêté royal du 8 octobre 1981 concernant l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers Koninklijk Besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en verwijdering van vreemdelingen	Royal Decree 1981	<http://bit.ly/1IkJsLv> (FR, unofficial consolidation)
Royal Decree of 11 July 2003 determining certain elements of the procedure to be followed by the Aliens Office charged with the examination of asylum applications on the basis of the Law of 15 December 1980	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 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	Royal Decree on AO Asylum Procedure	<http://bit.ly/1KOyLBu> (NL)
Royal Decree of 11 July 2003 determining the procedure and functioning of the Office of the Commissioner General for Refugees and Stateless persons	Arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux Réfugiés et aux Apatrides ainsi que son fonctionnement Koninklijk besluit van 11 juli 2003 tot regeling van de werking van en de rechtspleging voor het Commissariaat-generaal voor de Vluchtelingen en de Staatlozen	Royal Decree on CGRS Procedure	<http://bit.ly/1FYKWaB> (FR) <http://bit.ly/1Jo26lJ> (NL)
Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation	Arrêté royal du 21 décembre 2006 fixant la procédure devant le Conseil du Contentieux des Etrangers Koninklijk besluit van 21 december 2006 houdende de rechtspleging voor de Raad voor Vreemdelingenbetwistingen	Royal Decree on CALL Procedure	http://bit.ly/1VtXdcq (FR) http://bit.ly/1VtXhJ3 (NL)
Royal Decree of 9 June 1999 implementing the law of 30 April 1999 regarding the employment of foreign workers *Amended by:* Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers	Arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers Koninklijk besluit van 9 juni 1999 houdende de uitvoering van de wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers Arrêté royal du 29 octobre 2015 modifiant l'article 17 de l'arrêté royal du 9 juin 1999	Royal Decree on Foreign Workers	<http://bit.ly/1Q9rEXZ> (NL) <http://bit.ly/1MYS23I> (FR)
Royal Decree of 12 January 2011 on the granting of material assistance to asylum seekers receiving	Arrêté royal de 12 janvier 2011 relatif à l'octroi de l'aide matérielle aux demandeurs d'asile bénéficiant de revenus professionnels liés	Royal Decree on Material	<http://bit.ly/1IAukcQ> (FR) <http://bit.ly/1JB9PwY> (NL)

income from employment related activity	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	Assistance to Asylum Seekers	
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/1MHwUMS> (FR) <http://bit.ly/1TatQ0r> (NL)
Royal Decree of 2 August 2002 determining the regime and regulations to be applied in the places on the Belgian territory managed by the AO where an alien is detained, placed at the disposal of the government or withheld, in application of article 74/8 §1 of the Aliens Act	Arrêté royal de 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'OE, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, § 1er, de la loi du 15 décembre 1980 Koninklijk besluit van 2 augustus 2002 houdende vaststelling van het regime en de werkingsmaatregelen, toepasbaar op de plaatsen gelegen op het Belgisch grondgebied, beheerd door de DVZ, waar een vreemdeling wordt opgesloten, ter beschikking gesteld van de regering of vastgehouden, overeenkomstig de bepalingen vermeld in artikel 74/8, § 1 van de Vreemdlingenwet	Royal Decree on Closed Centres	<http://bit.ly/1Fx8sZ0> (NL)
Amended by: Royal Decree of 7 October 2014 amending the Royal Decree of 2 August 2002	Arrêté royal du 7 octobre 2014 modifiant l'arrêté royal de 2 août 2002		<http://bit.ly/1QSveUL> (FR) <http://bit.ly/1YkhRPe> (NL)

	Koninklijk besluit van 7 oktober 2014 tot wijziging van het koninklijk besluit van 2 augustus 2002		
Royal Decree of 9 April 2007 determining the regime and functioning rules of the Centres for Observation and Orientation of Unaccompanied Minors	Arrêté royal du 9 avril 2007 déterminant le régime et les règles de fonctionnement applicables aux centres d'observation et d'orientation pour les mineurs étrangers non accompagnés Koninklijk besluit van 9 april 2007 tot vastlegging van het stelsel en de werkingsregels voor de centra voor observatie en oriëntatie voor niet-begeleide minderjarige vreemdelingen	Royal Decree on OOCs	<http://bit.ly/1QLxABu> (FR) <http://bit.ly/1S40bo8> (NL)
Royal Decree of 24 June 2013 on the rules for the training on the use of coercion for security personnel	Arrêté royal déterminant les règles relatives à la formation dispensée dans le cadre du recours à la contrainte, prise en exécution de l'article 74/8, § 6, alinéa 3, de la loi du 15 décembre 1980 Koninklijk besluit tot bepaling van de regels voor de opleiding in het kader van het gebruik van dwang, genomen in uitvoering van artikel 74/8, § 6, derde lid, van de wet van 15 december 1980	Royal Decree on the Use of Coercion for Security Personnel	<http://bit.ly/1IuWwLu> (FR) <http://bit.ly/1cLmdvV> (NL)
Royal Decree of 18 December 2003 establishing the conditions for second line legal assistance and legal aid fully or partially free of charge	Arrêté royal de 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire Koninklijk besluit van 18 december 2003 tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand	Royal Decree on Legal Aid	<http://bit.ly/1EZmLoC> (FR) <http://bit.ly/1Ihe2CS> (NL)
Ministerial Decree of 5 June 2008 establishing the list of points for tasks carried out by lawyers charged with providing second line legal assistance fully or partially free of charge	Arrêté ministériel de 5 juin 2008 fixant la liste des points pour les prestations effectuées par les avocats chargés de l'aide juridique de deuxième ligne partiellement ou complètement gratuite Ministerieel besluit van 5 juni 2008 tot vaststelling van de lijst met punten voor prestaties verricht door advocaten belast met gedeeltelijk of volledig kosteloze juridische tweedelijnsbijstand	Ministerial Decree on Second Line Assistance	<http://bit.ly/1AO5l3i> (FR) <http://bit.ly/1T0jAYm> (NL)

Overview of the main changes since the previous report update

The report was previously updated in **February 2015**.

In the second half of 2015 there has been a serious rise in the number of asylum applications, with more than 4,000 applications in September almost 5,000 in October. Additional staff has been recruited at the AO and the CGRS to keep pace with the processing of this augmented number of files.

This rise has put the reception network under serious constraint, which has been dealt with mainly by creating more than 10,000 new accommodation places since August 2015. Consequently however some quality issues arise: adapted special reception needs cannot be provided for a rising number of vulnerable asylum applicants and the quality of the assistance (social, psychological, legal) is under threat.

Also the access to the asylum procedure itself has become more problematic. Registration delays for asylum applications at the AO are becoming longer week by week, seriously exceeding the maximum delay of 10 days allowed by the recast Asylum Procedures Directive in exceptional circumstances. The number of registrations per day seems to be limited by the State Secretary to keep the pressure from the Fedasil reception network. A communication campaign with personalised letters directed at certain groups (Iraqis, Afghans) intended at deterring them from (insisting on) applying for asylum, further puts pressure on the unhindered enjoyment of the right to asylum.

The protection rate has also risen sharply, due to the rising number of asylum applicants with serious protection needs (Syrians, Iraqis, Afghans), to about 50%. The CGRS reports a 59% protection rate, though this does not include the subsequent applications. Including the AO asylum refusal decisions (mainly Dublin transfer decisions), the protection rate is even below 43%.

The Dublin III Regulation is continuously being applied strictly in the AO's practice, in spite of some recent deteriorating evolutions in certain Member States' asylum systems and European case-law. Suspension judgments by the CALL have put some restraints on this policy by halting transfers in certain cases to *inter alia* Italy and Hungary, as such putting it in line with European jurisprudence and realities.

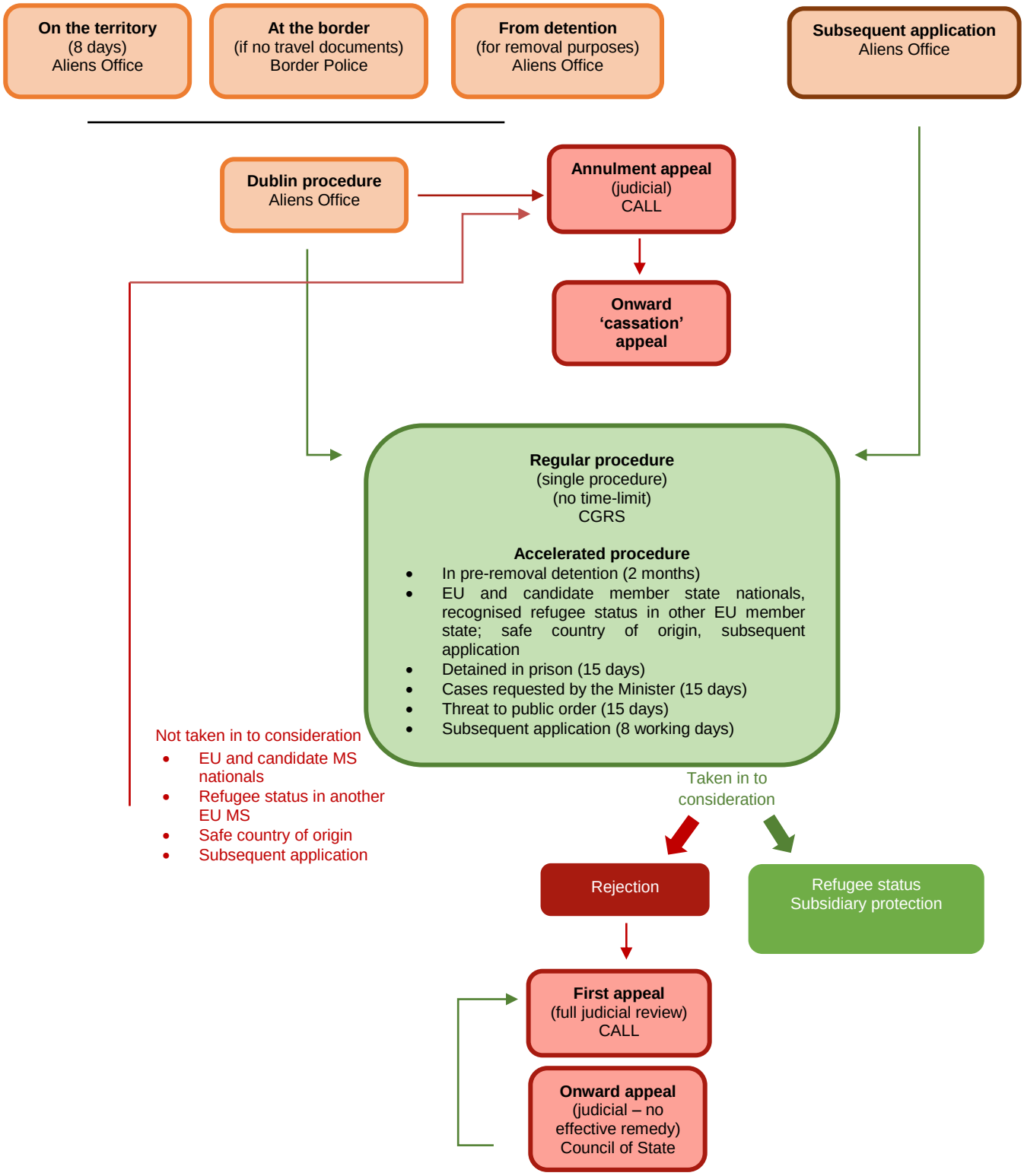
The government and the State Secretary did not live up to their repeated promise of transposing the recast Asylum Procedures and Reception Conditions Directives completely and timely (before the 20 July 2015 deadline). Also in practice some important aspects of the asylum *acquis* are not yet implemented (e.g. maximum detention periods, vulnerability identification and evaluation).

Access to qualitative legal aid is being further restricted in practice by stricter pro Deo (free) lawyer designation rules, by the announced cuts in their remuneration and by serious cuts in public financing for NGOs assisting asylum applicants and protection status holders.

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:	☒ Yes	☐ No
▪ Prioritised examination:[4]	☐ Yes	☒ No
▪ Fast-track processing:[5]	☒ Yes	☐ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure:[6]	☒ Yes	☐ No
❖ Other: Regularisation procedure[7]		
❖ Other: Residence permit for unaccompanied children		

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

According to Article 52 of the Aliens Act, the CGRS can consider an application as fraudulent or manifestly unfounded under the "accelerated procedure", but in practice this is not applied anymore.

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

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

4 For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.
5 Accelerating the processing of specific caseloads as part of the regular procedure.
6 Albeit not labelled as "accelerated procedure" in national law. See Article 31(8) APD.
7 Residence status is granted in the form of protection for medical reasons under a regularisation procedure rather than the asylum procedure, even where the serious risk of inhuman treatment upon return to the country of origin satisfies the criteria for subsidiary protection. See Article 9ter AA.

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office of the Commissioner General for Refugees and Stateless Persons (CGRS)	441 (full time equivalent) staff, of whom 213 (full time equivalent) protection officers (including 6 heads of service and supervisors)	State Secretary for Asylum and Migration, associated to the Minister of Home Affairs	☐ Yes ☒ No

5. Short overview of the asylum procedure

An asylum application may be lodged either on the territory (within 8 working days after arrival with the Aliens Office) or at the border (in case the asylum seeker does not dispose of valid travel documents to enter the territory with the border police) or from a detention centre (in case the person is already being detained for the purpose of removal). The examination of an asylum application lodged in Belgium roughly involves three main stages:

1. The examination of the criteria in the Dublin Regulation by the Aliens Office (AO) to determine whether Belgium is the responsible country;
2. The examination of the merits of the asylum application by the Commissioner-General for Refugees and Stateless Persons (CGRS);
3. An appeal against a negative decision of the Commissioner-General before the Council for Aliens Law Litigation (CALL).

The Aliens Office (AO) 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 criteria. Until September 2013, it also had the competence to decide whether a subsequent application had to be taken into consideration (and examined on its merits by the CGRS) or not, but this has now become the competence of the CGRS since the Law of 8 May 2013 amending the Aliens Act entered into force. The AO now only registers subsequent applications and transfers them to the CGRS.[8]

The CGRS is the central administrative authority exclusively responsible for the first instance examining and granting, refusing and withdrawing of refugee and/or subsidiary protection status. A single procedure applies and includes a possibility for a person granted subsidiary protection to lodge an appeal in order to obtain refugee status. The CGRS is independent in taking individual decisions on asylum applications and does not take any instruction from the competent Minister – or State Secretary – for Asylum and Migration in this respect, with the exception of some organisational aspects and a limited so-called injunction right as regards cases that should be examined with priority.[9]

The Council of Aliens Law Litigation (CALL) is an administrative court competent for handling appeals against all kinds of administrative decisions in the field of migration, among others against the first instance negative decisions of the CGRS. These appeals are dealt with by chambers specialised in the field of asylum. Appeals before the CALL against the decisions of the CGRS have automatic suspensive effect and must be lodged within 30 calendar days after the decision has been notified to the applicant.

[8] Articles 57/6/2 and 51/8 Aliens Act, as amended by Law of 8 May 2013.
[9] Article 52/2(3) Aliens Act.

The CALL has no investigative competence and has to take a decision based on all elements in the file presented by both parties (the applicant and the CGRS). It can reform a CGRS decision by granting a protection status, confirm the negative decision of the CGRS or annul it if it considers essential information is lacking in order to decide on the appeal and further investigation by the CGRS is needed. This is a so-called appeal *en pleine jurisdiction*, or "full judicial review" (as this civil law term is commonly translated in English). An onward so-called 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.

An accelerated admissibility procedure – although not defined as such in the law – applies with regard to asylum applications by EU nationals and nationals of EU accession candidate countries, as well as with regard to asylum seekers from a safe country of origin (based on a list) or who have already obtained refugee status in another EU Member State. In those cases the CGRS can decide "not to take into consideration" such applications, i.e. deliver a decision of inadmissibility, if no elements are submitted that the person has a well-founded fear of persecution or there are serious grounds for a real risk of serious harm, within 5 or 15 working days respectively. Also, on subsequent applications, the CGRS has to take a decision of admissibility or inadmissibility within 8 working days, or 2 working days for a detained asylum seeker. According to the law, the CGRS can also consider an application as fraudulent or manifestly unfounded, but in practice this is not applied anymore.

An annulment appeal can be lodged with the CALL against decisions by the CGRS not to take an asylum application into consideration and against a decision taken by the AO in application of the Dublin Procedure. Such an appeal does not examine the merits of the claim and is not automatically suspensive. However, a suspension of the decision to remove or refuse entry can be requested for together with the annulment appeal, or prior to it in case of "extremely urgent necessity". Both annulment and suspension appeals must be lodged within 30 calendar days after notification of the negative decision. This appeal procedure has been found not to be an effective remedy in certain situations by the European Court of Human Rights (ECtHR),[10] and also by the Constitutional Court in a 2014 judgment on the appeal procedure against CGRS decisions not to take into consideration asylum applications from safe countries of origin.[11] Following these decisions, amendments to the Aliens Act entered into force on 1 June 2014 through the Law of 10 April 2014, allowing for a full judicial review against inadmissibility decisions on subsequent applications and applications form safe countries of origin (see the sections on Admissibility Procedure, Subsequent Applications and Safe Country Concepts).

For asylum seekers in detention and in cases where the competent Minister uses his or her injunction right, an accelerated procedure is provided for the examination of the well-foundedness of the claim. In this procedure, a first instance decision is taken within 2 months or 15 days in case of public order issues or ministerial injunction right cases, while appeals are subject to very short deadlines of 1 to 5 working days for each procedural step.

As for subsidiary protection needs for medical reasons, a specific procedure has been put in place, which is not formally part of the asylum procedure. A person who suffers from an illness that constitutes a real risk to their life or physical integrity or for which there is a real risk of inhuman or degrading treatment, should there be no adequate treatment in their country of origin or residence, should apply for a residence permit under a so-called regularisation procedure for medical reasons based on Article 9ter of the Aliens Act. This procedure has much less procedural guarantees and residential rights than

[10] See e.g. ECtHR, *MSS v Belgium and Greece*, Application No 30696/09, 21 January 2011 (Dublin); *Singh and Others v Belgium*, Application No 33210/11, 2 October 2012 (subsequent application); *Josef v Belgium*, Application No 70055/10, 27 February 2014 (non-suspensive effect).

[11] Constitutional Court, Judgment No 1/2014 of 16 July 2014, available in Dutch at: http://bit.ly/1KPZX2H and French at: http://bit.ly/1eF4v8y.

is the case in the asylum procedure.[12] In *M'Bodj* and *Abdida*,[13] two judgments delivered on 18 December 2014, the Court of Justice of the European Union (CJEU) has ruled that this so called '9ter procedure' is not a form of international protection, but a national protection measure on which the EU asylum rules do not apply because it does not entail a protection against harm caused by "actors of persecution or serious harm" in the meaning of the Qualification Directive. Nevertheless, as the Return Directive and the EU Charter of Fundamental Rights remain applicable, there needs to be an effective remedy available that automatically suspends the execution of the refusal decision in case a return might create a risk of serious or irrevocable damage to the health situation of the person concerned, that could amount to a violation of Article 3 ECHR. The current appeal procedure does not seem to satisfy this requirement completely, given the short deadline to file an automatically suspensive urgent appeal.

B. Procedures

1. 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?
   - ❖ At the border: At the moment the person is inquired of the purpose of entry
   - ❖ On the territory: 8 working days
   - ❖ In detention: 8 working days
3. 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

The Aliens Office (AO) is the authority responsible for the registration of asylum applications, which is done immediately when the asylum seeker presents the application at their offices. At the border, asylum applications can be made with the border police section of the Federal Police, and in penitentiary institutions with the prison director. These authorities refer the asylum application immediately to the AO, which informs the Commissioner General for Refugees and Stateless Persons (CGRS) thereof.[14]

A change in legislation in 2007 abolished the general admissibility procedure, which was the AO's exclusive competence. Currently, the asylum section of the AO is still responsible for:

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

At the AO, a short interview takes place to establish the identity, nationality and travel route of the asylum seeker and to fill in a questionnaire for the CGRS about the reasons why they fled their country of origin, or, in case of a subsequent asylum application, which new elements are being submitted. If

12 The scope of this protection for medical reasons and how this relates to Article 3 ECHR is the subject of diverging jurisprudence by the Dutch-speaking and French-speaking chambers of the Council of State. Council of State (Dutch Chamber), Judgments No 223.961 of 19 June 2013 and Nos 225.632, 225.633 and 225.635 of 28 November 2013 expand the protection under Article 9ter Aliens Act to all diseases without an accessible treatment in the country of origin that entail a real risk to life or physical integrity or to inhuman or degrading treatment; Council of State (French Chamber), Judgment No 225.522 and 225.523 of 19 November 2013 limits it to life-threatening diseases at an advanced stage.

13 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.

14 Article 50 Aliens Act and Article 71/2 Royal Decree 1981.

Belgium is the responsible State under the Dublin Regulation, the file is sent to the CGRS. Also the questionnaire about the reasons for the asylum application and impossibility of a return to the country of origin has to be filled in by the staff member of the AO, if necessary with the help of an interpreter, and then transferred to the CGRS.[15]

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

On the territory, whether at liberty or detained or in prison, asylum applications have to be made within 8 working days after the arrival.[16] At the border, they have to be made immediately upon the request of the border police officer about the purpose of the journey to Belgium.[17] There is no specific sanction for not respecting this time-limit, but this can be taken into consideration by the CGRS as one of the elements in assessing the credibility of the asylum claim.

The AO's competence to decide on whether or not subsequent asylum applications should be taken into consideration, i.e. their admissibility, has been transferred to the CGRS since September 2013.[18] Now the AO only has to register the asylum seeker's declaration about the new elements and the reasons why they could not deposit them earlier, and transfer the file "without delay" to the CGRS.[19] It should be noted that technically the AO could refuse to transfer the subsequent application to the CGRS if it considers that no new element was submitted and therefore cannot be registered as such. Since the right to reception conditions under a subsequent application only applies once the claim is taken into consideration by the CGRS, it is important the AO transfers them to the CGRS immediately. In times of high inflow of subsequent applications, this cannot always be guaranteed in practice; as was the case with the high amount of subsequent applications lodged by Afghan nationals at the beginning of 2014. Since the summer of 2015 there is a notable drop in the number of subsequent applications registered, while the number first applications have risen dramatically. This clearly indicates the reluctance of the AO to register subsequent applications.

Besides the sporadic stories of detained asylum seekers told to visitors at closed centres at the border, which are impossible to verify due to the lack of systematic independent monitoring of all arrivals at the border, there are no published reports by NGOs about cases of actual *refoulement* at the border of persons wanting to apply for asylum. There are, however, some reports, also referred to by the United Nations Committee Against Torture (CAT), of extraditions by Ministerial Decree and repatriations after an in-merit examination of the well-foundedness of the asylum application, but without having respected the absolute nature of the ECHR prohibition on *refoulement*.[20] This has been sanctioned at more than one occasion by the ECtHR both under Article 3 and Article 6 ECHR.[21]

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

16 Article 50 Aliens Act.

17 Article 50ter Aliens Act.

18 This was the most important change introduced in the Aliens Act by the Law of 8 May 2013, together with the introduction of some additional non-admissibility grounds and a partial transposition of the recast Qualification Directive.

