

Country Report: Belgium



2016
Update



Acknowledgements & Methodology

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

Vluchtelingenwerk Vlaanderen wishes to thank all those who provided information that was essential for the compilation of this report. Particular thanks for their contribution to this update are owed to: the former BCHV-CBAR, who was the previous national expert; Fedasil; the Aliens Office (AO); the Office of the Commissioner General for Refugees and Stateless Persons (CGRS); the Council for Aliens Law Litigation (CALL); the Guardianship Service of the Ministry of Justice; Myria (Federal Migration Centre); and ECRE.

The information in this report is up-to-date as of 31 December 2016, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



This report is part of the Asylum Information Database (AIDA) funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations.



Table of Contents

Glossary & List of Abbreviations	6
Statistics	8
Overview of the legal framework.....	10
Overview of the main changes since the previous report update.....	14
Asylum Procedure.....	16
A. General.....	16
1. Flow chart.....	16
2. Types of procedures	17
3. List of authorities intervening in each stage of the procedure	17
4. Number of staff and nature of the first instance authority	18
5. Short overview of the asylum procedure.....	18
B. Access to the procedure and registration	20
1. Access to the territory and push backs	20
2. Registration of the asylum application	21
C. Procedures	23
1. Regular procedure	23
2. Dublin	29
3. Admissibility procedure	37
4. Border procedure (border and transit zones).....	41
5. Accelerated procedure	45
D. Guarantees for vulnerable groups	47
1. Identification	47
2. Special procedural guarantees	50
3. Use of medical reports	50
4. Legal representation of unaccompanied children	52
E. Subsequent applications	53
F. The safe country concepts.....	55

1.	Safe country of origin	55
2.	Safe third country	57
3.	First country of asylum	57
G.	Relocation	58
H.	Information for asylum seekers and access to NGOs and UNHCR	59
1.	Provision of information on the procedure	59
2.	Access to NGOs and UNHCR.....	60
I.	Differential treatment of specific nationalities in the procedure	61
Reception Conditions.....		63
A.	Access and forms of reception conditions	63
1.	Criteria and restrictions to access reception conditions.....	63
2.	Forms and levels of material reception conditions.....	68
3.	Reduction or withdrawal of reception conditions.....	71
4.	Freedom of movement.....	73
B.	Housing	73
1.	Types of accommodation	73
2.	Conditions in reception facilities.....	75
C.	Employment and education.....	77
1.	Access to the labour market.....	77
2.	Access to education	79
D.	Health care	79
E.	Special reception needs of vulnerable groups	80
F.	Information for asylum seekers and access to reception centres.....	84
1.	Provision of information on reception.....	84
2.	Access to reception centres by third parties	84
G.	Differential treatment of specific nationalities in reception	85
Detention of Asylum Seekers		86
A.	General.....	86
B.	Legal framework of detention.....	86
1.	Grounds for detention	86

2.	Alternatives to detention.....	88
3.	Detention of vulnerable applicants.....	88
4.	Duration of detention.....	89
C.	Detention conditions.....	90
1.	Place of detention	90
2.	Conditions in detention facilities.....	91
3.	Access of third parties to detention facilities	93
D.	Procedural safeguards	94
1.	Judicial review of the detention order	94
2.	Legal assistance for review of detention.....	96
E.	Differential treatment of specific nationalities in detention.....	97
	Content of International Protection	98
1.	Residence permit	98
2.	Long-term residence	99
3.	Naturalisation	100
4.	Cessation and review of protection status	103
5.	Withdrawal of protection status	105
B.	Family reunification	106
1.	Criteria and conditions	106
2.	Status and rights of family members.....	109
C.	Movement and mobility	110
1.	Freedom of movement.....	110
2.	Travel documents.....	111
D.	Housing	111
E.	Employment and education.....	112
1.	Access to the labour market.....	112
2.	Access to education	114
F.	Health care	114
	ANNEX I – Transposition of the CEAS into national legislation.....	115