19 Article 51/8 Aliens Act.

20 CAT, 51st Session, 28 October 2013 - 22 November 2013, *Belgium*, available at: http://bit.ly/1KIsYKt.. Also the submissions of Amnesty International, the Ligue des Droits de l'Homme and the Center for Equal Chances and the Fight against Racism are included here, in which at least 3 cases of extradition by Ministerial Decree are mentioned in which the Minister of Justice overruled non-binding opinions by different instances (among others the CGRS) and relied on diplomatic assurances (Article 53bis Aliens Act). In one

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

2. Regular procedure

2.1. 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: None
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases as of 30 September 2015:
   - ❖ AO 10,000
   - ❖ CGRS 6,778

The asylum applications for which Belgium is responsible according to the Dublin Regulation are transferred to the office of the CGRS to be examined on their merits. The CGRS, which is an independent administrative authority, is exclusively specialised in asylum decision-making. In a single procedure, the CGRS first examines whether the applicant fulfils the eligibility criteria for refugee status and, only if they are not met, subsequently whether they are eligible for subsidiary protection status.[22]

The CGRS has the competence to:

1. Grant or refuse refugee status or subsidiary protection status;
2. Decide on the admissibility of asylum applications of EU citizens, persons from a safe country of origin or persons already having obtained refugee status in an EU Member State that is still effective, and of subsequent applications;
3. Apply cessation and exclusion clauses or to revoke refugee or subsidiary protection status (including on instance of the Minister);
4. Confirm or refuse refugee status of a refugee recognised in another country;
5. Reject asylum applications for technical reasons;[23] and
6. Issue civil status certificates for recognised refugees.[24]

There is no provision in the law imposing an obligation on the CGRS to take a decision within a certain period of time in the regular procedure (this is different for accelerated procedures: see below).[25]

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such case, the ECtHR ruled that Belgium had violated Article 3 ECHR by repatriating an Iraqi national excluded from subsidiary protection (presupposing a real risk of serious harm) because of terrorism-related offences: ECtHR, *MS v Belgium*, Application No 500012/08, 31 January 2012. Amnesty International considered it a violation of the principle of non-*refoulement*.

21 See ECtHR, *Trabelsi v Belgium*, Application No 140/10, 4 September 2014. On Article 6 ECHR and the risk of a "flagrant denial of justice" upon extradition on the ground that evidence obtained by inhuman or degrading treatment would be admissible, see *El Haski v Belgium*, Application No 649/08, 28 September 2012.

22 Article 49/3 Aliens Act.

23 So-called "technical reasons" to refuse an asylum application under Article 52 Aliens Act are: (a) deliberately 'withdrawing oneself' from a border procedure; (b) not appearing on the date of the interview without giving good reasons within 15 days; (c) not delivering the information one is asked for within a month without good reasons; and (d) non-compliance with the obligation to report for at least 15 days.

24 Articles 49(2), 49/2(4), 52, 52/4, 57/6, 57/6/1, 57/6/2 and 57/6/3 Aliens Act (the last two being new provisions since September 2013).

25 Article 23/1 of the Royal Decree on CGRS Procedure mentions the possibility for the asylum seeker to ask for a justification if no decision has been made within 6 months after the asylum application was made.

At the beginning of 2012, the then Secretary of State for Asylum and Migration declared in Parliament that it was her intention to provide for a quick and high quality procedure that allows for new asylum applications to be decided on within an average time-frame of 3 months at first instance or 6 months including a final decision on appeal.[26] To achieve this, among other measures, the 'Last-In-First-Out' (LIFO) principle was generally applied, meaning that priority was to be given to handling the most recently introduced asylum applications, and the capacity of the asylum authorities was reinforced with an extra 100 staff. This resulted in a considerable shortening of the total processing time of new asylum applications and a higher overall output that year. New applications lodged in 2012 were processed by the CGRS on average in 80 calendar days, counting from the moment of transfer of the file by the AO.[27] However, when taking into account the existing backlog of older files (i.e. one or two years old), the average processing time is still at 282 calendar days at the end of 2014 (compared to 291 at the end of 2013 and 275 at the end of 2012). There is no exact number available for cases that are still pending more than six months or more than a year after the registration of the asylum application. No exact data are available for 2015, but following the serious increase of applications the CGRS recognises that since the summer of 2015 it has become impossible to process them in an average of 3 months.

It should equally be noted that the capacity reinforcement of asylum authorities has faced significant rolling back due to linear budget cuts, resulting in a reduction of over 30 staff at the end of 2014, compared to 2012. Due to the increased number of application, in September 2015 the government has agreed on the recruitment of an additional 120 staff (105 protection officers and 15 administrative personnel) of whom 35 have already started by mid-October.

In September 2015, the CGRS still considered a number of 3,900 undecided asylum applications to be the normal working volume meaning that only a number above that is considered to be a backlog. At that moment the backlog was mainly building up at the AO and no new staff had yet been deployed at the CGRS; this however allows to conclude that this number will definitely be adapted in the near future. After a considerable catch-up effort has been accomplished throughout the years 2012 (backlog of 6695, working volume of 4,500), 2013 (backlog of 3,000, working volume of 4,000) and 2014 (backlog of 1,665, working volume of 3,900), more applications were treated than introduced, due to a sharp rise in the number of decisions taken, but also to a serious drop in the number of asylum applications in. With the increase of the number of applications in the second half of 2015, the backlog at the end of September was at 6,778 files (with a working volume of 3,900).

Nevertheless the intended total processing time of 6 months, appeal included, was never reached. Since the second half of 2014, the number of applications lodged has started rising again and has continued to do so with a sharp rise since the start of summer 2015: 1,708 in May 2015, 2,289 in June, 2,975 in July, 4,621 in August and a record 5,512 in September 2015.

2.2. Fast-track processing

The dramatic increase in application numbers by September 2015 and the high protection rates of Syrians has brought about a *de facto* prioritisation procedure for Syrian asylum applicants. The CGRS started detaching protection officers to the AO to attend the registration interview and add some additional questions to check the nationality and potential exclusion grounds. Then the manifestly well-founded applications can be transferred to the CGRS rapidly where a positive decision without an additional interview will be taken within 2 weeks.[28]

2.3. Personal interview

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26 Belgian Chamber of Representatives, *General Policy Note 2012 – Asylum and Migration Reform*, 20 December 2011, available at: http://bit.ly/1Qbgj9D, 4.

27 There is no 2013 and 2014 data available.

28 Declaration of the CGRS at the contact meeting organised by CBAR-BCHV, 20 October 2015, available at: http://bit.ly/1OTAckJ, 8, para 25.

Indicators: Regular Procedure: Personal Interview

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

At least one personal interview by a protection officer at the CGRS is imposed by law.[29] Generally, for every asylum application the CGRS conducts an interview with the asylum seeker, though the length and the substance of the questions can vary substantially, depending e.g. on the manifestly well-founded or unfounded nature of the claim, or the presence or absence of new elements presented in case of a subsequent application. The interview serves the CGRS to examine whether the asylum application is credible and qualifies for refugee status or subsidiary protection status. The lawyer or another person of confidence chosen by the asylum seeker can attend the interview.[30] The CGRS has elaborated an interview charter as a Code of Conduct for the protection officers, which is available on its website.[31]

The asylum seeker can request the assistance of an interpreter when introducing their asylum application with the AO, in case their knowledge of Dutch or French is not sufficient.[32] 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 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.[33] 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 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.

No video or audio recordings of the interview are made, but the detailed report has to faithfully include the questions asked to and declarations of the asylum seeker; the law demands a "faithful reflection" thereof,[34] which is understood to be different from a verbatim transcript. The CGRS protection officer has to confront the asylum seeker with any contradiction in their 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.[35] The asylum seeker may order a copy of the interview report, together with the complete asylum file.

29 Article 6 Royal Decree on CGRS Procedure.
30 Artcle 13/1 Royal Decree on CGRS Procedure.
31 CGRS, *Interview Charter*, available at: http://bit.ly/1FAxkyQ.
32 Article 51/4 Aliens Act.
33 CGRS, *Deontology for translations and interpretations*, available at: http://bit.ly/1ROmcHs.
34 Article 17 Royal Decree on CGRS Procedure.
35 Articles 16-17 and 20 Royal Decree on CGRS Procedure.

2.4. Appeal

Indicators: Regular Procedure: Appeal

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

2. Average processing time for the appeal body to make a decision in 2014:
   101 days (full jurisdiction)

A judicial appeal can be introduced before the CALL against all negative in-merit decisions of the CGRS within 30 days.[36] This appeal has automatic suspensive effect.[37]

In those cases the CALL has a so-called "full judicial review" competence (*en pleine jurisdiction*) which allows it to reassess the facts and to take one of three possible decisions: (a) confirm the negative decision of the CGRS; (b) overturn it by granting refugee or subsidiary protection status; or (c) annul the decision and refer the case back to the CGRS for further investigation.[38] However, 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.

The time-limits and suspensive effect of the appeal against in-merits decisions differs from Dublin decisions and admissibility decisions (see section on Admissibility Procedure), as well as for detained applicants (see section on Accelerated Procedure).

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.[39] At the hearing, the parties and their lawyer can orally explain their arguments to the extent that they were mentioned in the petition.[40] In the full jurisdiction appeals, however, the CALL is now 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.[41] Depending on how the CALL assesses the prospects of such new elements leading to the recognition or granting of an international protection status, it can annul the decision and send it back to the CGRS for additional examination – unless the CGRS can submit a report about its additional examination to the CALL within 8 days – or leave the asylum seeker the opportunity to reply on the new element brought forward by the CGRS with a written note within 8 days. Failure to respond within that 8-day time-is a presumption of agreeing with the CGRS on this point.

Still, in its *Singh v Belgium* judgment of October 2012, the ECtHR also found a violation of the right to an effective remedy under Article 13 ECHR because the CALL did not respect the part of the shared burden of proof that lies with the asylum authorities, by refusing to reconsider some new documents

36 Article 39/57(1) Aliens Act.
37 Article 39/70 Aliens Act.
38 Article 39/2 Aliens Act.
39 Article 39/69 Aliens Act.
40 Article 39/60 Aliens Act.
41 Article 39/76 Aliens Act, as amended by the Law of 8 May 2013. For a discussion of the pre-2013 provision, see CBAR-BCHV, *Nieuwe gegevens voor de Raad voor Vreemdelingenbetwistingen in volle rechtsmacht – In lijn met het Europees recht? (New elements before the CALL in full jurisdiction – in line with European law?)*, June 2010, available in Dutch at: http://bit.ly/1KefqbF. The new provision is clearly a simplification of what "new elements" are to be taken into consideration by the CALL and a better protection of the rights of the defence. On the other hand, it also introduces an additional procedural phase with strict time-limits to the already formalistic CALL procedure.

concerning the applicants' nationality and protection status in a third country, which were questioned in the preceding full jurisdiction procedure.[42]

For 2015 no official numbers are available yet. For 2013 and 2014 only partial numbers were made available by the CALL: in 2014, 8,172 full judicial review "asylum *contentieux*" appeals (30% less than the 11,699 in 2013) – this number includes 625 accelerated appeal procedures for non-admissible safe country of origin applications and subsequent applications and 316 accelerated appeal procedures for subsequent applications from detention, 13,519 "migration *contentieux*" *cases* (including also appeals against Dublin transfer decisions, but otherwise mostly not asylum related,) (16,072 in 2013) and 986 suspension requests for 'extremely urgent necessity' (1,013 in 2013). The average time needed by the CALL to issue a decision on all asylum related appeals (full jurisdiction and asylum related "migration *contentieux*") by mid-2015 was 209 calendar days (169 in 2014, and only 101 days in full jurisdiction cases). On 31 December 2014, 4,099 appeals in full jurisdiction were pending (of which 2,725 are pending for more than three months, and an additional 256 are a so-called historical backlog from the appeal authority that was abolished in 2006), and 27,566 annulment and suspension appeals in the "migration *contentieux*" (of which 24601 are pending for more than three months).[43] On 1 October 2015, 510 full jurisdiction case were pending for more than a year.

Generally speaking, lawyers and asylum seekers are quite critical about the limited use the CALL seems to make of its full jurisdiction, which is reflected in the low reform and annulment rates. It is also important to note that there is a big difference in jurisprudence between the more liberal Francophone and the stricter Dutch chambers of the CALL. On the other hand, it must be acknowledged that the quality of a lot of appeals submitted is often poor, especially if these are not introduced by one of the few specialised lawyers in the field. A 2011 Fundamental Rights Agency (FRA) study showed that asylum seekers in Belgium faced difficulties in finding a lawyer or had to change lawyers to lodge an appeal. The FRA study revealed that at the hearing they either felt like spectators or were otherwise led hand-held through the process by lawyers who instructed them when to speak and what to say, with occasionally little explanation. In some cases, hearings where the fate of asylum seekers was going to be decided were perceived as disappointingly short.[44]

A possibility of onward appeal against decisions of the CALL exists before the Council of State, the Belgian supreme administrative court.[45] Appeals before the Council of State must be filed within 30 calendar days after the decision of the CALL has been notified and have *no* suspensive effect. They are so called "cassation appeals" that allow the Council of State only to verify whether the CALL respected the applicable legal provisions and substantial formal requirements and requirements under penalty of nullity.[46] It cannot make its own assessment and decision on the facts of the case. Appeals before the Council of State are first channelled through some kind of admissibility filter, whereby the Council of State filters out, within 8 working days, those cassation appeals that have no chances of success or are only intended to prolong the procedure.[47] If the decision under review is annulled ("quashed"), the case is sent back to the CALL for a new assessment of the initial appeal.

2.5. Legal assistance

42 ECtHR, *Singh and Others v Belgium*, Application No 33210/11, 2 October 2012.
43 CALL, *Annual statistics 2014*, available in Dutch at: http://bit.ly/217y1xK.
44 FRA, *Access to effective remedies: The asylum-seeker perspective*, 2011, available at: http://bit.ly/1KegxrW, 27-34.
45 Article 39/67 Aliens Act.
46 Article 14(2) Acts on the Council of State.
47 The law, somewhat obscurely, 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). In practice, the Council of State does not shed light on what exactly is to be understood under these conditions.

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 AO stage.[48] The Reception Act also guarantees asylum seekers efficient access to the legal aid during the first and the second instance procedure, as envisaged by the Judicial Code.[49]

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.[50] 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 (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. Although legally provided for in every judicial district, in the field of asylum law only very few commissions seem to be actually functioning to date: there was one in the PCSW of **Antwerp** and formally there is also one in the closed centre in **Bruges**, but only the one in the closed centre of **Vottem** still appears to functioning. Besides these lawyers' initiatives, there are also other public social organisations and NGOs providing this kind of first line legal assistance.

As of the end of 2014, since the new regional and national government has been in place, the competence for the organisation of the first line assistance lies at the regional level.

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

The 2003 Royal Decree on Legal Aid determines the conditions under which one can benefit from this second line legal assistance free of charge. Different categories are defined, in general depending on the level of income or financial resources and, with regard to specific procedures, on the social group they belong to. For asylum seekers and persons in detention, among others, there is a rebuttable presumption of being without sufficient financial resources. With regard to children, unaccompanied or

48 Articles 39/56 and 90 Aliens Act.
49 Article 33 Reception Act.
50 Article 508/1-508/25 Judicial Code.

not, this presumption is conclusive. In theory, only asylum seekers who lack sufficient financial means should be entitled to free legal assistance, but due to the aforementioned presumption, in practice every asylum seeker will get a lawyer appointed to assist them in all the stages of the asylum procedure.

The law permits the bureau for legal assistance to apply a preliminary merits test before appointing a pro Deo lawyer in order to refuse those manifestly unfounded requests, which have no chance of success at all.[51] However, this provision is only very rarely applied in practice. In one judicial district, the appointment of a free lawyer was made dependent on preliminary positive advice on the matter by another lawyer, but this practice has been halted by a judgment of the labour tribunal. So, in practice, if a person entitled to legal aid asks for a lawyer free of charge to be appointed, the bureaus for legal assistance grant this quasi-automatically. However, there are reports of a more stringent appointment practice in some districts when the lawyers request to be appointed themselves after having been consulted by an asylum seeker, especially in case of subsequent asylum applications.[52]

Pro Deo Lawyers receive a fixed remuneration for every specific procedure or action by the bureau for legal assistance, which are financed by the bar associations that receive a fixed annual subsidy "envelope" from the Ministry of Justice. In theory, costs can be re-claimed by the state if the asylum seeker would appear to have sufficient income after all, but this does not happen in practice. The 2008 Ministerial Decree on Second Line Assistance has determined a list of points granted per service rendered:

Procedure	Points
First instance at CGRS	5
First instance at CGRS, including attending interview	15
Appeal at CALL	
❖ *Public hearing*	25
❖ *"Extreme urgency" procedure*	35
Onward appeal at the Council of State	
❖ *Inadmissible*	15
❖ *Admissible*	25

In 2013, the then Minister of Justice committed to paying a gross amount of €26.91 per point. However, this amount could not be upheld in practice since the total amount reserved by the Minister of Justice for compensation of pro Deo lawyers is fixed in advance and has not changed significantly in recent years, even though the number of procedures has more than doubled since 1999. The amount actually paid per point in June 2015 for assistance delivered in the judicial year 2013-2014 was only € 24.76 (up from €24.03 in 2013). The current Minister of Justice has not made any pledge to adjust this amount. Since 2013, lawyers have also been subjected to a VAT of 21%, which they cannot recover from asylum seekers, but will have to pay from their pro Deo remuneration. These developments certainly make the pro Deo remuneration system less attractive for lawyers. Another obstacle for lawyers to engage in this area of legal work is the fact that they are only paid once a year for all the cases they have closed and reported to their bar association in the previous year. Closure of the case can only take place once all procedures are finished, which in reality is long after the actual interventions were undertaken by the lawyer.

The national government agreement of 10 October 2014 mentioned the need for durable reform and refinancing of the second line legal assistance system. Currently negotiations between the Minister of

51 Article 508/14 Judicial Code.

52 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.

Justice and the Bar Associations to reform the pro Deo remuneration system are ongoing and might result in an even lower remuneration for assistance delivered in the field of asylum law.

The 2011 FRA study showed that asylum seekers feel that they have sufficient choice in selecting their lawyer in Belgium. However, they also reported bad experiences, including having paid private lawyers who never provided any help or only delayed the process. Language barriers in communicating with lawyers were also listed as one of the main obstacles faced with regard to the submission of an appeal, as well as the fact that they sometimes did not receive a copy of the submitted appeal and had been discouraged by their lawyers to appear at the hearing.

In an attempt to curb abuses of the pro Deo system by lawyers, the Order of Flemish Bar Associations adopted a general internal instruction in September 2015, inspired by the practice at some Bar Associations – most prominently the Dutch-speaking Brussels Bar Association – not to allow a second pro Deo lawyer to take over the case from the initially assigned pro Deo lawyer. Although this limits abuses by lawyers acting in bad faith to a certain degree, this measure has also resulted in asylum seekers being subject to the arbitrariness of bad quality lawyers and has prevented experienced lawyers from assisting some in need of specialised legal assistance. Currently, also the Order of the French and German-speaking Bar Associations is considering to adopt this as a general internal instruction.

3. Dublin

3.1. General

Indicators: Dublin: General

1.	Number of outgoing requests in 2014:		3,160
	❖ Top 3 receiving countries	IT	723
		ES	620
		FR	404
2.	Number of incoming requests in 2014:		3,940
	❖ Top 3 sending countries	DE	2,179
		FR	680
		SE	267
3.	Number of outgoing transfers in 2014:		741
	❖ Top 3 receiving countries	FR	116
		IT	115
		ES	105
4.	Number of incoming transfers in 2014:		1,673
	❖ Top 3 sending countries	DE	1,006
		FR	156
		SE/NL	108

Application of the Dublin criteria

No information has been made available on the way the Dublin criteria are applied.

The discretionary clauses

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.[53] The “sovereignty clause” (Article 17(1) Dublin III Regulation) is mentioned in Article 51/5(2) of the Aliens Act, but the “protection clause” (Article

[53] See e.g. Article 4bis(1) and Article 51/5(3) Aliens Act.

3(2)) and "humanitarian clause" (Article 17(2)) are not. Both clauses are sometimes applied in practice but this is not done systematically. The criteria for applying the clauses are very unclear and no specific statistics are available on their use. Since the *MSS 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 (former) sovereignty clause, now "protection clause". In principle no requests are made to Greece anymore at all, although 3 outgoing requests and 2 transfers took place to Greece in 2014.[54] Also with regard to some Dublin transfers to other EU Member States the AO has accepted to apply the sovereignty clause in individual cases (Poland, Malta, Italy, Hungary, Spain in specific cases of vulnerability or other).

Following the judgment of the CJEU in *K* on the interpretation of the humanitarian clause,[55] the AO at first accepted to collaborate actively to take charge of adult family members of unaccompanied asylum seeking children in Belgium under the family reunification provisions of the Dublin Regulation, who were still in Greece but for whom the Greek asylum authorities had not yet made a request to Belgium to take charge of the family members concerned. However, the AO now refuses a generalised application of this practice, claiming a more strict interpretation of *K* and applying it only in case the humanitarian clause applies, and not under the Dublin provisions concerning the criteria for unaccompanied children. This is done in order to avoid triggering possible abuses such as trafficking of children.

3.2. Procedure

Indicators: Dublin: Procedure

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

In practice, all asylum seekers are fingerprinted and checked in the EURODAC database immediately after lodging their asylum application with the AO.[56] In case they refuse, the law allows for them to be detained.[57]

Systematically, the AO 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 asylum seeker has to attend a specific Dublin interview in which they can state their reasons for opposing a transfer to the responsible EU state.[58] When a request to take back or take charge of an asylum seeker is being sent to another state, this is mentioned on the document provided to the asylum seeker as proof of registration of the asylum application (the so-called "Annex 26"). 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 receive a copy of the decision sent to the asylum seeker.[59] In case Belgium is the responsible state, the asylum seeker's file is transferred to the CGRS, and this is mentioned also on the registration proof of the asylum application.[60]

Individualised guarantees

54 Number confirmed by the Aliens Office.
55 CJEU, Case C-245/11, *K v Bundesasylamt*, 6 November 2012.
56 Article 51/3 Aliens Act.
57 Article 74/6(1bis)(13) Aliens Act.
58 Article 10 Royal Decree on AO Procedure.
59 Article 71/3 Royal Decree 1981.
60 Article 51/7 Aliens Act.

Following the 2014 ECtHR ruling in *Tarakhel v Switzerland*,[61] the AO started to systematically demand individualised guarantees in case of transfer requests to Italy of families with children, concerning specific accommodation, material reception conditions and family unity.[62] The AO did not do so for other vulnerable asylum applicants, nor in case of transfers to other Dublin States.

The CALL has however overruled this AO practice in some cases, without this having a generalised effect on its practice. By way of example, in 2015 some decisions by the AO 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.[63]

In a ruling of April 2015, the CALL held that a simple mention by the AO to the effect that the receiving authorities had indicated that the applicant would be placed "under an ERF project" did *not* discharge the duty to obtain individualised guarantees before the transfer.[64] In another judgment of April 2015, the CALL also clarified that, where the receiving authorities have not responded to a request within the requisite time-limits, the AO has not fulfilled its duty to obtain guarantees.[65]

Transfers

Persons whose claims are considered to be Dublin cases may in certain cases be detained (see section on Detention of Asylum Seekers: Legal Framework of Detention). As a reaction to the increase of asylum applications from persons having transited through other Member States in August 2015, since September more asylum seekers seem to be detained even before any transfer agreement has been reached in an apparent effort to deter asylum applications, especially from Iraqi nationals. After some decisions by the Council Chambers to release such persons because the applicability of the Dublin Regulation in itself is not a sufficient ground for detention, the AO has taken a step back and this practice has become less frequent.

Once the maximum time-limit under the Dublin Regulation for executing the transfer has passed (which is prolonged in case the persons did not have a known address with the AO), Belgium's responsibility for examining the asylum application will be accepted when the person concerned presents themselves to the AO again. However, until March 2014, this was technically registered as a subsequent asylum application, contrary to what Article 18(2) of the Dublin III Regulation seems to determine. The AO did not demand "new elements" to be submitted before taking the asylum application "into consideration" and transferring it subsequently to the CGRS, but this hinders as such the applicant's immediate access to accommodation in a reception centre. In March 2014, the CALL decided that this situation still concerns the first asylum application and the asylum seeker should not introduce a subsequent one with the AO.[66] Following this judgment, the AO has accepted to still consider cases where Dublin responsibility falls on Belgium due to delayed transfers as the first asylum application and now invites the person concerned for an interview on the asylum claim, before transferring the application to the CGRS.[67]

If the asylum seeker continues to be at the disposal of the AO for the execution of the transfer, in theory Belgium becomes responsible for their asylum application after 6 months. In practice, the AO systematically contacts the services in the reception centre where the asylum seeker resides and

61 ECtHR, *Tarakhel v Switzerland*, Application No 29217/12, Judgment of 4 November 2014.
62 Letter from the AO to CBAR-BCHV in response to questions concerning the implementation of the *Tarakhel* judgment, 17 November 2014, unpublished.
63 See e.g. CALL, Judgment No 144544, 29 April 2015; Judgment No 155882, 30 October 2015.
64 CALL, Judgment No 144188, 27 April 2015.
65 CALL, Judgment No 144100, 28 April 2015.
66 CALL, Judgment No 121606, 27 March 2014, available at: http://bit.ly/1RP9WGH.
67 AO, *Declaration at the CBAR-BCHV organised contact meeting*, 13 May 2014, available at: http://bit.ly/1T0Bv1a, para 13.

considers them to be absconding if they have not left an address. Once they leave the centre, the AO expects them to register at the *commune* in the so called "waiting register". This is a legal fiction, since communes will not assist rejected asylum seekers through this otherwise useless *demarche.* If the asylum seeker then does not appear in front of the AO when requested for whatever reason, then Belgian responsibility will only be accepted after 18 months, on the basis that the applicant has absconded.[68]

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 in 2015 is not communicated by the AO, but can vary greatly depending on the number of pending cases at the Dublin Office and the Member State the AO wants to transfer a person to. The delay from the acceptance of a request until the actual transfer is not known because the AO does not and cannot keep statistics relating to asylum seekers returning or going to the responsible State on a voluntary basis or on Dublin transfer decisions that are not executed in practice. More specific information on this is expected to be available in the near future, once the AO will receive the information of other Member States when asylum seekers taken back or taken charge of present themselves there voluntarily.

In 2015 (January-September), the AO took 1,092 decisions of refusal of entry under the Dublin Regulation (8.5 % of the total number decisions made), 991 in the whole of 2014 (6% of the total)[69] and 1,169 in 2013 (7% of the total).[70] For 2015 no numbers on outgoing or incoming requests have been communicated yet, nor are numbers on actual transfers. In 2014, however, Belgium made 3,160 requests (2,813 in 2013) and received 3,940 (5,441 in 2013); there were 741 actual transfers to other Member States in 2014 (738 in 2013) and 1,673 incoming transfers (1,779 in 2013).[71]

3.3. 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

The asylum seeker has to attend a specific Dublin interview in which they can state their reasons for opposing a transfer to the responsible EU state.[72] Lawyers are not allowed to be present at any procedure at the AO, including the Dublin interview. They can nevertheless intervene by sending information on the reception conditions and the asylum procedure in the responsible state or with regard to individual circumstances of vulnerability or other.[73] This is important since the CALL has repeatedly demanded from the AO that it responds to all arguments put forward and all information submitted.

As a consequence of the *MSS v Belgium and Greece* judgment, the AO has accepted to add some more specific questions to the questionnaire relating to elements 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 seeker is 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. Since the *Tarakhel* judgment, he or she is asked more

68 AO, *Declaration at the CBAR-BCHV organised contact meeting*, 11 March 2014, available at: http://bit.ly/1Qwc3MP.
69 AO, *Asylum Applications: Monthly Statistics for 2014*, available in French at: http://bit.ly/1EZq7Ia, 7.
70 AO, *Asylum Applications: Monthly Statistics for 2013*, available in French at: http://bit.ly/1JvCG4j, 32.
71 Information provided from the AO and Myria: *Migration in numbers and rights*, 2015.
72 Article 10 Royal Decree on AO Procedure.
73 Article 18 Royal Decree on AO Procedure.

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

Positive decisions accepting Belgian responsibility for the asylum application and transferring it to the CGRS are not motivated, and the AO has not been very transparent about its application of the sovereignty clause. For these reasons, it is very difficult to assess if in practice more relevant questions are asked in the Dublin interview, and that lead to an acceptance of responsibility.

3.4. Appeal

Indicators: Dublin: Appeal

☐ Same as regular procedure

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

	☒ Yes	☐ No
❖ If yes, is it	☒ Judicial	☐ Administrative
❖ If yes, is it suspensive		
○ Annulment appeal	☐ Yes	☒ No
○ Extreme urgency procedure	☒ Yes	☐ No

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.

Since applications for which Belgium is not responsible are subject to a "refusal of entry or residence" decision by the AO and are not examined on the merits, the rules discussed in the section on the Admissibility Procedure apply. It is exactly this appeal procedure that was considered by the ECtHR not to be an effective remedy in *MSS v Belgium and Greece*. However, under the "extreme urgency" procedure, an appeal with short automatic suspensive effect may be provided (see Admissibility Procedure: Appeal).

While controlling if all substantial formalities have been respected by the AO in taking the disputed decision,[74] the CALL also considers whether the sovereignty clause or the protection clause (Article 3(2) Dublin III Regulation) 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 AO 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 AO and included in its assessment of the sovereignty clause, in which case it will suspend the decision (regularly causing the AO to revoke the decision spontaneously itself, as such avoiding negative follow-up jurisprudence) or even annul it and send it back to the AO for additional examination.[75] 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 Dublin: Procedure).

74 Article 39/2(2) Aliens Act.

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

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

As with all final judgments by administrative judicial bodies, a non-suspensive cassation appeal before the Council of State can also be introduced against the judgments of the CALL concerning Dublin transfers.[76]

3.5. Legal assistance

Indicators: Dublin: Legal Assistance

☐ Same as regular procedure

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

The Ministerial Decree on Second Line Assistance, laying down the remuneration system for lawyers providing free legal assistance has not determined specific points for a lawyer's intervention in the Dublin procedure at first instance with the AO. 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 (10 points) will not be applied by the bureau for legal assistance. There might, however, be analogy with the category of written legal advice (5 points), if the lawyer intervenes in any other way (written or otherwise) at the AO 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).

3.6. 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? Greece

Sometimes, transfers under the Dublin Regulation are not executed following an informal (internal) and not explicitly motivated decision of the AO itself, or a suspension judgment (in some rare cases followed by an annulment judgement) of the CALL.

Besides the general suspension of transfers to **Greece**, which is actually a generalised application of the sovereignty – now protection clause, accepting Belgium's responsibility for an in-merit examination of the asylum application (with singular exceptions reflected in the 2 transfers to Greece in 2014), and omitting any decision to transfer, there have been suspensions on a case-by-case basis of transfers to Poland, Hungary, Italy, Malta, Bulgaria and Spain. This has been done *inter alia* for reasons of specific

[76] Article 14(2) Acts on the Council of State.

vulnerability of the asylum seeker concerned, reception conditions for children or medical patients, push back practices to third countries. In specific cases of vulnerability or on the basis of objective information about the general situation of asylum seekers in the responsible Member State, the CALL has suspended transfers, including to countries such as France and Germany when there is a risk of interruption of indispensable medical care,[77] and even annulled Dublin decisions concerning Malta, Hungary and Italy.[78]

Following the *Tarakhel v Switzerland* ruling of the ECtHR regarding **Italy**, the CALL has recently suspended transfers in respect of applicants who were at risk of being left homeless upon return due to the shortage in reception places in the country.[79] With the exception of families with minor children, this has not led to a generalised AO practice to demand individualised guarantees from Italy.

For **Malta**, the overall suspension of transfers in place since 2012, when the CALL decided that there was a serious risk of inhuman treatment for all asylum seekers in Malta because of its non-compliance with the EU asylum Directives,[80] is not upheld anymore.

The AO continues to decide that transfers of asylum seekers to **Bulgaria** do not automatically constitute a risk of inhumane treatment, only executes a small part of those decisions (15 out of 77 requests in 2014).[81] This practice is disputable, since it leaves asylum seekers in a limbo. The Belgian asylum authorities refuse responsibility for examining the asylum application, while the asylum seeker will not be expected to go to Bulgaria due to the risk of human rights violations. Therefore, no one conducts an in-merit assessment of the asylum application.

The AO also considers that there are no structural problems with reception conditions or the asylum system in **Hungary** and continues to transfer persons there. Since mid-2015, however, the CALL has suspended many transfers to Hungary, mainly because it considers there is no guaranteed access to the asylum procedure or sufficient procedural safeguards or reception conditions for most Dublin returnees.[82]

4. Admissibility procedure

4.1. General (scope, criteria, time limits)

No specific admissibility procedure exists in Belgium but it is nevertheless possible for the AO and the CGRS to take a decision refusing to enter into a further in-depth examination of the asylum application according to the regular procedure on the basis of *inadmissibility grounds*. Under Belgian law, this is not referred to as a decision of inadmissibility but as a decision “not to take into consideration”.

An application may “not be taken into consideration” where:

(a) The applicant is an EU citizen or EU accession country national;[83]
(b) The applicant comes from a safe country of origin;[84]

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77 CALL, Judgment No 32518, 9 October 2009 (suspension, France); Judgment No 76752, 8 March 2012 (suspension Germany), available at: http://bit.ly/1Marjhp.

78 CALL, Judgment No 117992, 30 January 2014 (annulment, Malta), available at: http://bit.ly/1Gon1oq;, Judgment No 71856, 15 December 2011 (annulment, Hungary), available at: http://bit.ly/1T0zt14; Judgment No 88804, 2 October 2012 (annulment, Italy), available at: http://bit.ly/1HPwhMR; Judgment No 93286, 11 December 2012 (annulment, Italy), available at: http://bit.ly/1KIMtCM.

79 CALL, Judgment No 138940, 20 February 2015; Judgment No 144488, 27 April 2015; Judgment No 144400, 28 April 2015.

80 CALL, Judgment No 72824, 6 January 2012.

81 AO, *Declaration at the CBAR-BCHV organised contact meeting*, 11 March 2014, available at: http://bit.ly/1Qwc3MP.

82 See e.g. CALL, Judgment No 148492, 25 June 2015, referring to the AIDA Hungary report.

83 Article 57/6 Aliens Act.

(c) The applicant has refugee status in an EU Member State which effectively protects him or her;[85] or

(d) A subsequent application presents no new elements.[86]
This is the only ground where the Aliens Act also obliges the CGRS to take a positive decision on admissibility, whereas the other grounds only demand an explicit decision when the application is declared inadmissible.

Moreover, where another Member State is responsible under the Dublin Regulation (see section on Dublin),[87] the AO also issues an inadmissibility-like decision in the form of a "refusal of entry or residence".

Whereas the Aliens Act does not impose a time-limit for taking a first instance decision on the merits, an inadmissibility decision must be taken by the CGRS according to the following deadlines:

Inadmissibility decision	Time-limit for decision
Applicant is an EU citizen or EU accession country national	5 working days
Safe country of origin	15 working days
Subsequent application	8 working days
Subsequent application in detention	2 working days
Refugee status in an EU Member State	15 working days

For all these grounds only written negative decisions on the inadmissibility of the asylum application stating the reasons are formally taken and notified to the applicant. Positive decisions on admissibility simply result in a further examination of the well-foundedness of the asylum application by the CGRS without any formal decision stating the reasons for such decision. Positive decisions on the admissibility of subsequent asylum applications are delivered as a formal written decision, but are not motivated since no one has any interest in appealing against a decision in their favour.

4.2. 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 registration of the asylum application takes place at the AO.[88] 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

84 Article 57/6/1 Aliens Act.
85 Article 57/6/3 Aliens Act.
86 Article 51/8 and 57/6/2 Aliens Act, as amended by Law of 8 May 2013.
87 Article 51/5 Aliens Act.
88 Article 51/10 Aliens Act.

the AO is explicitly obliged under the Royal Decree on AO Procedure to take into consideration all elements concerning those two aspects, even if they are invoked only after the interview.[89]

At the CGRS the regular personal interview about the facts underlying the asylum application has to take place for EU citizens, nationals of safe countries of origin and persons with refugee status in another EU Member State in the same depth and detail as is the case for other asylum applications.[90] In practice these interviews tend to be much shorter since the burden of proof is explicitly put at the asylum seeker to rebut the presumption of safety or effective protection, which the CGRS can take for granted. Also, in case of a subsequent application, the interview will be almost exclusively focussed on the new elements; when by example the country of origin or the nationality of the person concerned was considered not to be credible in the first procedure, the interview in the second procedure might only look at the new elements that counter those conclusions from the first procedure decision.

4.3. Appeal

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

2. Does the law provide for an appeal against the decision in the admissibility procedure?

	☒ Yes	☐ No
❖ If yes, is it	☒ Judicial	☐ Administrative
❖ If yes, is it suspensive		
○ Annulment appeal	☐ Yes	☒ No
○ Extreme urgency procedure	☒ Yes	☐ No

As of June 2014, partly as a reaction to the Constitutional Court judgment of 16 January 2014 on the effectiveness of remedies against inadmissibility decisions, the following deadlines apply for appeals against inadmissibility decisions:[91]

Inadmissibility decision	Time-limit for appeal
Safe country of origin	15 days
Subsequent application	15 days
First subsequent application in detention	10 days
Further subsequent application in detention	5 days
EU citizens or status in another Member State	30 days
EU citizens or status in another Member State in detention	15 days

Suspensive effect and the "extreme urgency" appeal procedure

As opposed to suspensive appeals against in-merit decisions, an appeal against an inadmissibility decision generally has *no* suspensive effect. This was criticised by the ECtHR in *MSS v Belgium and Greece* as contrary to the right to an effective remedy.

Through a number of judgments adopted in its composition of General Assembly in February 2011, the CALL had begun to bring its procedure more or less in accordance with the jurisprudence of the ECtHR,[92] by accepting an automatic suspension of the execution of the transfer decision during the first 5 calendar days (and no less than 3 working days) of the appeal period.[93]

89 Articles 10, 16 and 18 Royal Decree on AO Procedure.
90 Article 6 Royal Decree on CGRS Procedure.
91 Articles 39/57, 39/82 and 39/83 Aliens Act, as amended by Law of 10 April 2014.
92 See e.g. CALL, Judgment No 56201, 17 February 2011. On this issue, see CBAR-BCHV, *UDN als effectief rechtsmiddel post-M.S.S. Overzicht van de rechtspraak van de Raad voor Vreemdelingenbetwistingen: In overeenstemming met de Europese waarborgen tegen mishandeling en foltering bij de uitvoering van uitwijzingsbeslissingen* (Extremely urgent necessity as an effective remedy post-MSS, An overview of the jurisprudence of the Council of Alien Law Litigation: In accordance with the European guarantees against

Following the Constitutional Court's judgment of 16 January 2014, in which the Court decided that the non-suspensive annulment and suspension appeals against certain inadmissibility decisions were not an effective remedy,[94] amendments to the Aliens Act entered into force on 1 June 2014. Now, If an appeal in an extremely urgent necessity procedure has been lodged before the CALL within 10 or 5 calendar days in case of imminent execution e.g. in all cases of detention of the applicant of a first or subsequent return decision respectively,[95] while invoking a potential breach of an absolute fundamental right (e.g. Article 3 ECHR) in the petition, the appeal continues to be suspensive until a judgment is issued.[96] Such a timely appeal has automatic suspensive effect and 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.[97] A procedure for provisional measures is also provided in the law.

Where suspensive effect has been granted, the CALL must decide on the annulment appeal within 4 months from the date of suspension.[98]

Scope of appeal and "full jurisdiction"

Until June 2014, *all* "refusal of entry or residence" decisions of the AO and decisions "not to take into consideration" of the CGRS were only challengeable by an annulment appeal before the CALL. Accordingly, the CALL could only review the legality of the decision of the AO or CGRS and annul the decision and refer it back to the first instance for reconsideration.

Following the Constitutional Court judgment of 16 January 2014, amendments to the Aliens Act have also been adopted through the Law of 10 April 2014, introducing "full judicial review" procedures against inadmissibility decisions on subsequent applications and safe country of origin considerations (see sections on Subsequent Applications and Safe Country Concepts below).[99]

The Constitutional Court ruling could also lead to conclusions about the constitutionality of other non-suspensive appeal procedures.[100]

It remains to be seen if the April 2014 amendments regarding time-limits, suspensive effect and "full judicial review" will be 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.[101] The ECtHR calls the annulment appeal system as a whole – whereby suspension has to be requested simultaneously with the annulment for it to be activated (by requesting provisional measures) only once the execution of the removal decision becomes imminent – too complex to meet the requirements of an effective remedy, in order to avoid the risk of Article 3 ECHR violations. The

mistreatment and torture when decisions to return are executed), June 2012, available in Dutch at: http://bit.ly/1ER9RtB.

93 Article 39/83 Aliens Act, as amended by Article 6 Law of 10 April 2014.

94 Constitutional Court, Judgment No 1/2014 of 16 January 2014, available in Dutch at: http://bit.ly/1KPZX2H and French at: http://bit.ly/1eF4v8y.

95 Article 39/57 Aliens Act, as amended by Article 4 Law of 10 April 2014.

96 Articles 39/82 and 39/83 Aliens Act, as amended by Articles 5 and 6 Law of 10 April 2014.

97 Article 39/82(4) Aliens Act.

98 Article 39/82(4) Aliens Act.

99 Articles 39/2 and 39/57 Aliens Act, as amended by Articles 16-17 Law of 10 April 2014.

100 See L Leboeuf, 'The Right to an Effective Remedy in Accelerated Asylum Procedures: The Belgian Constitutional Court Stands Against the Reduction of Judicial Oversight", EDAL, March 2014, available at: http://bit.ly/1KQzsu1; T Wibault, *«Droit d'asile et recours effectif en Belgique: Procédure accélérée, mais pas amputée»*, CREDOF, 24 February 2014, available in French.

101 ECtHR, *Josef v Belgium*, Application No 70055/10, 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.

case was struck out the ECtHR Grand Chamber's list in March 2015, as the applicant had already been granted residence status.[102]

There also exists a possibility of an onward "cassation" appeal against decisions of the CALL before the Council of State.

4.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance
☒ Same as regular procedure

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

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

5. Border procedure (border and transit zones)

5.1. General (scope, time-limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☐ Yes ☒ No
2. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
3. Is there a maximum time-limit for border procedures laid down in the law? ☒ Yes ☐ No
   - ❖ If yes, what is the maximum time-limit? Maximum detention period of 2 months

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 AO, as opposed to the control on the territory, being primarily within the competence of the Local Police.

A person without the required travel documents will be refused entry to the Schengen territory at a border post and will be notified of a decision of refusal of entry to the territory and "*refoulement*" by the AO (so-called "Annex 11ter").[103] Such persons may submit an asylum application to the border police,

102 ECtHR, *SJ v Belgium*, Application No 70055/10, 19 March 2015.

103 Article 72 Royal Decree 1981; 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.

which will carry out a first interrogation and send the report to the Border Control section of the AO.[104] The "decision of *refoulement*" is suspended during the investigation of the asylum application but no right to enter the Belgian territory will be granted. This is also the case during the term to appeal and the whole appeal procedure itself.[105]

The asylum application will be examined while the applicant is kept in detention in a closed centre located at the border. Such detention may last for a period of a maximum of 2 months, which may be extended to a total maximum of 5 months, only if a final and executable decision on the asylum application has already been made within the first 2 months and if necessary steps to remove the asylum seeker from the territory are being taken by the AO.[106] Families with children are placed in so-called open housing units, which are more adapted to their specific needs, but which are also legally still considered to be border detention centres.[107] Most of the other asylum seekers who apply for asylum at the border are held in a specific detention centre called the "Caricole", situated near the 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.[108] 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.

When the asylum application is rejected, the asylum seeker has not yet entered the territory according to the law and may thus be removed from Belgium under the responsibility of the carrier.[109] 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.[110] 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 below).

The first instance asylum 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, except for the time-limit within which the CGRS must take the decision. The CGRS has to decide on the merits of the application within 15 days after having been notified by the AO that Belgium is responsible for examining the claim.[111] In most cases this time-frame is respected, but there are no consequences attached to not respecting it since it is considered to be a so-called term of 'internal order', as long as it does not exceed the legal detention period. If no final and executable decision on the asylum application has been made within the first 2 months of detention, the asylum seeker is released and allowed to enter the territory. The decision of refusal of entry to the territory and "*refoulement*" that was notified at the border when applying for asylum, is automatically (*ipso iure*) replaced by an order to leave the territory, that is not executable as long as the CGRS has not taken a decision.[112]

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104 Articles 50ter and 50 Aliens Act.

105 Article 39/70 Aliens Act.

106 Article 74/5 Aliens Act.

107 Article 74/9 Aliens Act.

108 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.

109 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.

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

111 Article 52/2 Aliens Act.

112 Article 74/5(5) Aliens Act. This legal practice of giving someone access to the territory and at the same time delivering him or her an order to leave is an anachronistic application of the two phased asylum procedure

In 2015 (January-September) so far 287 asylum applications were made at the border (437 in 2014, 538 in 2013).[113]

5.2. 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 AO 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 is an accelerated procedure, the interview by the CGRS takes place much faster after their 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 and 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. 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.