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 Aliens Office declaring that Belgium is not responsible for an application under the Dublin Regulation
Social integration	Financial assistance under social welfare intégration sociale maatschappelijke integratie
Transit group	Consortium of NGOs, comprising CBAR-BCHV, JRS, Caritas, Ciré and Vluchtelingenwerk, coordinating immigration detention monitoring visits
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
CIRE	Coordination et initiatives pour réfugiés et étrangers
CIV	Centre for Illegals of Vottem Centre pour les illégaux de Vottem Centrum voor illegallen van Vottem
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EMN	European Migration Network
Evibel	Registration database of the Aliens Office
Fedasil	Federal Agency for the Reception of Asylum Seekers
FGM	Female genital mutilation
INAD	Centre for Inadmissible Passengers
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

Overview of statistical practice

The Commissioner-General for Refugees and Stateless persons (CGRS) publishes monthly statistical reports, providing information on asylum applicants and first instance decisions.¹ Monthly reports are also published by the Aliens Office.²

Applications and granting of protection status at first instance: 2016

	Applicants in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	18,710	18,902	12,197	3,281	10,553	46.9%	12.6%	40.5%

Breakdown by main countries of origin

Afghanistan	2,767	6,338	656	830	1,036	26%	32.9%	41.1%
Syria	2,766	1,786	5,436	1,615	286	74.1%	22%	3.9%
Iraq	1,179	2,262	2,742	556	2,774	45.2%	9.2%	45.7%
Guinea	924	479	286	0	450	38.9%	0%	61.1%
Somalia	847	800	769	209	455	53.7%	14.6%	31.8%
Albania	817	282	67	0	708	8.6%	0%	91.4%
Turkey	736	822	10	0	59	14.5%	0%	85.5%
Russia	724	513	196	6	456	29.8%	0.9%	69.3%
Undetermined	682	779	484	4	115	80.3%	0.7%	19.1%
DRC	601	297	87	1	486	15.2%	0.2%	84.7%

Source: CGRS

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

² Aliens Office, *Statistics – Asylum*, available at: <http://bit.ly/1SDO67v>.

Gender/age breakdown of the total number of applicants: 2016

	Number	Percentage
Total number of applicants	18,710	100%
Men	11,964	63.9%
Women	6,746	36.1%
Children	5,883	31.4%
Unaccompanied children	1,076	5.8%

Source: CGRS

Comparison between first instance and appeal decision rates: 2016

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	26,031	100%	4,515	100%
Positive decisions	15,478	59.5%	237	5.18%
<i>Refugee status</i>	12,197	46.9%	217	4.73%
<i>Subsidiary protection</i>	3,281	12.6%	20	0.45%
Negative decisions	10,553	40.5%	3,717	82.5%
Annulments			561	12.32%

Source: CGRS; CALL

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
<p>Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens</p> <p><i>Amended by:</i> Law of 19 January 2012 <i>Amended by:</i> Law of 8 May 2013 <i>Amended by:</i> Law of 10 April 2014 containing several provisions concerning the procedures before the CALL and the Council of State</p> <p><i>Amended by:</i> Law of 26 February 2015 concerning the grant of a residence authorisation to foreign unaccompanied minors</p> <p><i>Amended by:</i> Law of 1 June 2016 regarding a temporary residency status for recognised refugees, cessation and revocation of the international protection status</p>	<p>Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</p> <p>Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</p> <p>Loi du 19 janvier 2012 Wet van 19 januari 2012</p> <p>Loi du 8 mai 2013 Wet van 8 mei 2013</p> <p>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</p> <p>Wet van 10 april 2014 houdende diverse bepalingen met betrekking tot de procedure voor de Raad voor Vreemdelingenbetwistingen en voor de Raad van State</p> <p>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</p> <p>Wet van 1 juni 2016 tot wijziging van de Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen</p>	<p>Aliens Act (AA)</p>	<p>http://bit.ly/1Ig1MCC (FR) http://bit.ly/1GmqyU0 (NL, unofficial consolidation)</p> <p>http://bit.ly/1AMmhas (FR) http://bit.ly/1EYd49X (FR) http://bit.ly/1G99rD7 (FR) http://bit.ly/1KQ052h (NL)</p> <p>http://bit.ly/1P1zSA5 (NL) http://bit.ly/1M16DYI (FR)</p> <p>http://bit.ly/2jOTfCl (FR) http://bit.ly/2jxX5wg (NL)</p>
<p>Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens</p>	<p>Loi de 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers</p> <p>Wet van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen</p>	<p>Reception Act</p>	<p>http://bit.ly/1MA7uD0 (FR) http://bit.ly/1MKITbo (NL)</p>
<p>Law of 30 April 1999 concerning employment of foreign workers</p>	<p>Loi de 30 avril 1999 relative à l'occupation des travailleurs étrangers</p>	<p>Law on Foreign Workers</p>	<p>http://bit.ly/1MHzmTK (FR) http://bit.ly/1FQUuRV (NL)</p>

	Wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers		
--	---	--	--

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/1Jo26IJ (NL)
Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation	Arrêté royal du 21 décembre 2006 fixant la procédure devant le Conseil du Contentieux des Etrangers Koninklijk besluit van 21 december 2006 houdende de rechtspleging voor de Raad voor Vreemdelingenbetwistingen	Royal Decree on CALL Procedure	http://bit.ly/1VtXdcg (FR) http://bit.ly/1VtXhJ3 (NL)
Royal Decree of 9 June 1999 implementing the law of 30 April 1999 regarding the employment of foreign workers	Arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers	Royal Decree on Foreign Workers	http://bit.ly/1Q9rEXZ (NL)

<p><i>Amended by:</i> Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers</p>	<p>Koninklijk besluit van 9 juni 1999 houdende de uitvoering van de wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers</p> <p>Arrêté royal du 29 octobre 2015 modifiant l'article 17 de l'arrêté royal du 9 juin 1999</p>		<p>http://bit.ly/1MYS23l (FR)</p>
<p>Royal Decree of 12 January 2011 on the granting of material assistance to asylum seekers receiving income from employment related activity</p>	<p>Arrêté royal de 12 janvier 2011 relatif à l'octroi de l'aide matérielle aux demandeurs d'asile bénéficiant de revenus professionnels liés à une activité de travailleur salarié</p> <p>Koninklijk besluit van 12 januari 2011 betreffende de toekenning van materiële hulp aan asielzoekers die beroepsinkomsten hebben uit een activiteit als werknemer</p>	<p>Royal Decree on Material Assistance to Asylum Seekers</p>	<p>http://bit.ly/1IAukcQ (FR)</p> <p>http://bit.ly/1JB9PwY (NL)</p>
<p>Royal Decree of 9 April 2007 determining the medical aid and care that is not assured to the beneficiary of the reception because it is manifestly not indispensable, and determining the medical aid and care that are part of daily life and shall be guaranteed to the beneficiary of the reception conditions</p>	<p>Arrêté royal du 9 avril 2007 déterminant l'aide et les soins médicaux manifestement non nécessaires qui ne sont pas assurés au bénéficiaire de l'accueil et l'aide et les soins médicaux relevant de la vie quotidienne qui sont assurés au bénéficiaire de l'accueil</p> <p>Koninklijk besluit van 9 april 2007 tot bepaling van de medische hulp en de medische zorgen die niet verzekerd worden aan de begunstigde van de opvang omdat zij manifest niet noodzakelijk blijken te zijn en tot bepaling van de medische hulp en de medische zorgen die tot het dagelijks leven behoren en verzekerd worden aan de begunstigde van de opvang /</p>	<p>Royal Decree on Medical Assistance</p>	<p>http://bit.ly/1KoGIMv (FR)</p> <p>http://bit.ly/1Tarbni (NL)</p>
<p>Law of 26 May 2002 on the right to social integration</p>	<p>Loi de 26 mai 2002 concernant le droit à l'intégration sociale</p> <p>Wet van 26 mei 2002 betreffende het recht op maatschappelijke integratie</p>	<p>Law on Social Integration</p>	<p>http://bit.ly/1GwdpYC (FR)</p> <p>http://bit.ly/1GnKfsF (NL)</p>
<p>Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary</p>	<p>Arrêté royal du 25 avril 2007 déterminant les modalités de l'évaluation de la situation individuelle du bénéficiaire de l'accueil</p> <p>Koninklijk besluit van 25 april 2007 tot bepaling van de nadere regels van de evaluatie van de individuele situatie van de begunstigde van de opvang</p>	<p>Royal Decree on the Assessment of Reception Needs</p>	<p>http://bit.ly/1MHwJMS (FR)</p> <p>http://bit.ly/1TatQ0r (NL)</p>
<p>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</p>	<p>Arrêté royal de 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'OE, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, § 1er, de la loi du 15 décembre 1980</p>	<p>Royal Decree on Closed Centres</p>	<p>http://bit.ly/1Fx8sZ0 (NL)</p>