5.3. 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 full judicial review appeal, as well as the annulment and suspension appeals at the border, are 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

as it existed before the legislative change in 2007, when it had an admissibility and an in-merit phase. The admissibility decision on the asylum application from a person detained at the border was also a decision on the right to access the territory, so the person was released. In some situations an asylum seeker was released before that decision on the admissibility was taken (Article 74/5(4)), in which case Article 74/5(5) was applied, as there was not yet a decision on the right to access the territory either. Since that admissibility phase has been abolished, Article 74/5(5) appears to have lost its underlying principle. Nevertheless, the CALL accepts the application of the legal provision, though does not qualify it as a binding obligation for the AO to do so anymore: CALL, General Assembly Judgments nos 66.328-66.332, 8 September 2011). See on this issue CBAR-BCHV, *Frontière-Asile-Détention. Législation belge, normes européennes et internationales* (Border-Asylum-Detention. Belgian legislation, European and international standards), January 2012, available in French and Dutch at: http://bit.ly/1dq3Ywv. In practice, a staff member of the AO puts a handwritten formula on the Annex 11ter, referring to the legal basis that assimilates it with a normal order to leave the territory within 7 days.

113 Declaration of the AO at the contact meeting organised by CBAR-BCHV, 20 October 2015, available at: http://bit.ly/1OTAckJ, 1, para 3.

(including for families in an open housing unit) is only 15 calendar days, instead of 30 calendar days in the regular procedure.[114] The case subsequently has to be handled by the CALL in accordance with different procedural steps from the appeal in the regular procedure, all within very short time limits, meaning that a final decision on the appeal must be taken by the CALL within a maximum of 14 working days in total.[115] Asylum seekers can attend the hearing.

In practice, asylum seekers do not face obstacles to lodging a full judicial review appeal against an asylum decision of the CGRS in the border procedure as such, except for the pressing time-frame in which to contact a lawyer, prepare and elaborate an appeal.

However, asylum seekers do face serious obstacles in appealing against decisions of *refoulement* (refusal of entry) delivered at the moment of arrival at the border. Since the maximum time-limit for lodging the appeal is also limited to 15 calendar days without this period being suspended during the examination of the asylum procedure, this time-limit will have passed well before a final decision has been taken on the asylum application. As a consequence, it is not possible anymore for an asylum seeker to raise certain risks of violations of Article 3 ECHR that have not yet been examined during the asylum procedure.

For the removal of rejected asylum seekers at the border, the AO 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.[116] Since 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, while the AO does not consider itself to be under an obligation to carry out this examination either, as it considers this to be the task of the CGRS. Accordingly, not all issues rising under Article 3 ECHR in the country where the person is (forcibly) returned will 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.

This last situation is still the case for some Afghan asylum seekers (though the phenomenon has receded compared to previous years) whose knowledge about their region of provenance is considered not to be sufficient or their declarations about their recent experiences there are not deemed to be credible. Since the CGRS considers it to be impossible to determine the potential risks in that specific region of Afghanistan in those cases and does evaluate those risks in Afghan asylum files only on a regional level. Therefore in these files there will be no evaluation of the risk of inhuman or degrading treatment in case of return to Afghanistan at all. Later, the AO will nevertheless try to expel these persons to Afghanistan, despite the absence of prior examination of potential Article 3 ECHR violations in Afghanistan by its officials or the CGRS.

This represents a serious protection gap and was one of the issues raised before the ECtHR in the case of *Singh v Belgium*, where the Court held that the Belgian authorities violated Article 3 and Article 13 ECHR. The amendments to the Aliens Act by the Law of 10 April 2014 introduced the obligation on the CGRS to determine the existence of a risk of direct or indirect *refoulement* upon execution of the removal decision, when it decides not to take into consideration a subsequent application.[117] In certain inadmissible cases, this might be a preventive measure against this protection gap.

5.4. Legal assistance

114 Article 39/57 Aliens Act.
115 Article 39/77 Aliens Act.
116 Article 74/4 Aliens Act.
117 Article 57/6/2 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
   - ❖ Does free legal assistance cover: ☐ Representation in interview
     ☒ Legal advice

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

In border procedures, asylum seekers are entitled to free legal aid. In principle, the same system as described under the regular procedure applies for the appointment of a pro Deo lawyer. However, most bureaus of legal assistance appoint junior trainee lawyers for these types of cases, which means that highly technical types of cases are handled be lawyers who do not have adequate experience. The contact between asylum seekers and their assigned lawyer is usually very complicated. Often no lawyer is present at the personal interview because asylum seekers cannot get in touch with their lawyer before the interview takes place, and lawyers tend not to visit their client before the interview to prepare it. When a negative first instance decision is taken by the CGRS, it is not always easy to contact the lawyer over the phone or in person to discuss the reasons given in the decision. Often the lawyer decides that there are no arguments/grounds to lodge an appeal with the CALL and advises the asylum seeker not to lodge an appeal without explaining the reasons why. Some bureaus of legal assistance have or intend to create pools and lists of specialised alien law lawyers to be exclusively assigned in this type of cases, but the necessary control and training to effectively guarantee quality legal assistance seems to be lacking.[118]

6. Accelerated procedure

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

Belgian legislation does not set out different types of first instance procedures. However, this does not mean that each asylum application is processed within the same time-span. In some specifically determined situations, the CGRS has to "prioritise" the examination of the application and take a decision within a prescribed period of time that can be 2 months, 15 days or even just 8, 5 or 2 working days. While the Aliens Act refers to "prioritised" examination, these procedures also entail shorter time-limits for asylum seekers to lodge appeals. For that reason, they should be understood as "accelerated procedures" within the meaning of Article 31(8) of the Asylum Procedures Directive.

Accelerated procedure

Acceleration is provided by the law in the following situations, whereby the CGRS must take a decision within 2 months after being informed that Belgium is responsible for the application, where:[119]

(a) The application is clearly based on reasons totally unrelated to asylum, fraudulent or manifestly unfounded;[120]

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118 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.

119 Article 52(5) Aliens Act.

120 Article 52(1) Aliens Act.

(b) The applicant voluntarily withdraws from the border asylum procedure or does not report to the designated reception centre within 15 calendar days after having tried to enter the country illegally, or he or she does not appear for the scheduled interview or provide the required information without good reason;[121]
(c) The applicant is held in a closed centre at the border or on the territory, or is subject to a security measure or is in prison, and where he or she:[122]
- Did not apply for asylum when the border police inquired about the purpose of his or her journey;
- Has already lodged another application;
- Has refused to provide or provided false information or documents on his or her identity or nationality;
- Has destroyed or disposed of identity and travel documents;
- Has made an application for the sole purpose of postponing or frustrating an immediate expulsion;
- Has hampered the collection of his or her fingerprints;
- Has not indicated that he or she has already made an application in another country; or
- Has refused to make the declarations required at the registration with the AO.

'Super'-accelerated procedure

Moreover, the CGRS takes a decision within 15 days after being informed that Belgium is responsible for the application, in cases where:[123]

(a) The applicant is detained in a closed centre at the border or on the territory for reasons other than those stated above;
(b) The applicant is in prison serving a sentence;
(c) The Minister or Secretary of State or the AO exercises an "injunction" and requests priority to be given to an application; or
(d) The applicant poses a threat to public order and national security.

Inadmissible cases

As discussed in the section on Admissibility Procedure, the following time-limits apply to cases "not taken into consideration" by the CGRS:

Inadmissibility decision	Time-limit for decision
Applicant is an EU citizen or EU accession country national	5 working days
Safe country of origin	15 working days
Subsequent application	8 working days
Subsequent application in detention	2 working days
Refugee status in an EU Member State	15 working days

The exact number of asylum applications that were handled in an accelerated manner according to the various grounds listed above is not available. Numbers of accelerated admissibility procedures and of accelerated border and detention procedures overlap, so there is double-counting. In 2015 (January-September), 54 EU-citizens applied for asylum (99 in 2014, 128 in 2013, 146 in 2012). Most applications were lodged by persons from Romania (22); there were also some applications by persons from Bulgaria (5), Poland (4), Croatia (4), Slovakia (3), Lithuania (3), Germany (2), France (2) and Latvia (4); and one by persons from the Netherlands, Denmark, Greece, Malta, Spain and Sweden.

121 Article 52(2) Aliens Act.
122 Articles 52/2(1) and 74/6(1bis)(8)-(15) Aliens Act.
123 Articles 52/2(2) and 74/8 Aliens Act.

Also, 1,243 persons from a safe country of origin applied for asylum in January-September 2015, (1640 in 2014, 2,005 in 2013, and 2,998 in 2012, when up until June they were still examined under the regular procedure). The break-down per nationality is as follows:[124]

Country	Jan-Sep 2015	2014	2013	2012
Kosovo	433	494	754	983
Albania	370	481	487	667
FYROM	181	222	248	476
India	56	76	67	109
Bosnia-Herzegovina	41	89	100	139
Montenegro	7	13	13	53
Total	1,243	1,640	2,005	2,998

There is no final number on accelerated procedures in detention – in 2015 (January-August), 247 applications were made at the border and 497 in a closed centre on the territory.[125]

6.2. 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 accelerated procedures, including the ones dealing with the admissibility of the application, as to the one in the regular procedure.[126] 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.[127] Also an interpreter is present during these interviews.

6.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

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

The criterion for distinguishing between the time limits for the different types of appeal in the procedure is whether the applicant concerned is in detention or not, and not the accelerated character of the first instance procedure. When an appeal against CGRS decisions concerns a person in detention or confinement (therefore including the border procedure), the time period to lodge the appeal is limited to

124 CGRS, *Monthly Asylum statistics*, September 2015, http://bit.ly/1MG0Rfd.
125 Declarations by the AO representative at the monthly contact reunions, available in Dutch at: http://bit.ly/1QScpkK.
126 Article 5 Royal Decree on CGRS Procedure.
127 Article 13 Royal Decree on CGRS Procedure.

15 calendar days and the time granted to the CALL to rule on the case is limited to about 14 working days (see section on Border Procedure: Appeal).[128]

For the appeals lodged against other accelerated decisions concerning asylum applicants who are not detained or confined, the regular appeal procedure and time-limits apply (see section on Regular Procedure: Appeal).

Different time-limits and rules apply in respect of inadmissibility cases, however. In relation to time-limits for appeals against inadmissibility decisions, see the section on Admissibility Procedure: Appeal.

6.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

☐ Same as regular procedure

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

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

The right to (free) legal assistance applies in exactly the same way to the accelerated procedure as it does to regular procedure (see section on 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.

However, for border accelerated, admissibility procedures and asylum procedures in detention centres, it has been reported that asylum seekers encounter difficulties in having a lawyer appointed in time due to practical obstacles.

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

Indicators: Information and Access to NGOs and UNHCR

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

2. 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

[128] Articles 39/57 and 39/77 Aliens Act.

The Royal Decree on AO 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 Geneva 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.[129] Although the Dublin III Regulation has full and direct effect since the beginning of 2014, imposing the distribution of an information brochure on the general Dublin procedure in general and one for unaccompanied minors specifically,[130] the AO says it is still waiting for the European Commission to provide them the common models, which is said to be related to a printing problem with the Arabic version. In the meantime the AO is still handing out its own Dublin information brochure,[131] which however has not had a Dublin III update.

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. Last updated in 2014, it exists in ten languages (Dutch, French, English, Albanian, Russian, Arabic, Pashtu, Farsi, Peul and Lingala) and in a DVD version and is distributed at the dispatching desk of Fedasil, where people are designated to a reception accommodation place.[132]

Besides these more general brochures directed to all asylum seekers, some specific leaflets are also published and made available. The brochure 'Women, girls and asylum in Belgium' (2011) was drawn up for female asylum seekers and is translated in nine different languages. It not only contains information about the asylum procedure itself, but also on the issues of health, equality between men and women, intra-family violence, female genital mutilation and human trafficking. Also for asylum seekers in a closed centre, at a border or in prison specific information leaflets are available. There is also the so-called 'Kizito' comic (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.

Also 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). Finally also a publication for all professionals assisting asylum seekers throughout the procedure is distributed by the CGRS. All these publications are freely available on the CGRS website.[133] Mid-2015, the CGRS has launched its refurbished website, now including country of origin information and policy statements.[134]

Specialised national, Flemish and French speaking NGOs such as BCHV-CBAR (Belgian Refugee Council), Vluchtelingenwerk Vlaanderen (Flemish Refugee Action), Kruispunt Migratie-Integratie (Reference Point Migration-Integration), Ciré (Coordination and Initiatives for Refugees and Aliens), ADDE (Association for Aliens Law), JRS Belgium and Caritas International – to name only the most centralised and refugee and migration law oriented ones – have developed a whole range of useful and qualitative sources of information and tools, accessible on their respective websites or through their first

129 Articles 2-3 Royal Decree on AO Procedure.
130 Article 4 Dublin III Regulation.
131 Declaration of the AO at the CBAR-BCHV organised contact meeting, 15 September 2015.
132 CGRS & Fedasil, *Asylum in Belgium: Information brochure for asylum seekers regarding the asylum procedure and reception provided in Belgium*, available at: http://www.cgrs.be/en/publications.
133 See: http://www.cgrs.be/en/publications.
134 See: http://www.cgrs.be/en/country-information.

line legal assistance helpdesks.[135] A procedural guide by Ciré was updated in 2015, but only available in French (unlike the 2008 version that was made available in Dutch, English, Serbo-Croat, Turkish, Albanian and Russian also).[136] Vluchtelingenwerk updated its handbook for professionals assisting asylum seekers in 2014 and published a Dublin brochure in 2013, both are in Dutch.[137] The BCHV-CBAR developed a manual on asylum procedures at the border for lawyers. On the websites of Kruispunt Migratie-Integratie (Dutch), Ciré (French) and ADDE (French) extensive legal information is made available on all aspects of the asylum procedure, reception conditions and detention.[138]

It is not clear, however, how well-known and accessible all of these publications are in practice for the asylum seekers themselves and if they provide them with the information they need. The 2011 FRA report mentions varying experiences in Belgium depending on where asylum seekers were hosted: asylum seekers living in the community and particularly those in the hotels during the asylum reception crisis, appeared to have much less information compared with those staying in reception centres.[139] Also, it could not be ascertained if in all situations asylum seekers actually receive the information brochures immediately upon the registration of their asylum application at the AO or at the border.

D. 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 Until the decision extreme urgency suspension

3. Is a removal order suspended during the examination of a second, third, subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage Until the decision extreme urgency suspension, unless within 48 hours before removal

A subsequent asylum application will only lead to a new examination by the CGRS on the well-foundedness of the protection claim if the application contains new elements (or also in case the first asylum application has been refused for technical reasons of asylum seekers not presenting themselves on the date of the interview without a valid reason or of withdrawing voluntarily from a border procedure).

Since September 2013, the CGRS, and no longer the AO, has the competence to decide whether or not to take into consideration such an application depending on the presence of new elements which, at the same time, should also increase the chance of being eligible for one of the two international protection statuses.[140] The CGRS has to take this admissibility or inadmissibility decision within 8 working days, or only 2 in case of detention, after the application was transferred by the AO (see section on Admissibility Procedure above).

135 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.

136 See: http://bit.ly/1XdLNdx.

137 See: http://bit.ly/1LpY4Vs.

138 Kruispunt M-I: http://bit.ly/1OiBS41 (in collaboration & new information brochure on the asylum trajectory), 16 October 2015: http://bit.ly/1X2gPud; ADDE: http://bit.ly/1MG2OrY.

139 FRA, *Access to effective remedies: The asylum-seeker perspective*, 2011, 27-34.

140 Article 57/6/2 Aliens Act, as introduced by Law of 8 May 2013, which brought the admissibility procedure for subsequent applications in line with the conditions of Article 40 of the recast Asylum Procedures Directive.

As with all asylum applications, the AO is also still the competent authority for the registration of the new asylum application. The AO has to register a declaration of the asylum seeker on the new elements and the reasons why he or she could not invoke them before, and transfer it without delay to the CGRS.[141] Also the same questions on identity, origin and travel route have to be asked and registered in a written declaration, and the questionnaire of the CGRS on the reasons for their flight has to be filled in, as is the case with first applications.[142] Similarly, the lawyer is not allowed to attend.

The CGRS, after having received the file with the questionnaire on the new application transferred to it by the AO, is supposed to take into account all elements, new and old, in examining and deciding on the well-foundedness of the claim. The personal interview at the CGRS on the admissibility and/or well-foundedness of the claim should take place in the same way as is the case with first asylum applications, although it will mostly be limited to elaborating on the new elements.[143]

Previously, a non-suspensive annulment appeal could be lodged against a decision not to take into consideration the subsequent asylum application. Recent changes in the law, following the Constitutional Court judgment of 16 January 2014, have changed this to a full judicial review procedure with short time-limits to introduce the appeal of 15 calendar days in regular cases, 10 days in case of detention, or 5 calendar days in the case of a second or further inadmissibility decision while in detention.[144]

There is a so-called standstill clause in the law suspending the removal of persons automatically during a certain period of time after a decision of removal has been notified. Until very recently, this period was set at 3 days by the law.[145] The AO considered this period to have elapsed, however, three working days after the delivery of the first order to leave the country, which has been notified after the first negative decision of the CGRS on the first asylum application. Consequently it considered it has the authority to return a person as soon as the decision not to take into consideration the subsequent asylum application has been notified without further delay. There have been some cases of notification of such a decision on the airport immediately preceding the already planned boarding of the plane (the executory measure of the decision to return). Since the person has thus been removed from the territory and no suspensive appeal could be introduced timely and usefully anymore against the order to leave the territory or the executory measure (that is not notified as such), neither the CALL nor any other tribunal in summary proceedings seems to have issued judgments about this practice.[146]

The 2014 amendments to the Aliens Act aim at solving this by introducing a 10 or 5 calendar day appeal period to introduce a suspension request of the removal decision for “extreme urgency”. The appeal periods of 10 or 5 days operate respectively against the first or subsequent return decisions in case of imminent execution of such a decision, considered to be so in case of detention. This appeal period itself (the standstill clause) and the processing time of the appeal have automatic suspensive effect. A swift processing and decision from the CALL is foreseen.[147]

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141 Article 51/8 Aliens Act, as amended by Law of 8 May 2013.

142 Article 51/10 Aliens Act and Article 16 Royal Decree on AO Procedure.

143 Articles 16, 17 and 27 Royal Decree on CGRS Procedure.

144 Articles 39/2 and 39/57 Aliens Act, as amended by Articles 16 and 17 Law of 10 April 2014.

145 Article 39/83 Aliens Act (modified by the Law of 8 May 2013). See also on the *MSS v Belgium and Greece* and its impact on the automatic suspension of a decision to return or transfer (Dublin: Appeal).

146 This also makes it difficult to assess whether this practice of executing removals immediately after a decision not to take into consideration a subsequent asylum application is limited to cases in which the subsequent application was introduced with the only intention to delay or prevent the removal and is not violating the *non-refoulement* principle, and if this practice does not therefore violate the conditions imposed by Article 41(1) of the recast Asylum Procedures Directive. In at least one such case of immediate removal after an inadmissibility decision of a subsequent application, a request has been submitted to the ECtHR in the case of *ZH v Belgium*, Application No 64141/13.

147 Article 39/57 Aliens Act, as amended by Article 4 Law of 10 April 2014; and Articles 39/82 and 39/83 Aliens Act, as amended by Articles 5 and 6 Law of 10 April 2014.

Nevertheless, the law also provides for exceptions to the standstill clause when the subsequent application is introduced only within 48 hours before the removal and for a third application after a final decision on the second one.[148] Since the execution of the removal decision might become imminent only after that time period to appeal, provisional measures can be requested to reactivate an earlier (timely lodged) suspension request once execution does become imminent.[149] However, this system of appeals was found to be too complex to be an effective remedy by the ECtHR in *Josef v Belgium*.[150] Even amended by these recent legal changes, the legal provisions determining the appeal procedure seem to need additional amendments right away. The 2014 amendment of the law also introduced the obligation on the CGRS to determine the existence of a risk of direct or indirect *refoulement* upon execution of the removal decision, when it decides not to take into consideration a subsequent application (see section on Border Procedure above).[151]

In theory, there should be no difference in appeals against inadmissibility decisions regarding subsequent applications at the border or on the territory. In practice however, subsequent applications appear to be taken into consideration more rarely when the person concerned is in detention, since it is frequently presumed that they apply for asylum again only to avoid the execution of the removal decision. There have been cases in which elements that had not been invoked in an earlier asylum procedure and, if found credible, might be indications of a well-founded fear of persecution or real risk of serious harm, were not even mentioned in the decision of inadmissibility, resulting in a forced return of the asylum seeker.[152] This might also happen at liberty, but in that case it is easier to appeal such a decision or to insist with yet another asylum application, possibly supported by an additional declaration from the lawyer or a refugee organisation.

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.

In 2015 (January-September, the total number of subsequent asylum applications was 3,370 (15.1% of the overall number of 22,266 asylum applications – less than half the percentage of previous years 2014 (36%) and 2013). About 58% of decisions by the CGRS on the admissibility of subsequent applications (2,944 decisions in total in January-September 2015) were decisions not to take into consideration the subsequent application (up from 51% in 2014, but still under the 61% of 2013, when the competence to decide on the admissibility of subsequent applications was with the AO up until September 2013 and only from then on with the CGRS).[153]

E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

1. Special procedural guarantees

148 Article 39/70 Aliens Act, as amended by Article 18 Law of 10 April 2014.
149 Article 39/85 Aliens Act, as amended by Article 7 Law of 10 April 2014.
150 ECtHR, *Josef v Belgium*, para 103.
151 Article 57/6/2 Aliens Act.
152 *ZH v Belgium* concerns a person having been forcibly returned to Afghanistan after making a subsequent asylum application in which he wrote on the questionnaire (that was still handed over to the asylum seeker in person until the recent change of law) that he had converted to Christianity, mentioning credible witnesses who could testify to this. This element was not even mentioned in the decision of inadmissibility.
153 The top ten of nationalities from asylum seekers who submitted subsequent asylum applications in 2014 is Afghanistan (1259), Russia (622), Guinea (589), Iraq (339), Kosovo (265), Iran (256), Pakistan (218), DR Congo (172), Albania (148) and Serbia (145).

Indicators: Special Procedural Guarantees

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: Unaccompanied children

2. Are there special procedural arrangements/guarantees for vulnerable people? ☐ Yes ☒ For certain categories ☐ No
   - ❖ If for certain categories, specify which: Unaccompanied children; Gender-related claimants i.e. LGBTI applicants, victims of FGM, honour retaliation, partner violence or sexual abuse

It was only in 2014 that a "Vulnerability Unit" was put in place at the AO to screen all applicants upon registration on their potential vulnerability. There is no mechanism put in place for this identification of vulnerabilities, so only visible or clearly stated vulnerabilities are registered in a database ("Evibel"), to which Fedasil, the reception authority, also has access. It is not very clear, however, what impact this has on the procedure and assessment of the asylum application as such. The Vulnerability Unit consists of four 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.[154]

Besides the general provision that specific circumstances, vulnerability in particular, have to be taken into consideration,[155] only two other procedural provisions exist concerning the handling of specific vulnerable cases at the AO: unaccompanied and accompanied children alike should be assisted during the interview by an adult or tutor (see below)[156] and in gender-related asylum claims the official should check if the asylum seeker opposes to a protection officer of the other sex.[157] 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.[158]

Similarly at the CGRS level, there are few specific provisions as to the screening, processing and assessing of vulnerabilities of asylum seekers. More or less the same procedural guarantees are in place. 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.[159] Also, it is determined that in case of a gender-related claim, one can oppose to be interviewed by a protection officer from the other sex,[160] and that children should be interviewed in appropriate circumstances and their best interests should be decisive in the examination of the asylum application.[161]

First instance inadmissibility decisions are taken in the same accelerated way for vulnerable persons. Unaccompanied minors are excluded from accelerated border procedures, since they cannot be detained, so the short appeal time does not apply to them either.

At the CGRS, two vulnerability orientated units have been established that render support to protection officers dealing with such cases. A "Gender Unit" assembles all gender-related asylum applications, including applications based on sexual orientation or gender identity (LGBTI), as well as those

154 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.
155 Article 11 Royal Decree on AO Procedure.
156 Article 8 Royal Decree on AO Procedure.
157 Article 9 Royal Decree on AO Procedure.
158 CGRS, *Women, girls and asylum in Belgium: Information for women and girls who apply for asylum*, available at: http://www.cgrs.be/en/publications. The brochure is not otherwise distributed or freely available.
159 Article 27 Royal Decree on CGRS Procedure.
160 Article 15 Royal Decree on CGRS Procedure.
161 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.

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. A "Psy Unit" assists protection officers in cases where psychological problems might have an influence on the processing of the application or on the assessment of the application itself However, in September 2015 the CGRS suddenly declared this cell to have been abolished as a consequence of the need to prioritise among its different internal projects due to the rising numbers of applicants since the summer of 2015.[162] (See section on Use of Medical Reports below).

The provisions on the evaluation of and the procedural guarantees in case of vulnerability in Articles 22 of the recast Reception Conditions Directive and 24 of the recast Asylum Procedures Directive need further transposition in the Belgian law and implementation in the asylum practice. It is difficult to assess to what extent vulnerability is identified systematically from the beginning of the asylum procedure. At least in border procedures, no systematic screening seems to be in place except for the screening of unaccompanied children. Also, even established vulnerabilities are not always taken into consideration in the assessment of the protection needs when the asylum seeker does not at least refer to those him or herself and invokes them as a decisive element for his or her protection claim.

2. 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

Legislation does not explicitly determine the specific possibility to submit a medical report in the asylum procedure or the weight to be given to it in the assessment of the asylum application. In 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.

Mental state and credibility

Until very recently, a "Psy Unit" at the CGRS existed, consisting of a psychologist and a reference person in every regional section to provide support services to protection officers upon request if they believe that the psychological situation of the asylum seeker might have an impact on the way the interview can be conducted as well as on the determination of protection needs and status.[163] The purpose of the psychologist's intervention was clearly not to confirm or contradict certain elements of the asylum application.

The only psychologist available resigned at the end of 2014 and had not been replaced yet, when in September 2015 the CGRS declared to have abolished the cell all together because of budgetary and prioritisation reasons. The CGRS had already before announced its intention to develop internal instructions for the protection officers on how to identify different psychological problems and to publish

162 Declaration of the CGRS at the CBAR-BCHV organised contact meeting of September 2015, available in French at: http://bit.ly/1GymMYx, 15, para 60.
163 CBAR-BCHV, *Trauma, geloofwaardigheid en bewijs in de asielprocedure*, August 2014, 74-80.

guidelines on which information a (psycho-)medical report should contain.[164] It is unclear if the prioritisation due to the rise in applications over summer, has any impact on this intention also. The support and advice services delivered by the psychologist, as described above, can thus be considered to have become unavailable to protection officers and asylum seekers alike.

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

Medical evidence of past persecution or serious harm

For the determination of the well-foundedness of an asylum application based on acts of persecution or serious harm undergone in the past, there is no procedure to establish evidence for the physical harm such acts might have caused. The general provisions concerning the burden of proof apply in these situations: the burden of proof in principle lies with the asylum seeker, without any explicit reference in legislation to that burden being shared with the CGRS.[165] The procedure provides for the possibility for the CGRS to ask for additional information, for the asylum seeker to deposit all pieces he or she deems necessary, even after the interview, and obliges the CGRS to take all documents and elements submitted into consideration.[166]

The value of such medical reports of physical harm as evidence for the existence of past persecution or inhuman treatment is mostly put aside by the CGRS, arguing that such reports cannot be decisive about the exact cause of the harm or about who inflicted such injuries and for which reasons. Exceptionally, the CGRS has been required by the CALL to further examine the circumstances surrounding the physical harm, after having refused to consider a medical report because it did not allow for a determination of the exact cause of the harm and potential past persecution with certainty.[167] The CALL ruled that the reversal of the burden of proof in case of past persecution or serious harm applies because of the presence of the physical scars as such, and this obliges the CGRS to conduct additional research into the circumstances surrounding their causes.[168]

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

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164 Declarations of the CGRS at the CBAR-BCHV organized contact meeting of February 2015, available in French at: http://bit.ly/1MvsoVI, 6, para 22; and of March 2015, available in French at: http://bit.ly/1XBcBXk, 6, para 22.

165 Article 48/6 (former Article 57/7ter) Aliens Act, as amended by Law of 8 May 2013. This is still an incomplete transposition of Article 4(1) Qualification Directive, since it does not mention the shared burden of proof for the authorities in actively cooperating with the asylum seeker. See CJEU, Case C-277/11, *MM v Minister for Justice, Equality and Law Reform*, Judgment of 22 November 2012.

166 Articles 10, 22, 17 and 27 Royal Decree on CGRS Procedure.

167 See for example CALL, Judgment No 64786, 13 July 2011. In this case the doctor himself mentioned in his medical report that the injuries were "most probably" inflicted by torture, but the CGRS found this insufficient as evidence since the other declarations were considered to be not credible. The proven hyporeaction, 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.

168 Article 48/7 (former Article 57/7bis) Aliens Act, as amended by Law of 8 May 2013.

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

In this context, it is also important to mention the so-called "medical regularisation procedure", that is not technically a part of the asylum procedure, but is very closely related. In case return to the country of origin would create a risk of inhuman or degrading treatment resulting from the deterioration of the health of the person concerned due to a lack of actual access to appropriate medical treatment, an application should be lodged with the AO instead of the CGRS.[169] This application of the subsidiary protection definition for medical reasons has been taken out of the asylum procedure, and a completely separate procedure with less procedural guarantees and without any temporary residence status is carried out for the examination of the application. In this procedure, a standardised medical form has to be filled in and deposited before the request can be admissible and examined on its merits. A refusal can only be subjected to an annulment (and suspension) appeal. The mere existence of the procedure is an excuse often used in decisions of the CGRS not to take into consideration and not even to pronounce itself at all about any medical element put forward in the asylum procedure, even if it could have had certain relevance for the asylum application. In 2014 this so-called medical 'regularisation' procedure has led to only 496 positive decisions to grant a temporary staying permit, against 9242 refusals.[170]

In *M'Bodj* and *Abdida*,[171] two judgments delivered on 18 December 2014, the CJEU has ruled that this so called '9ter procedure' is not a form of international protection, but a national protection measure on which the EU asylum rules do not apply because it does not entail a protection against harm caused by "actors of persecution or serious harm" in the meaning of the Qualification Directive. Nevertheless, as the Return Directive and the EU Charter of Fundamental Rights remain applicable, there needs to be an effective remedy available that automatically suspends the execution of the refusal decision in case a return might create a risk of serious or irrevocable damage to the health situation of the person concerned, that could amount to a violation of Article 3 ECHR. The current appeal procedure does not seem to satisfy this requirement completely, given the short deadline to file an automatically suspensive urgent appeal.

3. Age assessment and legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for an identification mechanism for unaccompanied children?
   ☒ Yes ☐ No
2. Does the law provide for the appointment of a representative to all unaccompanied children?
   ☒ Yes ☐ No

Every unaccompanied child who applies for asylum or is otherwise detected on the territory or at the border has to be referred to the Guardianship service at the Ministry of Justice. The so-called Programme Law of 24 December 2002 has established the service and procedures to be followed in such a case.[172]

Age assessment

169 Article 9ter Aliens Act.
170 AO, *Annual statistical report 2014*, available in Dutch at: http://bit.ly/1HU9b8X 29.
171 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.
172 Article 479 Title XIII, Chapter VI of Programme Law of 24 December 2002 (UAM Guardianship Act).

The Guardianship service has the general mission to streamline a system of tutors (guardians) intended to find a durable solution for unaccompanied children who are not EU citizens in Belgium, whether they apply for asylum or not. The service has to control first of all the identity of the person who declares or is presumed to be below 18 years of age. If the Guardianship service itself or any other public authority responsible for migration and asylum, such as the AO or the CGRS, has any doubt about the person concerned being underage, a medical age assessment can be ordered, at the expense of the authority applying for it.[173] Following critiques around the accuracy of the medical test to establish the age of non-Western children by the Order of Physicians,[174] a margin of error of 2 years is taken into account. This means that only a self-declared child who is tested to be 20 years of age will be registered as an adult. In 2015, the Council of State had to reaffirm, by suspending several Guardianship services' decisions, the legal provision that of the different outcomes of the different subtests of which such an age assessment consists, the one that indicates the lowest age is the one binding for the Guardianship service's decision.[175] The identification procedure also entails a risk for unaccompanied children who did not apply for asylum yet but might have protection needs that are still to be discovered, if the Guardianship service would find it necessary to contact the consular services of the country of origin.

Guardianship

Once identified as being underage, a tutor will be assigned to assist the child. The tutor 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 tutor has to arrange for the child's accommodation and ensure that the child receives the necessary medical and psychological care, attends school etc. The tutor 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. Only since the February 2015 amendment to the Aliens Act is it now allowed to cumulate the specific procedure intended at finding a durable solution for unaccompanied minors (family reunification, return or right to reside in Belgium) with the asylum procedure,[176] while before one had to choose between the two or conduct them consecutively. The tutor also has to help in tracing the parents or legal guardians. If that has not been done yet, the tutor can also introduce an asylum application for his or her pupil.[177] Except for the provisions that allow the tutor to attend the different interviews at the AO and the CGRS, there are no specific legal provisions as to the tutor's role in the asylum procedure.[178]

If necessary, a provisional tutor 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 deputy shall take on the guardianship.[179]

In 2015 (January-September) there were 3,091 signalisations of unaccompanied minors, of whom 2,556 are new arrivals and 1,784 applied for asylum (in this same period) – a dramatic increase compared to earlier years (1,530 self-declared minors applied for asylum in 2012, only 765 in 2013 and 804 in 2014). The top 5 nationalities (among the signalisations) are: Afghanistan (995), Syria (293), Somalia (183), Iraq (165) and Morocco (118). Of the 682 age assessments conducted in 2015 so far, 485 were declared to be over 18 years old (71% of the tests).[180]

Of the 3000+ signalisations in 2015, only 1,000 had gotten a guardian by 1 October, while there are more than 2,000 ongoing guardianships. Additionally the Guardianship service is now registering more

173 Article 7 UAM Guardianship Act.
174 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.
175 See e.g. Council of State, Judgment No 231491 of 9 June 2015, available in French at: http://bit.ly/1XdO2xs; Judgment No 232635 of 20 October 2015, available in Dutch.
176 Article 61/15 Aliens Act, as amended by Article 2 Law of 26 February 2015.
177 Article 479(9)(12) UAM Guardianship Law.
178 Article 9 Royal Decree Asylum Procedure AO and Article14 Royal Decree Procedure CGRS.
179 Article 479(6) UAM Guardianship Law.
180 Information provided by the Guardianship Service by e-mail, 28 October 2015.

than 500 unaccompanied minors a month. This is more than it has the capacity and means for, the more so since they lost a number of guardians due to their demand to take up more tutorships. A follow-up recruitment campaign by the Ministry of Justice however has resulted in more than 400 extra candidates, who still have to go to a selection and training procedure and expected to finally result in 60 new guardians. By October there was a total of 230 guardians, 107 francophone and 123 Dutch speaking, though all are expected to take up pupils with procedures in both the national languages. In September 2015, the government granted an additional budget to the service to support the staff and to recruit professional guardians through its partner organisations, which is ongoing. This process is expected to result in new designations from November on and a catch-up of the back-log later on; in the meantime the youngest and most vulnerable minors are prioritised in the designation procedure.[181]

F. The safe country concepts

Indicators: Safe Country Concepts

1.	Does national legislation allow for the use of "safe country of origin" concept?	☒ Yes ☐ No
	❖ Is there a national list of safe countries of origin?	☒ Yes ☐ No
	❖ Is the safe country of origin concept used in practice?	☒ Yes ☐ No
2.	Does national legislation allow for the use of "safe third country" concept?	☒ Yes ☒ No
	❖ Is the safe third country concept used in practice?	☒ Yes ☒ No
3.	Does national legislation allow for the use of "first country of asylum" concept?	☒ Yes ☐ No

With regard to asylum seekers from EU Member States or candidate EU Member States, the CGRS can decide not to take into consideration their asylum applications in an accelerated procedure, if the statements of the asylum seeker do not clearly indicate that there is, in his or her respect, a well-founded fear of persecution or a real risk of serious harm. Such a decision should be taken within 5 working days.[182] In 2015 so far (January-September), 25 such inadmissibility decisions were taken by the CGRS (29 in 2014, 70 in 2013).

Safe country of origin

The safe country of origin concept was introduced in the Aliens Act in 2012. The Law of 19 January 2012 established an accelerated admissibility procedure similar to the procedure that was already in place for EU citizens and the procedure to determine the countries of origin that are considered to be safe. According to this provision, 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.[183]

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.[184] The Royal Decree of 11 May2015 on Safe Countries of Origin reconfirmed the list with the same 7 safe countries of origin that

181 Written declaration by the Guardianship Service, added to the report of the 20 October 2015 contact meeting, organised by BCHV-CBAR, available in French at: http://bit.ly/1OTAckJ.
182 Article 57/6 Aliens Act.
183 Article 57/6/1 Aliens Act.
184 Article 57/6/1 Aliens Act.

was adopted for the first time in 2012: **Albania**, **Bosnia-Herzegovina**, **FYROM**, **Kosovo**, **Serbia**, **Montenegro** and **India**.[185]

On 7 May 2015, the Council of State once again had quashed the inclusion of **Albania** in the Royal Decrees of 2014, after having done so in October 2014 with the Royal Decrees of 2012 and 2013, because of the high recognition rate of 11.4% in 2012 and 13.7% in 2013 and the fact that those positive decisions were in 80% of the cases motivated by an ongoing risk, that of vendetta; unlike the recognition of Kosovar asylum applications, which are mostly based on non-topical problems.[186] In late 2014, the new Secretary of State for Migration and Asylum has declared his intention to add more countries to the list of safe countries of origin and has asked an advice to the CGRS on Tunisia, Senegal, Cameroun, Georgia and Armenia,[187] but the CGRS seems not to have delivered a positive advice on any of the proposed countries.

The CGRS has to decide if asylum applications from nationals or stateless residents of these countries are to be taken into consideration or not within 15 working days. To refute the presumption of safety of their country of origin, it has to "appear clearly", according to the legal provision, from the asylum seeker's declarations that he or she has a well-founded fear of persecution as determined in the refugee definition in the 1951 Geneva Convention or runs a real risk of serious harm as determined in the subsidiary protection definition. 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.

An appeal at the Constitutional Court, challenging the legal concept of safe countries of origin, has been rejected in 2013.[188] Since the introduction of the concept in June 2012, a majority of applications from asylum seekers originating from these safe countries have been declared inadmissible by the CGRS. In 2015 so far (January-September), 255 decisions of inadmissibility of applications from safe countries of origin were delivered (293 in 2014, 691 in 2013. (See section on Admissibility Procedure above). Due to the 2014 and 2015 Council of State judgments quashing the inclusion of Albania in the safe countries of origin lists, the CGRS has decided to take all Albanian asylum applications into consideration.[189]

For the rules on appeals against safe country of origin inadmissibility decisions, see the section on Admissibility Procedure: Appeal.

For statistics on applications from safe countries of origin treated under the accelerated procedure, see Accelerated Procedure: General.

First country of asylum

With the Law of 8 May 2013, which entered into force on 1 September 2013, the concept of a first country of asylum was also introduced in the Aliens Act, in two different provisions. First, when an asylum seeker already has refugee status in another EU Member State, the CGRS can decide within 15 working days not to take into consideration the asylum application, unless the asylum seeker can prove that he or she cannot effectively rely on this status anymore (see the section on Admissibility

185 Royal Decree of 11 May 2015 implementing Article 57/6/1, par. 4 of the Aliens Act, establishing the list of safe countries of origin, available in French at: http://bit.ly/1OiD4Vi and Dutch at: http://bit.ly/1PQJFry.

186 Council of State, Judgment No 231157 of 7 May 2015, available at: http://bit.ly/1OiHTAI; Judgments Nos 228901 and 228902, 23 October 2014, available at: http://bit.ly/1QFs6YQ and http://bit.ly/1GlW5U9 respectively.

187 Declarations of the CGRS at the CBAR-BCHV organized contact meeting of January 2015, report available at: http://bit.ly/1kmazLW, 6, para 25.

188 Constitutional Court, Judgment No 107/2013, 18 July 2013, available in Dutch at: http://bit.ly/1GuVxNO and French at: http://bit.ly/1JDj4Lv.

189 Declaration of CGRS at the monthly contact meeting of the CBAR-BCHV, June 2014, available in French at: http://bit.ly/1WtvJUD, 5, para 19.

Procedure).[190] In 2015 so far (January-September), 35 inadmissibility decisions were taken on this ground (18 in 2014 and 10 in 2013).

Secondly, when there is a first non-EU country of asylum where the asylum seeker already enjoys "real protection" that he or she can still rely on, meaning that he or she is recognised as refugee there or at least has guarantees that the non-*refoulement* principle will be respected, and he or she can effectively regain access to that country, this can be a sufficient reason for the CGRS to refuse the asylum application as unfounded, unless the asylum seeker can prove that he or she can no longer invoke that real protection or get access to the territory of that state.[191] This is not a ground for inadmissibility, nor are these asylum applications prioritised. At the end of 2013, beginning of 2014, this first country of asylum concept was applied largely to refuse asylum applications from Tibetans having lived in India before coming to Belgium, although India is not a signatory to the 1951 Refugee Convention. Moreover, Rwandans and Congolese with (often Mandate UNHCR) refugee status in another African country had been refused international protection on this ground, but this practice has been halted due to some judgments of the CALL considering this protection status ineffective and/or inaccessible.[192] The CALL has repeatedly refused to refer a preliminary question to the CJEU on the interpretation of the new concept of "real protection".

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.

Safe third country

The Aliens Act does not refer to the "safe third country" as a relevant factor affecting the procedure *per se*. However, under Article 74/6, §1bis, 2°-3°, an applicant who has resided for over 3 months in one or more third countries, where he or she has no well-founded fear of persecution or faces no real risk of serious harm, may be detained for that reason (see the section on Grounds for Detention below).

G. Treatment of specific nationalities

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No
   - ❖ If yes, specify which: Syria

2. Are applications from specific nationalities considered manifestly unfounded?[193] ☒ Yes ☐ No
   - ❖ If yes, specify which: Bosnia-Herzegovina, Serbia, Montenegro, Kosovo, Albania, FYROM, India

Besides the prioritisation by law of the non-admissibility decisions on asylum applications from EU-citizens, persons with a protection status in an EU Member State or persons from a safe country of origin (with the exception of **Albania**), there is no formal prioritisation of the in merit treatment of any nationality.

190 Article 57/6/3 Aliens Act.
191 Article 48/5(4) Aliens Act.
192 See e.g. CALL, Judgment No 129911, 23 September 2014; Judgment No 123682, 8 May 2014.
193 Whether under the "safe country of origin" concept or otherwise.

De facto however, **Syrian** applications are handled with priority and with the presumption that once their nationality is ascertained and there are no indications for exclusion, the person should get a protection status.

As to applications from **Iraqis from Bagdad** there has been a freeze in treatment, combined with an intense campaign by the AO and the Secretary of Asylum himself to divert them from applying or continuing their asylum procedure. Through different specific communications by the authorities, they have tried to persuade Iraqis to withdraw their applications and return on a voluntary basis, a practice vehemently opposed by many NGOs.[194]

For some other nationalities the treatment of the asylum applications was temporarily frozen in 2015 such as **Ukraine**, **Gaza (Palestine)** and **Burundi**.

Resettlement

The Belgian government has committed to resettling 75 Syrians from Turkey under its 2014 quota. Eventually, 71 Syrian refugees arrived in Belgium between November 2014 and August 2015. .

Under Belgium's 2015 quota, the Secretary of State for Migration has announced his intention to resettle 300 persons. This concerns 235 Syrians who fled to Lebanon due to the conflicts in their country and 65 Congolese who fled to Burundi. By the end of September, the Syrians had been selected in Beirut and 124 had completed a cultural orientation course, which consisted of presentations and various activities to inform the refugees about the different aspects of life in Belgium: cost of living, education, healthcare, labour market etc.[195] At the end of January 2015, in Burundi the CGRS had already selected 88 Congolese refugees (23 of whom still fall within the 2014 national quota). They are all expected to be gradually arriving in Belgium from October 2015 on. Under the EU resettlement scheme agreed upon at the Justice and Home Affairs Council of 20 July 2015, Belgium pledged to resettle 1,100 Syrians.

Humanitarian visas have been delivered to some Syrians during 2015 and a spectacular action put up by a secret committee of former diplomats has resulted in the transfer of 140 Christian Syrians from Aleppo with the help of Belgian Embassy in Beirut.

194 Press releases from Vluchtelingenwerk Vlaanderen, 7 October 2015, available in Dutch at: http://bit.ly/1WtvJUD (Dutch); and CIRÉ, 14 October, available in French at: http://bit.ly/1NlvtXf.

195 CGRS and Fedasil, *Resettlement of Refugees in Belgium*, available at: http://www.resettlement.be/.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

❖ Regular procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Dublin procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Admissibility procedure	☐ Yes	☒ Reduced material conditions	☐ No
❖ Border procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Accelerated procedure	☐ Yes	☒ Reduced material conditions	☐ No
❖ First appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Onward appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Subsequent application	☐ Yes	☐ Reduced material conditions	☒ No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

According to the 2007 Reception Act, every asylum seeker has the right to reception conditions from the moment he or she has registered his or her application, that allow him or her to lead a life in human dignity. Since the adoption of this law, the system of reception conditions for asylum seekers has shifted completely from financial to purely material aid. This comprises 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). An asylum seeker can, however, also choose not to accept the offered place in a reception centre and to stay at a private address, but in that case he or she will not be entitled to certain parts of this material aid such as accommodation, food and clothing. The whole reception structure is coordinated by Fedasil. Also, the social welfare services provided by the PCSW are a form of material aid delivered to asylum seekers in certain cases.[196]

When the asylum seeker introduces his or her asylum application at the AO, he or she gets a proof of this registration (so-called "Annex 26"). This document has to be presented to Fedasil's Dispatching desk, in the same office building as the AO, where the applicant will get a reception centre assigned as his or her mandatory place of registration (so-called "Code 207").[197]

The serious backlog of asylum application registrations that emerged in late summer 2015 when the AO refused to (or could not) register more than 250 a day, caused hundreds of people to sleep rough for days because they were not yet eligible for accommodation to be assigned by Fedasil. At first a camp organised by civil society emerged in the park opposite the AO building as a response to this reception gap.[198] Later the government created so called pre-reception accommodation at the AO premises organised by the Flemish Red Cross for up to 1,000 people by the beginning of October, to be buffer capacity.[199]

For the assignment to a specific centre, Fedasil takes into consideration the occupation rate of the centre, the family situation of the asylum seeker, his or her age, health condition and the procedural language of his or her asylum case (although legally provided criteria, the proportionate allocation of

196 Article 3 Reception Act.
197 Articles 9-10 Reception Act.
198 Euractiv, 'In Europe's capital, a makeshift camp for refugees creates embarrassment', 11 September 2015, available at: http://bit.ly/1O7ACCN.
199 Flemish Red Cross, 'WTCIII site B van Rode Kruis evolueert van pre-opvang naar tijdelijke flexibele bufferopvang', 16 October 2015, available in Dutch at: http://bit.ly/1O7ABid.

asylum seekers on the territory and the knowledge of one of the official languages [Dutch, French or German] are not usually taken into consideration).[200] No assessment of (the risk of) destitution or the financial means of the asylum seeker takes place. There are no monitoring or evaluation reports about the effective assessment of all these elements in practice. After 4 months, asylum seekers can apply to be transferred to an individual accommodation structure (see sections on Forms and Levels of Material Reception Conditions and Types of Accommodation below).

The Law of 19 January 2012 brought about some further modifications to the reception system, restricting access to material reception conditions in certain circumstances and introducing the concept of a so-called "return track" for asylum seekers. This is a framework for individual counselling on return, set up by Fedasil and put into practice since September 2012 that promotes voluntary return to avoid forced returns. The return track starts with informal counselling, followed by a more formal phase. The informal phase consists of providing information on possibilities of voluntary return and starts from the moment the asylum application is being registered. Within 5 working days after a negative first instance decision on the asylum application by the CGRS, the asylum seeker is formally offered return accompaniment. An individual project of return must be elaborated and the AO will be informed. Once the period to introduce an appeal with the CALL has elapsed or a negative appeal decision is taken by the CALL, the person is transferred to a special open return place in a federal reception centre. Since the AO does not deliver any new order to leave the country after a negative judgment from the CALL, but just prolongs the time period to execute the order delivered after the CGRS decision by 10 days,[201] the right to material reception conditions will only be prolonged for this period. This return track procedure has been shortened in October 2015 by new instructions from Fedasil.[202]

Until this moment, every asylum seeker (whether he or she collaborates with voluntary return or not) is entitled to full material reception conditions, but this prolongation is renewable for two extra periods of 10 days, only if the person collaborates on his or her return.[203] When the period for voluntary return as determined in the order to leave the country elapses and there is no willingness to return voluntarily, the right to reception ends and the AO can start up the procedure to forcibly return the person, including by using administrative detention. Introducing a cassation appeal with the Council of State against the CALL judgment does not prolong the right to reception conditions, but this right will be reactivated should this appeal be declared admissible. Until then the asylum seeker is no longer entitled to an accommodation place.[204]

Some humanitarian and other circumstances in which a prolongation of the right to reception conditions can be applied for with Fedasil are determined in the law: to end the school year; 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 serious medical reasons; or whenever respect for human dignity demands it.[205] After a decision granting a protection status, the person concerned can stay for a maximum of 2 more months in the reception place. Fedasil has adopted internal instructions about how to end the accommodation in the reception structures in practice.[206]

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

201 Law of 8 May 2013.

202 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.

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

204 Article 6 Reception Act.

205 Articles 6 and 7 Reception Act.

206 Fedasil, *Instructions on the termination and the prolongation of the material reception conditions*, 15 October 2013. The instructions determine that the decision of the AO on the prolongation of the time period to execute the order to leave the country precede over the Fedasil decisions on the prolongation of the reception.

The amendments introduced by the Law of 19 January 2012 also provide that asylum seekers who lodge a second or further subsequent asylum application can no longer benefit from the right to reception conditions, until their asylum application is taken into consideration by the CGRS, unless they have a pending request for a prolongation of the reception.[207] This normally happens within a very short term, but in certain cases this takes longer, e.g. in case of a sudden sharp rise of subsequent applications. The Brussels Labour Tribunal has ordered Fedasil at multiple occasions to motivate such decisions individually taking into account all elements of the case.[208] During the appeal procedure against inadmissibility decisions on subsequent asylum applications, they have no right to reception conditions either. Also, EU citizens applying for asylum and their family members will, albeit entitled to it, not be assigned a reception place, but they can challenge this before the Labour Courts.

In other admissibility procedures, the asylum seekers concerned are not excluded from reception conditions. Asylum seekers from safe countries of origin will have a reception place assigned to them, as will those who have a recognised refugee status in another EU country.

During the examination of the Dublin procedure by the AO, asylum seekers are entitled to a reception place. Previously, in case of an agreement with another Member State to take charge of or take back the asylum seeker, this right continues until the delay to execute a decision to transfer them to the responsible member state has elapsed, even if the transfer did not take place. Following judgments of the Brussels and Liege Labour Tribunals implementing the CJEU's *Cimade* judgment, according to which the authorities are under an obligation to provide a reception place until the (forced or voluntary) Dublin transfer is actually carried out,[209] Fedasil has adapted its instructions. However, it still limits the right to reception conditions to the period until the time-period for executing the order to leave the territory has elapsed (considering this to be the "actual transfer" the CJEU refers to), or until the travel documents are delivered if the asylum seeker confirms his or her willingness to collaborate with the transfer but cannot execute the decision yet for reasons beyond his or her own will.[210] The Brussels Labour Court and the Antwerp Labour Tribunal have overruled these instructions again in individual cases, because they would make too strict an interpretation of the *Cimade* judgment, ordering Fedasil to provide shelter until the Belgian state effectively executes this transfer decision itself (unless it gives clear instructions as to when and where the asylum seeker has to present him or herself for this).[211] From October 2015 on, asylum applicants under a pending Dublin transfer decision will be accommodated in an open return place and the return track procedure will apply (see above).[212] If eventually in such cases, after the maximum time period permitted by the Dublin Regulation to transfer the asylum seeker to the responsible Member State has passed, Belgium accepts its responsibility to examine the asylum application, no reception place will be assigned until the person has presented him or herself at the AO again and the AO has accepted to reactivate the first application (see section on Dublin). In a July 2015 judgment in the *V.M. v Belgium* case, the ECtHR found that Belgium had violated Article 3 ECHR because (back in 2011) it had not provided for adequate material reception conditions for a particularly vulnerable family (asylum seekers, children, disabled, Roma) during the

207 Article 4 Reception Act. See also 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. These new instructions replace the ones of 5 October 2012.

208 Labour Tribunal, Brussels, Judgment of 17 February 2015, available in French at: http://bit.ly/1Q3cOBn.

209 CJEU, Case C-179/11, *Cimade & Gisti v Ministre de l'Intérieur*, Judgment of 27 September 2012; Labour Court, Brussels, Judgment of 24 January 2013.

210 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.

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

212 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/1MuInwV. This instruction replaces point 2.2.4. of the Instructions of 15 October 2013.

(non-automatically suspensive) appeal procedure against an AO transfer decision under the Dublin Regulation.[213]

The Reception Conditions Directive has never been transposed into the Belgian legislation with regard to the accommodation of asylum seekers in closed centres. Asylum seekers at the border are held in closed collective centres at the border or on the territory. Families with children are not detained anymore and are accommodated in housing units on the territory; albeit considered not to have legally entered it. If the asylum procedure takes longer than the allowed maximum detention period of 2 months, they must be transferred to the normal reception structures (see section on Asylum Procedure: Border Procedure).

During the so-called medical regularisation procedure (which is formally not part of the asylum procedure), only when the request for regularisation on medical grounds is declared admissible will the applicant be entitled to reception conditions, equal to those asylum seekers are entitled to.

In theory, no material reception conditions, with the exception of medical care, are due to a person with sufficient financial resources to provide for his or her basic needs.[214] Expenses made for material aid already delivered can also be recovered in such cases.[215] The concept and means of calculating financial resources, as well as the part to be contributed, are determined in the 2011 Royal Decree on Material Assistance to Asylum Seekers. 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 control and have the expenses already made effectively reimbursed (see section on Reduction and Withdrawal of Reception Conditions).

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 31 December 2014 (in original currency and in €):
   - ❖ Accommodated single adult, incl. food €176
   - ❖ Accommodated single adult €276

Fedasil coordinates the entire reception system, including its material aid distribution. In principle, since 2007, all asylum seekers are entitled to material aid only, irrespective of the kind of reception accommodation they are assigned to. This comprises 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) and the social welfare services provided for by the PCSW.[216] Fedasil regularly issues internal instructions on how to implement specific rights provided for in the Reception Act.[217]

The theoretical reception model provides for accommodation in a collective reception centre where material aid is distributed during the first 4 months, or for as long as the asylum seeker does not apply

213 ECtHR, *V.M. and others v. Belgium*, Application No 60125/11, Judgment of 7 July 2015 (referred to the Grand Chamber), see: http://bit.ly/1MYGPvr.
214 Article 35/2 Reception Act.
215 Article 35/1 Reception Act.
216 Article 3 Reception Act.
217 These instructions are not published, but communicated to all accommodation initiatives and also freely distributed to those interested. In 2014, instructions were issued *inter alia* on the reimbursement of psychological consultations (20 August), on monthly allowances (pocket money) and community services (6 June) and on managing Ebola-related risks (10 October).; and in 2015, on the accommodation in collective centres of persons with a right of residence (2 July) and on unaccompanied minors with a right of residence (23 July).

for a transfer.[218] All asylum seekers who reside in such type of accommodation additionally receive a fixed daily amount of pocket money in cash.[219] In 2015, adults and accompanied children from 12 years on who attend school receive €7.40 a day, younger accompanied children and children 12 years of age or older who do not attend school receive €4.50 a day, and unaccompanied children receive €5.70 a day.

To adapt reception conditions better to individual needs, since August 2015 two categories are to be exempt from collective accommodation: asylum applicants with a high chance of receiving a protection status (e.g. Syrians) are immediately assigned to an Local Reception Initiatives (LRI), and those with particular vulnerabilities are assigned to specialised NGO reception structures.

In a second phase (for the others), after 4 months, a transfer to an individual accommodation structure can be applied for, in theory by any asylum applicant.[220] Where the person's asylum application has already been refused at first instance procedure by the CGRS, the transfer will be refused or postponed if an individual accommodation would not be considered sufficiently adapted or if there are no sufficient places available. Due to the actual increase in asylum applications, and thus persons entitled to accommodation, these transfers have been put on hold.[221] The individual accommodation structures are now reserved for the two categories of persons exempt from collective accommodation altogether.

Asylum seekers in this kind of accommodation all receive a weekly amount in cash or in food vouchers, to provide for material needs autonomously; this also includes the pocket money. For 2015, the amounts vary according to the family composition and the internal organisation of accommodation. These amounts are as follows on a monthly (4 weeks) basis:[222]

Category of applicant	Allowance in LRI with food provided	Allowance in LRI with no food provided
Single adult	€176	€276
Additional adult	€132-196	€132-196
Additional child	€48-132	€48-132
Single-parent extra allowance	€24-40	€24-40
Unaccompanied child	€176	€276

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 Local Reception Initiatives (LRIs) 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. Also, in theory, if all reception structures would be completely saturated and no place can be assigned to an asylum seeker, he or she can present him or herself directly to the local PCSW and 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.

Since 1 December 2012, these amounts are as follows per person per month:[223]

Category	Belgian nationals on "social integration"
Single adult	€801.34
Cohabitant	€534.23

218 The theoretical reception model from Fedasil may be found at: http://bit.ly/1Lq3W0V.
219 Article 34 Reception Act.
220 Article 12 Reception Act.
221 Declaration by Fedasil at the contact meeting organised by CBAR-BCHV, 15 September 2015, available in French at: http://bit.ly/1GymMYx, 21, para 88.
222 Extrapolated from the weekly amount, times 4.
223 Article 14 Law on Social Integration. These amounts have been valid since 1 December 2012.

Person with family at charge	€1,068.45

In practice, most asylum seekers who presented themselves to the PCSW after having been turned down at the Fedasil dispatching during the reception crisis of 2009-2012 were refused this financial allowance and had to take their request to the Labour Courts. In its February 2014 judgment in *Saciri*,[224] the CJEU ruled that in case the accommodation facilities are overloaded, asylum seekers may be referred to the general public assistance system (PCSW), provided that that system ensures that the minimum standards laid down in the Reception Conditions Directive are met. In particular, the total amount of the financial allowances shall be sufficient to ensure a dignified standard of living, adequate for ensuring the health of the asylum seekers and capable of ensuring their subsistence. That general assistance should also enable them to find housing, if necessary, meeting the interests of persons having specific needs, pursuant to Article 17 of that Directive.

If the asylum seeker 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.[225] The applicant also has an obligation to inform the authorities thereof. Though a control mechanism is provided for in a Royal Decree, it is not frequently carried out by Fedasil in practice due to lack of operational means. Most local PCSW have more opportunities to carry out such controls. From April 2013 until January 2015, about 700 accommodated asylum seekers have contributed financially to some extent. In 2014, another 8 persons have had their reception rights temporally suspended because they were in employment. In 2014, a total of €421,756 was contributed by inhabitants of the reception centres; in January-October 2015, this was only €198,797.

The planned reception model provides for a so called “transit reception” phase for persons who got a protection status, transferring the person still at the collective reception centre on a voluntary basis to an LRI, where they would be entitled to 3 (instead of 2) months of individual reception conditions, with a better assistance with the first steps of integration into society (in the first place finding adequate housing).[226] This phase has been put on hold due to the current overburdening of the reception system.

3. Types of accommodation

Indicators: Types of Accommodation

1. Number of collective reception centres (20 October 2015):[227] 65
2. Total number of places in the reception centres (27 October 2015): 18,437
3. Total number of places in LRI (18 November October 2015): 7,154

4. Type of accommodation most frequently used in a regular procedure:
   ☒ Reception centre ☐ Hotel or hostel ☒ Emergency shelter ☒ Private housing ☐ Other

5. Type of accommodation most frequently used in an accelerated procedure:
   ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

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

225 Articles 35/1 and 35/2 Reception Act and Royal Decree on Material Assistance to Asylum Seekers (original amounts without indexation).

226 Fedasil, *Instruction concerning the assignment to an individual reception place at a LRI on a voluntary basis for residents of a collective reception centre being entitled to stay for more than 3 months*, 2 July 2015, available in Dutch at: http://bit.ly/20qIzrE; *Instruction concerning the assignment to an individual reception place at a LRI on a voluntary basis for unaccompanied minors accommodated in a collective reception centre being entitled to stay for more than 3 months*, 23 July 2015, available in Dutch at: http://bit.ly/1Pjmw0D.

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

Accommodation may be collective i.e. a centre or individual reception facilities i.e. a house,[228] depending on which phase of the asylum procedure the asylum seeker is in.

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.[229] 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.[230] The partners include the Flemish and the Francophone Red Cross, Flemish Refugee Action (Vluchtelingenwerk Vlaanderen), Ciré and the communal PCSW.

The 65 collective reception centres as of 20 October 2015 are mainly managed and organised by:

- Fedasil: 19 centres;
- Flemish and Francophone departments of the Red Cross: Croix-Rouge runs 22 centres and Rode Kruis runs 18.
- Samu Social and Mutualités socialistes: each 1 centre
- Since October 2015 private companies, for the first time involved in providing reception, also run 4 centres:

The individual reception initiatives are mainly run by the PCSW and by NGO partners. A total of 1,476different individual reception structures run by LRIs of the PCSW, totalling 7,154 places, are operating as of 18 November 2015.

There are a number of specialised centres for unaccompanied children (1,375 places), for unaccompanied underage mothers with their children (places for 40 mothers in Fedasil centres), for single women with children (about 70 places in 21 apartments from Caritas), for persons with psychological problems (40 places in a Croix Rouge centre), for persons with specific medical needs (211 places from Fedasil, Ciré and Vluchtelingenwerk Vlaanderen) and for victims of trafficking (external of the Fedasil-run network).

As of 27 October 2015, the asylum reception network had a total capacity of 26,433 places, out of which 25,511 were occupied (97%); there is no buffer capacity anymore.[231] Since August 2015 the reception capacity has been increased in an unprecedented manner with more than 10,000 extra places, immediately following a steady decrease over the last two years: in July 2015, there were only 16,080 places (and an additional 2,176 buffer places available in case of a sudden increase of applications); in January 2014, 20,182 places and in January 2013, 23,985 places.

Through their specialised PCSW, local authorities play an important role in the reception of asylum seekers in LRIs. With 6,706 places in October 2015, they are currently still the biggest provider of accommodation.[232] The Red Cross sections together have a capacity of 10,294 places (4,074 from the Flemish Red Cross and 6,220 from the francophone Red Cross) and Fedasil provides 6,505 places in collective centres.[233]

228 Article 64 Reception Act.
229 Article 56 Reception Act.
230 Article 62 Reception Act.
231 Fedasil, *Statistics,* available at: http://fedasil.be/fr/figures.
232 Fedasil, *Statistics,* available at: http://bit.ly/1MeS2My.
233 Fedasil, *Statistics,* available at: http://bit.ly/1MeS2My.

The Law of 8 May 2013 introduced the legal possibility to oblige all PCSWs to create an LRI in case of emergency and face financial sanctions in case they do not comply with such obligation.[234] This provision still awaits further legal implementation. The government plans to come up with some kind of voluntary or obligatory distribution scheme by December 2015, but the discussion about the applicable criteria have become subject to a (typically Belgian) communitarian stalemate (between the Flemish and the francophone).

In December 2014, the new Belgian national government announced serious budget cuts as well as a further decrease of reception facilities. For 2015, Fedasil was planned to do with €16.3 million less and, 2,057 places would have to be shut down, on top of the 5,748 that had already been abolished since 2013. 26 collective centres and many other reception initiatives were planned to disappear and the small scale partners would be the ones most affected. By the end of 2015 only 16,636 structural and 2,193 buffer places were planned to be left. The total number of reception initiatives, individual or collective, from all partners combined would be 997 by the end of 2015 (coming from 1045 in 2014).[235] Moreover, the new State Secretary for Asylum and Migration declared that he wanted a new reception model with mainly collective reception facilities, and only individual housing for certain categories such as single women with children and unaccompanied minors or asylum seekers with profiles receiving high recognition rates.[236]

The implementation of this budgetary plan as well as reception model has now been put aside because of the emergency situation in reception capacity that started in September-October 2015. The government has been forced to completely reverse its budgetary plans and provide substantial additional funding for reception. In September 2015 the State Secretary calculated that for 2015 Fedasil would need, besides its actual €280 million budget, its complete €80 million reserve and for 2016 it will need €600 million.[237] Since September 2015, almost every week additional reception centres and other accommodation initiatives are being opened,[238] for which piecemeal additional budget is provided. It is not clear in how far the government has agreed on a global budget for reception conditions.

The unavoidable consequences of the governmental crisis management that focusses on providing material aid – "bed, bath, bread" – and stimulating (voluntary and forced) return, are that standards of reception conditions cannot be guaranteed in all situations anymore and that immaterial assistance (legal, psychological, social aid) risks being seriously underfunded, definitely when it comes to non-governmental services. Organisations such as Vluchtelingenwerk Vlaanderen and the Belgian Refugee Council (CBAR-BCHV) have lost such substantial parts of its public funding that certain projects have been put on hold or, in case of the latter, the organisation might disappear altogether.

The introduction of the "return traject", the individual counselling on voluntary return to avoid forced return, demanding collaboration of the asylum seeker after a first instance refusal decision in return for a prolonged right to reception conditions, led to the creation of so-called return places in 4 Fedasil reception centres (totalling 300 places) and an open return centre for families with children under the direction of the Aliens Office (105 places, in Holsbeek) for those whose asylum procedure has come to an end. 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 UN Convention on the Rights of the Child and the Belgian Constitution, because the right to education is not guaranteed, social assistance focusses mainly on return

234 Article 57ter/1 of the Organic Law of 8 July 1976 on the PCSWs, available in French at: http://bit.ly/1B1tzaj and Dutch at: http://bit.ly/1S3vFdP.

235 Federal Government, *Reduction plan*, 11 December 2014, available at: http://bit.ly/1FNDjjS; oral information by Fedasil management.

236 State Secretary for Asylum and Migration, *Policy statement in the Chamber of Representatives*, 4 December 2014, available in French and Dutch at: http://bit.ly/1FGheF2, 24.

237 Knack, 'Francken wil 8.000 extra plaatsen creëren voor asielzoekers', 10 September 2015, available in Dutch at: http://bit.ly/1Yk5bYS.

238 For news on the government decisions to open new reception centres, see the News section on the Fedasil website, available in French at: http://fedasil.be/fr/news?tid=31.

assistance and it is the AO, and not Fedasil, who deliver the material aid, making this right to material aid conditional on the collaboration of the children's parents with the return.[239] The Bruges and Liege Labour Courts have also ruled this conditionality to be a violation of the fundamental rights of the child and has ordered Fedasil to provide accommodation, and not the AO, in accordance to the Royal Decree of 24 June 2004 on the conditions and modalities of material aid to minor foreigners who reside stay with their parents on the territory illegally, also after the 30-day period for the execution of the return decision.[240] In a Judgment of 24 April 2015, the Council of State declared the agreement of 2013 between Fedasil and the AO concerning the reception conditions of families with minor children in the Holsbeek open return centre in violation with the 2004 Royal Decree insofar as it only provides in accommodation for 30 days instead of accommodation according to the needs, health and development of the child, but it allowed Fedasil to subcontract this obligation to the AO.[241]

4. 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?[242] 9.3 months
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

The law provides for accommodation to be adapted to the individual situation,[243] but in practice places are mostly assigned according to availability. There are a number of specialised centres or individual accommodation initiatives for single women with children, for persons with psychological problems, for victims of trafficking and for persons with medical problems that require treatment from experts. Since the end of the reception crisis, when the pressure on the network had diminished in 2014 and the first half of 2015, it was easier to assign asylum seekers to the most appropriate place and specific reception needs were largely covered, with the exception of asylum seekers with specific medical problems, more specifically disabled persons in wheelchairs. By the end of 2015 it had become increasingly impossible to continue doing so in a significant manner due to the demand exceeding the supply. Now people are simply assigned to the reception initiative that has a place available, while taking into account the family composition or urgent medical needs as far as possible (see the section on Addressing Special Reception Needs of Vulnerable Persons).

The minimum material reception rights for asylum seekers are described in the Reception Act, mostly only in a very general way.[244] Fedasil puts them into 4 categories of aid:[245]

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.

239 Federal Ombudsman, *Annual Report 2013*, available at: http://bit.ly/1AZrewH, 26-30.
240 Labour Court, Bruges, Judgment 13/1179/A of 19 February 2014, available at: http://bit.ly/1QHEkA9. Labour Court, Liege, Judgment 2014/AN/90 of 18 November 2014, available at: http://bit.ly/1NWMLug. The Labour Court of Charleroi has also found the transfer of a family to the family centre in Holsbeek (in Dutch speaking Flanders) a violation of the right to education guaranteed for children of irregularly residing families by the Royal Decree of 24 June 2004 on the conditions and modalities of material aid to minor foreigners who reside stay with their parents on the territory illegally since it would force the children to change from a French speaking school to a Dutch speaking one. Labour Court, Charleroi, Judgment of 6 May 2014, available at: http://bit.ly/1F5Hyqq.
241 Council of State, Judgment No 230.947 of 23 April 2015, available in French at: http://bit.ly/1RZgJg8.
242 Information as of August 2015.
243 Articles 11, 22, 28 and 36 Reception Act.
244 Articles 14-35 Reception Act.
245 Fedasil, *About the Reception Centres*, available at: http://bit.ly/1IuvC6u.

The guidance aspects are regulated in a more detailed way by the 2007 Royal Decree on Medical Assistance and in some Fedasil instructions. However, certain aspects such as the house rules, the quality norms for reception facilities and the qualifications of social assistants have not been regulated by implementing decrees as the law has stipulated. Those are left to be determined by the individual reception facilities themselves or in a more coordinated way by Fedasil instructions.[246] The European Migration Network (EMN) published a report in 2013, describing the regulatory framework of material aid, also providing detailed information on some of the standards that are laid down in unpublished internal Fedasil instructions, such as the minimum surfaces per person for bedrooms and restaurants, medical facilities, the minimum number of social workers and the organisation of activities. The report does not, however, make a qualitative evaluation of the implementation of these legal and regulatory standards (and those of the Reception Conditions Directive) in practice in the different centres, that are all very different in size, location, age and origin. It does refer though to the very limited number of field studies that have been conducted some years ago, before or during the reception crisis; which means they have lost most of their relevance. In 2009, both a Parliamentary Commission and the Federal Ombudsman conducted an evaluation of the reception system, proposing several recommendations.[247]

No independent, external and structural monitoring system is put in place. Asylum seekers can make individual complaints to the managing director of the centre and the director-general of Fedasil, that can lead to mediation or other measures, or lodge an appeal with the Labour Courts. The Federal Ombudsman also examines individual complaints.[248] In its conventions with reception partners, a quality control by Fedasil itself that might lead to a suspension or close-down of the reception facilities is also provided for.

In 2013 Fedasil evaluated its own reception model and came to the following conclusions:[249]

a. A system of buffer capacity is preferable to emergency accommodation;
b. The form and level of reception conditions should be based on individual evaluation and special needs instead of the stage of the asylum procedure an asylum seeker is in;
c. The accompaniment needs more specialisation; and
d. There is a need for more exchange of information and good practices, as well as for a central databank.

As there is no centralised database, it is not possible for Fedasil to keep track of asylum seekers throughout the period they are in the reception network. The most recent sample test at the beginning of 2015 and still plausible as of August indicated an average length of stay in the reception network of 9.3 months (compared to 13 months in 2013). Fedasil is convinced that recent measures such as the accelerated examination of asylum applications and the exclusion of subsequent applicants from reception accommodation before their application is taken into consideration, are the underlying reasons for the shortening of this period in recent years.[250] At the beginning of 2015, most families got a transfer to a reception structure providing individual accommodation after 4 to 6 months, but for some profiles, in particular single men, this could take up to 8 months or more. By October 2015 this transfer system was suspended due to the limits in absorbing capacity of the overburdened reception network (see the section on Forms and Levels of material reception conditions).

246 Vluchtelingenwerk Vlaanderen, *Annual Report 2013*, available at: http://bit.ly/1dvBxgS, 7-8.
247 EMN, *The organisation of reception facilities in Belgium*, August 2013, 18-20, 23-24.
248 EMN, *The organisation of reception facilities in Belgium*, August 2013, 21-22.
249 Fedasil, *Report on the reception model and recommendations*, April 2013, available in Dutch and French, unpublished.
250 Oral information from the Fedasil managing direction.

5. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

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

- Different limitations to the enjoyment of reception conditions can be imposed for minor infractions of the internal code of conduct of a reception centre. As a sanction for having seriously violated the internal code, the right to reception can be suspended for maximum one month.[251] This measure was taken for 32 persons in 2015 (January-October), 15 persons in 2014, 42 in 2013 and 14 in 2012.

Such decisions are taken by the managing director of the centre, have to be motivated and can be appealed before the managing authority of that reception centre (the Director-General of Fedasil, the NGO partner or the administrative council of the PCSW). An onward appeal is possible with the Labour Court.[252] 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.

- Also the assignment of a reception place might be withdrawn and refused if such a place has been abandoned by the asylum seeker.[253]

- According to the Reception Act, it is also possible to refuse, withdraw or reduce reception rights – with the exception of the right to medical assistance and the medical assistance already received – or even claim compensation if the asylum seeker has financial resources themselves. Such a sanction can be imposed also for not having declared such means.[254] Until now, in practice 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. There is also an arrangement for demanding a contribution of an asylum seeker with such income which has been put in practice in about 700 cases between April 2013 and January 2015 (see section on Forms and Levels of Material Reception Conditions).

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

Although they are legally entitled to a reception place, EU citizens applying for asylum in Belgium are not accommodated by Fedasil anymore. Fedasil argues that EU citizens are legally on the territory since they are exercising their freedom of movement, but the Federal Ombudsman has discarded this argument because it goes against the interpretation of "legal residence" by the Constitutional Court and violates provisions of the Convention on the Rights of the Child and the constitutional non-discrimination and equality principles, when it considers EU families with minor children.[255] EU citizens applying for

251 Article 45 Reception Act.
252 Article 47 Reception Act.
253 Articles 4, 35/1 and 35/2 Reception Act; Royal Decree on Material Assistance to Asylum Seekers.
254 Articles 35/1 and 35/2 Reception Act.
255 Federal Ombudsman, *Annual Report 2013*, available at: http://bit.ly/1AZrewH, 30-35.

asylum can challenge the formal refusal decision of Fedasil (known as the "Code 207 no show") before the Labour Court.

6. 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

Except for the legal provision that access to first and second line legal assistance should be guaranteed, there are no specificities as to the access to the reception structures by lawyers or family members/relatives, NGOs or UNHCR.[256] In practice, access does not seem to be problematic, but only few lawyers go visit asylum seekers in the centres themselves. Asylum seekers are entitled to public transport tickets to meet with their lawyer at the lawyer's office. 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.[257]

7. Addressing special reception needs of vulnerable persons

Indicators: Special Reception Needs

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

At the Dispatching Desk of Fedasil, the specific situation of the asylum seeker (family situation, age, health condition) should be taken into consideration before assigning him or her to a reception centre, since some are more adapted to specific needs than others. The Dispatching has access to the Evibel database in which AO can register the elements that indicate a specific vulnerability that has become apparent at the moment of the registration of the asylum application. For deontological reasons, Fedasil cannot communicate its observations concerning indications of vulnerability to the AO. The identification of vulnerability is not conducted in a formalised assessment.

The law enumerates as vulnerable persons: children, unaccompanied children, single parents with children, pregnant women, persons with a disability, victims of human trafficking, violence or torture and the elderly.[258] There are some specialised centres or specific places in regular centres for unaccompanied children, with sufficient places to accommodate them all currently, as opposed to the period of the reception crisis up until 2012. There are only about 70 places in 21 apartments (run by Caritas in **Louvranges**) and some individual reception initiatives for single women with children, where they get a specifically adapted accompaniment, and there are 40 places in a specialised centre (run by Fedasil in **Rixensart**) for unaccompanied pregnant girls and young mothers, where child care is also provided for, besides some separated wings or corridors reserved for this group in regular centres. Furthermore, there are specialised centres (external to the Fedasil-run reception network) for victims of trafficking and for persons with psychological problems (40 places in the Croix Rouge **CARDA** centre) and "medical rooms" in the regular network adapted for people with specific medical needs and their family members (84 places in Fedasil centres – occupied by almost twice as many persons – and 127 places run by Ciré and Vluchtelignenwerk Vlaanderen). Families with children are allocated in a family room, guaranteeing more privacy. Finally, it is also possible to refer people to more specialised institutions such as retirement homes or psychiatric institutions outside the reception network.

256 Article 33 Reception Act.
257 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.
258 Article 36 Reception Act.

A legal mechanism is put in place to assess specific needs of vulnerable persons once they are allocated in the reception facilities. A finding of vulnerability may lead to a transfer to more adequate accommodation, if necessary. 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.[259] 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 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.[260] There has not been any public monitoring or evaluation of the efficiency of this vulnerability identification mechanism yet, but Fedasil launched an evaluation of the implementation in practice to result in a report with recommendations by the end of 2015.[261] Since it allows up to 6 months before taking measures and the processing time of asylum applications is often much shorter now, its efficiency is certainly not guaranteed.

To adapt reception conditions better to individual needs, since August 2015 two categories are to be exempt from collective accommodation: asylum applicants with a high chance of receiving a protection status (e.g. Syrians) are immediately assigned to an Local Reception Initiatives (LRI), and those with particular vulnerabilities are assigned to specialised NGO reception structures.

Unaccompanied children should in principle also be accommodated in specialised reception facilities and this is organised in three phases: first in a centre for observation and orientation, then in an adapted collective reception structure and finally in an adapted individual structure.[262] These places should be separated from reception facilities for adults, but this has not always been possible during the reception crisis of 2009-2012. Unaccompanied children have also been accommodated in hotels, but never had to share sleeping rooms with adults.[263] By November 2015, there were 1,375 places specifically reserved and arranged for unaccompanied children throughout all the different types of specific reception structures (including 394 in the first reception phase centres). These have a 100% occupancy rate, while on 31 December 2014, only 493 (38.13%) of the then 1,293 places were occupied (coming from 89.85% at the end of 2012, when there were 1320 such places reserved). Since the end of 2012 no unaccompanied child has been accommodated in a hotel.

8. Provision of information

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).[264] The brochure "Asylum in Belgium" currently distributed is available in ten different languages[265] and in a DVD version. As to the specific rights and obligations concerning the reception conditions, the asylum seeker also receives a copy of the internal rules of conduct (also available in different languages). Fedasil also ensures that the asylum seeker accommodated in one of the reception structures has access to the interpretation and

259 Article 22 Reception Act.
260 Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.
261 Declaration by Fedasil at the contact meeting organised by CBAR-BCHV, 19 May 2015, available in French at: http://bit.ly/1MAdXxY, 12, para 49.
262 Article 41 Reception Act.
263 Following a collective complaint concerning the treatment of children during the reception crisis, the Belgian State has recently been found to be in violation of Article 17 of the European Social Charter of 1961 by the European Committee of Social Rights of the Council of Europe. European Committee for Social Rights, *APPROACH v Belgium*, Complaint No 98/2013, 13 February 2013, available at: http://bit.ly/1JBiQGl.
264 Article 14 Reception Act.
265 Dutch, French, English, Albanian, Russian, Arabic, Pashtu, Farsi, Peul and Lingala, available on the website of Fedasil and of the CGRS: http://www.cgrs.be/en/publications.

translation services to exercise their rights and obligations.[266] The brochure is actually distributed at the dispatching at the AO, where asylum seekers are directed to after they have lodged their asylum application, before being assigned to a particular reception place.

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

9. 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 on the national territory without restrictions (as long as they are not detained).

There is a 2- (or 3-) step reception process, starting with a collective reception structure, followed by assignment to individual housing, mostly run by NGOs or local PCSW, after approximately 4 months. If the asylum application is refused, the rejected asylum seeker is transferred to a so called “open return place” in a regular centre (or to the “open return centre” in case of families with children), where he or she can enjoy full reception rights for a maximum of another 30 days, under the condition that he or she is willing to collaborate with a voluntary return.

As discussed in the section on Types of Accommodation, the government plans to come up with some kind of voluntary or obligatory distribution scheme by December 2015, but the discussion about the applicable criteria have become subject to a communitarian stalemate (between the Flemish and the francophone).

Asylum seekers can only enjoy the material and other provisions they are entitled to in the reception place they are assigned to. If the asylum seeker refuses the place assigned or leaves it without prior notice or permission, Fedasil can decide to refuse him or her the 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.[267]

[266] Article 15 Reception Act.
[267] Article 4 Reception Act.

B. Employment and education

1. Access to the labour market

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

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

In January 2014, the Federal Parliament adopted the so-called Sixth State Reform Special Law, transferring a range of competences from the level of the federal legislator to the communities and the regions, among which also the competence to legislate (and not only implement legislation) on work permits for foreigners was transferred to the regions, with the exception of the temporary work permit C for foreigners with a right to stay on another legal basis.[268] Only once new regional parliaments execute this competence will the old federal law cease to be applicable.

Since 2010, asylum seekers who fulfil certain criteria are allowed to work with a work permit card C. It concerns asylum seekers who have not yet received a first instance decision on their asylum case within 4 months following the registration of their asylum application. By Royal Decree of 29 October 2015, the federal government brought this period to from 6 to 4 months.[269] These asylum seekers can work until a decision is taken by the CGRS, or in case of an appeal, until a decision has been notified by the CALL. Such a permit cannot be applied for anymore during the appeal procedure before the CALL if the procedure at the CGRS did not last for longer than 4 months, however.[270]

The work permit C allows the asylum seeker to do whatever job in paid employment for whatever employer, and is valid for 12 months and renewable.[271] The asylum seeker has to apply for the permit with the competent regional authority. The permit automatically ceases to be valid once the asylum procedure has ended with a final negative decision by the CGRS or the CALL. In principle the employer is supposed to check on the residence status of his or her employees, but in practice employment is tolerated by the social inspection authorities until the date of validity mentioned on the working permit has expired.

268 Article 22 Special Law of 6 January 2014 relating to the Sixth Reform of the State.
269 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.
270 Article 17 Royal Decree on Foreign Workers.
271 Article 3 Royal Decree on Foreign Workers.

Asylum seekers are also eligible for self-employed labour under the condition that they apply for a professional card. Only small-scale and risk-free projects will be admitted in practice. For the time being, asylum seekers are not allowed to do voluntary work, but they are entitled to perform certain community services (maintenance, cleaning) within their reception centre as a way of increasing their pocket money.

Adult asylum seekers who have access to the labour market can register as job-seekers at the regional Offices for Employment and are then entitled to a free assistance programme and vocational training.

In practice, however, finding a job is very difficult while in the asylum procedure because of the provisional and precarious residence status, the mostly very limited knowledge of the national languages, the fact that many foreign diplomas are not considered equivalent to national diplomas, and high discrimination in the labour market.

2. Access to education

Indicators: Access to Education		
1.	Does the law provide for access to education for asylum-seeking children?	☒ Yes ☐ No
2.	Are children able to access education in practice?	☒ Yes ☐ No

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

In practice, the capacity of some local schools is not always sufficient to absorb all asylum-seeking children entitled to education. Also, transfers of families to another reception centre or to a so-called “open return place” after having received a negative decision might entail a move to another (sometimes even linguistically different) part of the country, which can have a negative impact on the continuity in education for the children. In that respect, it is noteworthy to recall that courts have endeavoured to guarantee asylum seeking children the right to education. In a ruling of 6 May 2014, for example, the Charleroi Labour Court 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.[272]

In reception centres for asylum seekers, all residents can take part in activities that encourage integration and knowledge of the host country. Also, they have the right to attend professional training and education courses.[273] The regional Offices for Employment organise professional training for asylum seekers who are allowed to work with the purpose of assisting them in finding a job. Also, they can enrol in adults’ education courses for which a certain level of knowledge of one of the national languages is required, but not all regions equally take charge of the subscription fees and transport costs.

[272] Labour Court, Charleroi, Judgment of 6 May 2014, available at: http://bit.ly/1F5Hyqq.
[273] Article 35 Reception Act.

C. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
   ☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
   ☒ Yes ☐ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
   ☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
   ☒ Yes ☐ Limited ☐ No

The material aid an asylum seeker is entitled to includes the right to medical care necessary to live a life in human dignity.[274] 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.[275]

In general medical costs, as for Belgian nationals, will have to be paid first by the asylum seeker, who is later reimbursed. However, in collective reception centres, asylum seekers do not have to pay themselves first, as this is taken care of by the reception centre. However, in those centres asylum seekers normally do not have a free choice of medical doctor, unless they are willing to pay the cost of another doctor of their choice themselves. In that case, a nurse at the centre will decide whether or not they should get a consultation with the physician. Asylum seekers, unlike nationals, do not have to pay a so-called "franchise patient fee",[276] unless they have a professional income or receive a financial allowance.

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. Those centres that have this kind of asylum-related expertise have to work with waiting lists. In Wallonia, there is a specialised Red Cross reception centre for traumatised young asylum seekers, but this centre also has a waiting list.

When the material reception conditions are reduced or withdrawn as a sanction measure, the right to medical aid will not be affected.[277] Once the asylum application has been refused and the reception rights have come to an end, the person concerned will only still be entitled to emergency medical assistance, for which he or she must refer to the local PCSW.[278]

274 Article 23 Reception Act.
275 Article 24 Reception Act and Royal Decree on Medical Assistance.
276 "*Remgeld* / *ticket moderateur*", which is under the Belgian health care system the amount of the medical cost the patient needs to pay without being reimbursed for it by the health insurance.
277 Article 45 Reception Act.
278 Article 57 Article 57ter/1 of the Organic Law of 8 July 1976 on the PCSW.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention	
1. Total number of asylum seekers detained in 2015 (January-September):[279]	1,492
2. Number of asylum seekers in detention at the end of 2015:	Not available
3. Number of detention centres:	5
4. Total capacity of detention centres:	452

No final and unambiguous numbers on the detention of asylum seekers are made publicly available by the AO. Data are published in its annual report, but are not always sufficiently clear to distinguish between asylum seekers and other detained foreign nationals or between persons detained after applying for asylum or applying while in detention. Double counting is therefore difficult to avoid. The annual report for 2014 has still not been made publicly available, unless for a resumed statistical report that does not allow to deduce any specific data on AO's practices concerning detention of asylum seekers.[280]

For 2015 (January-September) and 2014, the following information can be deduced from the numbers communicated by the AO in monthly contact meetings with NGOs (see Statistics: Detention):[281]

- 708 asylum seekers were detained on a variety of grounds after having applied for asylum on the territory; 741 in 2014 and 718 in 2013. This includes:
  - 84 awaiting a Dublin decision; 129 in 2014 and 91 in 2013;
  - 68 after a subsequent application; 84 in 2014 and only 2 in 2013;
  - 556 under the Dublin provisions, awaiting the Dublin transfer, after an agreement has been reached with another EU Member State to take charge or take back; 657 in 2014 and 625 in 2013
- A total of 287 asylum applications were lodged at the border; 437 in 2014 and 502 in 2013;
- Another 497 asylum applications were introduced in detention centres or prisons (not at the border, but after having been detained while not formally being an asylum seeker); 690 in 2014 and 486 in 2013.

A conservative calculation – counting the asylum seekers detained after applying, those applying in detention, those applying at the border and those awaiting the execution of a Dublin decision, brings the total of asylum seekers in detention for 2015 (January-September) to 1,492 and for 2014 to 1,868, compared to 1,884 in 2013. A general conclusion as to the numbers and detention practice in Belgium is that asylum seekers at the external borders (mainly the Brussels national airport) are systematically detained and asylum seekers on the territory are not, unless they have a pending Dublin transfer execution order.

Belgium has a total of 5 detention centres, commonly referred to as "closed centres":[282] the **127bis** repatriation centre; the "**Caricole**" near Brussels Airport;[283] and 3 Centres for Illegal Aliens located in Bruges (**CIB**), in Merksplas near Antwerp (**CIM**) and in Vottem near Liege (**CIV**). In addition to the Caricole building, there are also some smaller **INAD** centres in the five regional airports that are Schengen border posts. Unlike the open reception centres, the detention centres fall under the authority of the AO and the provisions of the Reception Conditions Directive are still not applicable to them.

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

280 AO, *Statistical Annual Report 2014*, available at: http://bit.ly/1HU9b8X.

281 Reports of the monthly contact meetings organised by CBAR-BCHV, available in French at: http://bit.ly/1PKTpnf.

282 For an overview, see Getting the Voice Out, 'What are the detention centres in Belgium?', available at: http://bit.ly/1GxZAJd.

283 In May 2012, Caricole replaced the Centre for Inadmissible Aliens (INAD) and the 127 repatriation centre.

While in detention, the asylum procedure has to be handled in the same accelerated manner as is applicable in border procedures: a decision must be taken within 2 months or 15 days at first instance,[284] the appeal must be lodged within 15 calendar days after the first instance decision, and within maximum 14 working days a decision must be taken on the appeal by the CALL (see section on Border Procedure).[285] The deadlines to be respected by the authorities are considered to be of internal order, so there is no sanction when they are not respected. However, in practice they are mostly respected.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

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

The Aliens Act provides for a range of grounds for detaining asylum seekers, most of these being added with the substantial modifications to the law in 2007. It is the AO's competence to decide on the administrative detention of foreign nationals.

At the border, asylum seekers arriving without travel documents are automatically detained.[286]

On the territory, in principle asylum seekers are not detained, but a lot of exceptions are provided for in the law and applied in practice. There are about 15 situations in which a foreign national can be detained immediately after he or she applies for asylum and before any decision on the application has been made. These include the following grounds, where the applicant:[287]

(1) Has been removed or expelled from Belgium within the previous 10 years and this measure has not been suspended;
(2) Has resided for a period exceeding 3 months in a "safe third country";
(3) Has resided for an overall period exceeding 3 months in multiple "safe third countries";
(4) Is in possession of valid travel document to a third country and has the necessary documents to pursue the travel;
(5) Has not applied for asylum within the time-limit of 8 days after arrival;
(6) Has voluntarily withdrawn from a border procedure;
(7) Has failed to comply with the obligation to present him or herself to a return centre for at least 15 days;
(8) Did not apply for asylum when inquired by border authorities of the reasons for entry in Belgium;
(9) Has introduced a subsequent application;

284 Articles 52 and 52/2 Aliens Act.
285 Articles 39/57 and 39/77 Aliens Act.
286 Article 74/5 Aliens Act.
287 Article 74/6(1bis) Aliens Act.

(10) Refuses to establish his or her identity or nationality, presents false information on identity or nationality, or presents false identity or travel documents;
(11) Has destroyed or disposed of an identity or travel document which could contribute to establishing identity or nationality;
(12) Has lodged an application for the purpose of delaying or frustrating the execution of a previous or imminent expulsion decision;
(13) Resists the taking of fingerprints;
(14) Has not declared that he or she has lodged an application in another country when applying; or
(15) Refuses to make the declaration on identity and nationality.

Beyond these grounds, asylum seekers who are considered to be a threat to public order or national security,[288] or who have served a sentence or been placed at the disposal of the government,[289] are also detained during the asylum procedure. Most of these grounds are not provided for by the Article 8(3) of the recast Reception Conditions Directive – or even as grounds for considering a claim as manifestly unfounded under Article 31(8) of the recast Asylum Procedures Directive.

Asylum seekers can also be detained during the Dublin procedure if there are indications that another EU Member State might be responsible for handling the asylum claim, but before their responsibility has been accepted by that state.[290] A risk of absconding is considered to exist by the AO whenever a person who applied for asylum in one Member State afterwards travels on to another, which seems to imply a willingness to detain all asylum seekers awaiting a Dublin transfer.[291] However no objective criteria that indicate a risk of absconding in case of a Dublin transfer are specified in the Belgian law, as is demanded under Article 2(n) of the Dublin III Regulation.

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

There are no legal restrictions or guidelines as to the assessment of the necessity of the detention and possible alternatives. The Reception Conditions Directive is not considered to be applicable to detention situations. There is no legal provision requiring that detention of an asylum seeker be a measure of last resort, nor is any assessment of individual circumstances of vulnerability or the risk of absconding before a decision to detain or prolong detention made in practice.

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

288 Article 52/4 Aliens Act.
289 Article 74/8 Aliens Act.
290 Article 51/5 Aliens Act.
291 AO, *Declaration at the CBAR-BCHV contact meeting*, 11 February 2014, available in Dutch at: http://bit.ly/1MHJADu, para 20.

necessity or proportionality by the AO, and the judicial review is mostly limited to the question of legality (see Procedural Safeguards: Judicial Review below).[292]

Nevertheless, alternative measures are provided for vulnerable applicants such as families with children and unaccompanied minors (see Detention of Vulnerable Applicants).

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

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

Families with minor children who claim asylum at the border are explicitly excluded from detention in a closed centre and are placed in facilities adapted to the needs of such families.[293] Following the ECtHR's *Muskhadzhiyeva* judgment,[294] and before *Kanagaratnam*,[295] the then Secretary of State decided that from 1 October 2009 onwards families with children, arriving at the border and not removable within 48 hours after arrival, should be accommodated in a family unit.

The detention of unaccompanied children is also explicitly prohibited by law.[296] 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.[297] 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: Age Assessment). 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.[298] Within 15 calendar days, the AO has to find a durable solution for the child, which may include return after an asylum application has been refused. Otherwise access to the territory has to be formally granted.

No other vulnerable categories of asylum seekers are excluded from detention by law. Besides the consideration of the minority of age, no other vulnerability assessment is made whatsoever before deciding on the detention of asylum seekers, especially at the border.

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292 See also BCHV-CBAR, *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen* (Border-Asylum-Detention, Belgian legislation – European and international norms), January 2012, available in Dutch at: http://bit.ly/1wNTXfc.

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

294 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.

295 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.

296 Article 74/19 Aliens Act.

297 Article 40 Reception Act.

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

4. Duration of detention

Indicators: Duration of Detention	
1. What is the maximum detention period set in the law (incl. extensions):	8 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, extended by 15 calendar days in case an appeal is lodged. If a final negative asylum decision has been made before that period has passed and the decision to expel or order to leave the country has become enforceable, and the necessary steps are taken by the AO to effectively execute that decision within a reasonable time, the detention can be prolonged for another 2 months, up to an absolute maximum of 5 months – extendable to 8 months for reasons of public order or national security.[299]

In practice the AO continues to surpass the maximum detention period of 28 days allowed by Article 43(2) of the recast Asylum Procedures Directive in border procedures where no first instance decision had been made within that period, also after the Directive became directly applicable in July 2015.

For detainees who are in the Dublin procedure, the detention can only last for 1 month, extendable by another month.[300] Belgium has recently been condemned more than once by the ECHR for exceeding this maximum time-period of Dublin detention, mostly because the asylum seeker is kept in detention during the cassation appeal procedure lodged by the AO against a decision of the Court of Appeal that ordered his or her release (see under the section Procedural Safeguards: Judicial Review).[301]

In 2013, the last year for which data were published, the average overall detention period per closed centre was as follows: 17.55 days at **TC Caricole**; 30.80 days at the **RC127bis**; 36.92 days at the **CIB**; 41.65 days at the **CIM**; and 37.36 days at the **CIV** – all of these being notably higher, by three to eight days, than previous years.[302] These numbers include all types of migrant detentions, so no conclusions on the specific detention periods for asylum seekers can be made out of this. Since detention in order to execute a return or transfer is normally a faster procedure, one might assume that asylum seekers are generally detained for longer periods than the ones indicated here.

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.[303] The Criminal Procedures Act, as well as the Aliens Act, provide for a strict separation of persons

299 Articles 74/5 and 74/6 Aliens Act.
300 Article 51/5 Aliens Act.
301 ECtHR, *Firoz Muneer v Belgium*, Application No 56005/10, 11 April 2013, *MD v Belgium*, Application No 56028/10, 13 November 2013.
302 AO, *Annual Report 2013*.
303 Article 4 Royal Decree on Closed Centres, referring to Articles 74/5 and 74/6 Aliens Act.

illegally entering or residing on the territory and criminal offenders or suspects.[304] 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.

In 2015, the overall capacity of the closed centres was of 452 places (506 in 2013), but the government decided in September 2015 to increase this to 605. In 2014, in total 5,605 individuals were detained for the first time (down from 6,285 in 2013, 6,797 in 2012 and 7,034 in 2011, mainly due to a capacity decrease in three centres) – a number including asylum seekers, but mostly foreign nationals lacking a legal residence status (the numbers do not distinguish between the different categories), of whom 4,306 were removed from the territory (or 77.8% as compared to 4,980 or 79.4% in 2013 and 5,320 or 78,3 % in 2012) and 1,095 released for various reasons (1,119 in 2013, 1,108 in 2012), among others having obtained refugee or subsidiary protection status, and 13 escaped (36 in 2013, 28 in 2012). The daily average population of all closed centres taken together was 474 in 2012 (most recent data available; 475 in 2011). The capacity of the centres is never completely used, since places are to be kept free for potential transfers from prisons or for persons detained by the police or social inspection services. [305]

As regards families with children, the family or housing units are individual houses or apartments provided for a temporary stay. Legally these persons are not considered to have entered the territory and are in detention, but in practice these families have a certain liberty of movement, under the control of a so-called "return coach".[306] Children are able to go to school and adults can go out if they get permission to do so.[307] At the moment there are five housing sites, with a total of 23 housing units. In 2014, of the 217 families (754 persons in total, of whom 429 are children) that resided in one of the units. Only 68 families were formally stopped at the border in 2014 (32%, down for 36% in 2013 and 50% in 2012). 45 families were eventually 'released' (20 of them for having obtained a protection status) (21%, down from 30% in 2013); 69 returned (including 15 voluntarily and 10 as a Dublin transfer (32%, down from 40% in 2013) and 91 'escaped' (42%, only 23% in 2013). The average length of stay in those units was only 23.7 calendar days.[308] This alternative to detention has been broadly recognised as a good practice, also by NGOs.[309] Nevertheless, the new State Secretary has announced plans (already launched under the former governments) to construct family units on the premises of the 127bis closed centre, to add as an additional phase to the return trajectory for families, since the 'disappearance rate' from the open housing units is considered too high.[310]

As for unaccompanied children, the OOCs are not closed centres but they are "secured" and fall under the authority of Fedasil instead of that of the AO.

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304 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.

305 AO, *Statistical Annual Report 2014,* available at: http://bit.ly/1NZpJCO (French version). For more data on return and repatriation, see also: Myria (Federal Migration Centre), *Migration in numbers and in rights 2015*, Chapter 9: *Return, detention and removal*, available in French at: http://bit.ly/1I1dV1L (also available in Dutch).

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

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

308 Myria, *Migration in numbers and in rights 2015*, Chapter 9.

309 Vluchtelingenwerk Vlaanderen *et al.*, *Open housing units: 'Coaches' for families with minor children as an alternative to detention*, October 2012, available in French at: http://bit.ly/1IuVZJD and Dutch at: http://bit.ly/1S3RIkP. See also L Schockaert, 'Alternatives to detention: open family units in Belgium', Forced Migration Review No 44, September 2013, available at: http://bit.ly/1I1cjiu.

310 State Secretary for Asylum and Migration, *Policy statement in the Chamber of Representatives*, 4 December 2014, available in French and Dutch at: http://bit.ly/1FGheF2, 24.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1.	Do detainees have access to health care in practice?	☒ Yes	☐ No
	❖ If yes, is it limited to emergency health care?	☐ Yes	☒ No
2.	Is access to detention centres allowed to		
	❖ Lawyers:	☒ Yes ☐ Limited	☐ No
	❖ NGOs:	☐ Yes ☒ Limited	☐ No
	❖ UNHCR:	☒ Yes ☐ Limited	☐ No
	❖ Family members:	☐ Yes ☒ Limited	☐ No

So far, the Reception Conditions Directive has not been transposed as to its application in the context of detention. The 2002 Royal Decree on Closed Centres provides for the legal regime and internal organisational guidelines. The closed centres are managed by the AO, not by Fedasil as are the open reception centres.

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 far-reaching 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.[311] The AO organises training for the security personnel at the detention centres on the use of coercion, as provided for by law.[312] 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 AO instructor. Also, training sessions on dealing with aggression and on intercultural communication are organised. In 2013, fourteen sessions were given by an external contractor.[313]

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.[314] For persons who appear not to be able to adapt to the collective regime, the managing director can decide to apply a more secluded "room regime". Children until the age of 18 are not detained in closed centres anymore and, while residing in a return housing unit, all have to be enrolled in a school in the neighbourhood.

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.[315] The doctor attached to the centre can decide that a person has to be transferred to a specialised medical centre.[316] 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.[317] At the same time, the quality of the

311 Articles 85-111/4 Royal Decree on Closed Centres.
312 Article 74/8 Aliens Act and Royal Decree on the Use of Coercion for Security Personnel.
313 AO, *Annual Report 2013*.
314 Article 83 Royal Decree on Closed Centres.
315 Article 53 Royal Decree on Closed Centres.
316 Article 54-56 Royal Decree on Closed Centres.
317 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.

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 AO, 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.[318] After every failed attempt of removal, the doctor has to examine the person concerned.[319] 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.

The Royal Decree of 9 April 2007 on OOCs regulates the functioning of the OOCs for unaccompanied children. Specific measures are taken to protect and accompany the children. During their stay of maximum 15 days, their contacts are subjected to special surveillance. During the first 7 days of their stay, they are not allowed to have any contact with the outside world other than with their lawyer and their guardian. The modalities of the visits, outside activities, telephone conversation and correspondence are strictly determined in the house rules. When a child is absent for more than 24 hours or whenever extremely vulnerable children (younger than 13 years, children with psychological problems or victims of human trafficking) are absent without informing the staff, the police and the guardian or the Guardianship Service are alerted.[320]

Lawyers always have access to their client in detention.[321] Also, UNHCR has the right to access, as do the Children's Rights Commissioner, the national Centre for Equal Rights and supranational human rights institutions.[322] NGOs need to get permission from the AO managing director in advance to get access to the detention centres.[323] In general, an individualised accreditation is issued for specific persons who conduct these visits for an NGO, as is the case for employees of the Jesuit Refugee Service, Caritas International and CBAR-BCHV. 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.[324] 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.[325]

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.[326] 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.[327] 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.[328]

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.[329] The asylum seekers get the opportunity to wash themselves on a daily basis and toiletries are at their disposal free of charge.[330] The asylum seeker can have

318 Article 61 Royal Decree on Closed Centres.
319 Article 61/1 Royal Decree on Closed Centres.
320 Articles 10 and 11 Royal Decree on OOCs.
321 Article 64 Royal Decree on Closed Centres.
322 Article 44 Royal Decree on Closed Centres.
323 Article 45 Royal Decree on Closed Centres.
324 Articles 33, 42 and 43 Royal Decree on Closed Centres.
325 Articles 37 and 40 Royal Decree on Closed Centres.
326 Article 34 Royal Decree on Closed Centres.
327 Article 36 Royal Decree on Closed Centres.
328 Articles 29-30 Royal Decree on Closed Centres.
329 Articles 79-80 Royal Decree on Closed Centres.
330 Article 78 Royal Decree on Closed Centres.

clothes delivered at their own expense, but the centre is to provide free clothing in case he does not dispose of appropriate clothing.[331]

Assistance to religious services or non-confessional counselling is guaranteed in the detention centres and assistance of a minister of non-officially recognised cult can be applied for.[332]

The asylum seeker has an unlimited right to entertain correspondence during the day. Writing paper is provided for by the centre, as is assistance with reading and writing by staff members.[333] 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.[334] Calls can be made at the asylum seekers' own expenses during daytime to an unlimited extent.[335]

The social service of the centre has to organise sport, cultural and recreational activities.[336] Every centre has a library at the disposal of the inhabitants and newspapers and other publication can be purchased at their own expense.[337]

In detention centres asylum seekers do have access to open air spaces. In some centres they are allowed to get out in open air during day time whenever they want. In other centres this is strictly regulated. A minimum of two hours exercise outside is to be provided for.[338]

As to the implementation of these rights provided for by law, very little field studies have been done and date back to 2010. The 'Transit Group' (see section on Procedural Safeguards: Judicial Review) plans the publication of detention conditions monitoring report in the second half of 2016.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention? ☐ Yes ☒ No
2. If yes, at what interval is the detention order reviewed?

When asylum seekers are detained, they are informed in writing of the detention decision, its reasons and the possibility to lodge appeal. Those reasons are mostly limited to very general considerations such as 'having tried to enter the territory without the necessary documents (at the border)', or 'risk of absconding (in Dublin cases)'. Translation of the detention decision in the language of the asylum seeker is not provided for by law, though in some centres a social interpreter is arranged by the centre's social assistant on demand by the detainee.

National legislation does provide for judicial review of the lawfulness of detention. No habeas corpus writ is automatically brought before a judge when an asylum seeker is being detained, but he or she can lodge a request to be released with the Council Chamber of the Criminal Court every month.[339] The

331 Article 76 Royal Decree on Closed Centres.
332 Articles 46-50 Royal Decree on Closed Centres.
333 Articles 19, 22 and 23 Royal Decree on Closed Centres.
334 Articles 20-21/2 Royal Decree on Closed Centres.
335 Article 24 Royal Decree on Closed Centres.
336 Articles 69-70 Royal Decree on Closed Centres.
337 Articles 71-72 Royal Decree on Closed Centres.
338 Article 82 Royal Decree on Closed Centres.
339 Article 71 Aliens Act.

Council Chamber has to decide within 5 working days, and if this time-limit is not respected, the asylum seeker has to be released from detention.[340] An appeal can be lodged against the decision of the Council Chamber before the Indictment Chamber at the Court of Appeal (*Chambre des mises en accusation* | *Kamer van Inbeschuldigingstelling*) within 24 hours. Against this final decision, a purely judicial appeal can be introduced at the Court of Cassation.

When the AO 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.[341]

The judicial review of detention remains very restrictive in scope. Only the legality of the detention can be examined, not the appropriateness or proportionality of it. This means that only the accuracy of the factual motives of the detention decision can be scrutinised i.e. whether the reasons are based on manifest misinterpretations or factual errors or not. The logic behind this is that the competence to decide on the removal of the foreigner, and as such on the appropriate measures to execute such a decision, lays with the AO 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 section on Border Procedure).

Of course the limits of the legality of a decision are almost arbitrary and the Court of Cassation itself is ambiguous about the interpretation of such legality in its own jurisprudence, by including assessments of conformity of detention with the Return Directive or the ECHR, following ECtHR's ruling in *Saadi v UK*.[342] The Council or Indictment Chambers have even sometimes considered the principle of proportionality itself to be a part of the legality of a decision, but in most cases they limit their review to the legal basis for the decision, without ever considering any of the provisions of the Reception Conditions Directive. The fact that the person detained is an asylum seeker is generally not taken into consideration as an argument to limit the use of detention, nor are even more specific elements of vulnerability.[343] In 2012, Belgium partly transposed the Return Directive into domestic law by adding the condition that detention is only allowed when other less coercive measures would not be effective, specifying that this is the case when there is a risk for absconding or when the person circumvents or obstructs the preparation of the return or removal procedure.[344] While these grounds also apply to asylum seekers under the Reception Conditions Directive, since the Aliens Act provision concerns only persons that stay irregularly on the territory, these restrictions are not applicable to asylum seekers and are as such not scrutinised by the court in case of border detention. It remains to be seen in how far the courts will be willing to directly apply the provisions from the Reception Conditions Directive, now the transposition period has expired since July 2015. Although in 2014 the Court of Cassation judged that the AO has the obligation to consider less coercive measures through an individual assessment (e.g. taking into account the asylum seekers family life),[345] this jurisprudence has not been systematically applied by the lower courts.

The courts have not ordered the AO to respect the maximum detention period of one month in case no first instance decision has been taken, as provided for in Article 43(2) of the recast Asylum Procedures Directive, but not transposed into Belgian Law. The lack of objective reasons spelt out in Belgian law that can be considered indications of a risk of absconding from a Dublin transfer (as is demanded under the Dublin III Regulation) has not been taken into consideration in practice by the courts either. In some individual case however, the Indictment Chamber of Antwerp has ordered the liberation of asylum

340 Article 72 Aliens Act.
341 Article 74 Aliens Act.
342 ECtHR, *Saadi v the United Kingdom*, Application No 13229/03, Judgment of 29 January 2008.
343 See for examples of jurisprudence and more on this issue, BCHV-CBAR , *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen*, January 2012.
344 Articles 7 and 27 Aliens Act.
345 Court of Cassation, Judgment N° P.14.1415.F/4 of 1 October 2014. For more recent case-law concerning detention (of asylum seekers and irregular migrants), see Myria, *Migration in numbers and in rights 2015*, Chapter 9, 168-170.

seekers held in detention with the only motivation that the Dublin provisions apply.[346] This does however not indicate a generalised practice of the courts.

The procedure before the courts is determined in the Law on the Provisional Custody that applies in criminal law proceedings.[347] 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.[348]

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
   ☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?
   ☒ Yes ☐ No

The law provides for access to free legal assistance for the judicial review of the detention decision. Free legal assistance is provided for in the Judicial Code under the same conditions as for other asylum-related procedures. A rebuttable presumption applies that the person detained has no financial means to pay for legal assistance (see section on Regular Procedure: Legal Assistance). The Royal Decree on Closed Centres also explicitly guarantees legal assistance for every resident of a closed centre and free and uninterrupted contact between him or her and his or her lawyer.[349]

In the closed centre in **Vottem**, a judicial permanence is organised by the bureau for legal assistance of the bar association. Their service is mainly limited to assigning a pro Deo lawyer who is not present but has to ensure free legal assistance. The other centres have no first line legal assistance service and the assignment of a lawyer depends entirely on the social services in the centre. A platform of NGOs (called "Transit group")[350] 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. Asylum seekers and other persons with protection needs that are not (or no longer) engaged in the asylum process are referred to the CBAR-BCHV, whose legal assistance projects are not prolonged into 2016 however for lack of financing.

A critical 2008 report by a consortium of NGOs stresses several shortcomings in the legal assistance delivered in the closed centres: (a) inadequate information is given to detainees; (b) detainees depend on the social assistants (who are actually employed by the AO to assist with the removal) for their communication with their lawyer; (c) many do not have access to a lawyer; (d) only a limited number of detention decisions are contested before the courts; (e) time periods for appeals elapse frequently, etc.[351] More recent reports have not been published on the subject, but in general, the situation has changed very little ever since. 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

346 Court of Appeal Antwerp, Indictment Chamber, Judgment No K/2060/2015 of 7 September 2015, not published.
347 Law of 20 July 1990 concerning pre-trial detention, available in French at: http://bit.ly/1B626nE and Dutch at: http://bit.ly/1KpjZzR.
348 ECtHR, *Firoz Muneer v Belgium*; *MD v Belgium*.
349 Articles 62 and 63 Royal Decree on Closed centres.
350 Including *inter alia* JRS, Vluchtlingenwerk, Ciré, Caritas and BCHV-CBAR.
351 Vluchtelingenwerk Vlaanderen, CIRE, JRS, Caritas International, CBAR-BCHV, *Exercising Rights in Closed Centre*, 2008, available in French at: http://bit.ly/1QobE4r and Dutch at: http://bit.ly/1FRtBNF.

interest in assisting detained asylum seekers, these lists do not have specific qualification requirements. The system organised by the law does not offer sufficient means to enable lawyers to specialise themselves in migration and asylum law. This creates a structural shortage of qualified legal aid.

ANNEX I – Transposition of the CEAS into national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Articles	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	4(1)-(2), 7-10, 11, 16, 24	21 December 2013	1 September 2013	Law of 8 May 2013 amending Law of 15 December 1980	<http://bit.ly/1EYd49X> (FR)
	14, 16, 17, 19		3 September 2015	Law of 10 August 2015 amending Law of 15 December 1980 to take better account of the threats against society and national security in the applications for international protection	<http://bit.ly/1NFl1u4> (FR)
	Chapter VII	21 December 2013		Multiple Decrees and Ordinances from regional and community governments (Flanders, Francophone Community, Germanophone Community, Brussels-capital Region) on integration, education and non-discrimination provisions	
Directive 2013/32/EU Recast Asylum Procedures Directive	31(8)(b), 36-37	20 July 2015	1 March 2012	Law of 19 January 2012 amending Law of 15 December 1980	<http://bit.ly/1AMmhas> (FR)
	31(8), 33(2)(a)-(b), 35, 40 and 42	20 July 2015	1 September 2013	Law of 8 May 2013 amending Law of 15 December 1980	<http://bit.ly/1EYd49X> (FR)
	41 and 16	20 July 2015	1 June 2014	Law of 10 April 2014 amending Law of 15 December 2015	<http://bit.ly/1G99rD7> (FR)

Directive 2013/33/EU Recast Reception Conditions Directive	20(1)(c)	20 July 2015	1 September 2013	Law of 8 May 2013 amending Law of 15 December 1980	<http://bit.ly/1EYd49X> (FR)

Pending transposition and reforms into national legislation

Directive / Regulation	Articles	Deadline for transposition	Stage of transposition	Participation of NGOs
Directive 2013/32/EU Recast Asylum Procedures Directive	Remaining provisions	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	No draft available	☐ Yes ☒ No
Directive 2013/33/EU Recast Reception Conditions Directive	Remaining provisions	20 July 2015	No draft available.	☐ Yes ☒ No
Regulation (EU) No 604/2013 Dublin III Regulation		Directly applicable 20 July 2013	No draft available.	☐ Yes ☒ No

Asylum Procedure

- Shared burden of proof
- Full judicial review appeals for all inadmissible applications, including against Dublin decisions
- Grounds of inadmissibility, prioritisation and accelerated procedures,
- Best interest determination and procedural guarantees for accompanied and unaccompanied minors
- Special procedural needs
- Interviews reports or recording
- Entry to territory for applications at the border declared admissible or without decision on admissibility within 4 weeks
- No suspensive effect from third application or if in detention
- Acceleration admissibility decisions

Reception Conditions

- Applicability of provisions in closed centres for asylum seekers
- Vulnerability and special needs assessment and evaluation
- Reception pending Dublin transfer decisions in case of collaboration with transfer

Detention

- Grounds for detention of asylum seekers