	Koninklijk besluit van 2 augustus 2002 houdende vaststelling van het regime en de werkingsmaatregelen, toepasbaar op de plaatsen gelegen op het Belgisch grondgebied, beheerd door de DVZ, waar een vreemdeling wordt opgesloten, ter beschikking gesteld van de regering of vastgehouden, overeenkomstig de bepalingen vermeld in artikel 74/8, § 1 van de Vreemdingenwet		
<i>Amended by:</i> 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 Koninklijk besluit van 7 oktober 2014 tot wijziging van het koninklijk besluit van 2 augustus 2002		http://bit.ly/1QSveUL (FR) http://bit.ly/1YkhrPe (NL)
Royal Decree of 9 April 2007 determining the regime and functioning rules of the Centres for Observation and Orientation of Unaccompanied Minors	Arrêté royal du 9 avril 2007 déterminant le régime et les règles de fonctionnement applicables aux centres d'observation et d'orientation pour les mineurs étrangers non accompagnés Koninklijk besluit van 9 april 2007 tot vastlegging van het stelsel en de werkingsregels voor de centra voor observatie en oriëntatie voor niet-begeleide minderjarige vreemdelingen	Royal Decree on 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/1luWwLu (FR) http://bit.ly/1cLmdvV (NL)
Royal Decree of 18 December 2003 establishing the conditions for second line legal assistance and legal aid fully or partially free of charge	Arrêté royal de 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire Koninklijk besluit van 18 december 2003 tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand	Royal Decree on Legal Aid	http://bit.ly/1EZmLoC (FR) http://bit.ly/1Ihe2CS (NL)
Ministerial Decree of 5 June 2008 establishing the list of points for tasks carried out by lawyers charged with providing second line legal assistance fully or partially free of charge	Arrêté ministériel de 5 juin 2008 fixant la liste des points pour les prestations effectuées par les avocats chargés de l'aide juridique de deuxième ligne partiellement ou complètement gratuite Ministerieel besluit van 5 juni 2008 tot vaststelling van de lijst met punten voor prestaties verricht door advocaten belast met gedeeltelijk of volledig kosteloze juridische tweedelijnsbijstand	Ministerial Decree on Second Line Assistance	http://bit.ly/1AO5l3i (FR) http://bit.ly/1T0jAYm (NL)

Overview of the main changes since the previous report update

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

Asylum procedure

- ❖ **Pre-registration phase:** The Belgian authorities maintained the pre-registration phase throughout 2016 and will continue to do so in 2017. Asylum seekers receive a letter with a number which they can use online to verify the day on which they can register their application. This letter literally states: “You have not yet lodged your asylum application in Belgium.” Although the AO commits itself to registering the asylum claim as soon as possible, it also admitted that it could take up to 2 weeks, meanwhile leaving asylum seekers in a vulnerable situation.
- ❖ **Dublin transfers:** Belgium already increased its use of the Dublin Regulation in 2016. The Secretary of State commits to increasing the number of Dublin transfers in 2017 and to reintroducing transfers to Greece, as the “only way for candidate applicants to understand that they may not choose their country of asylum.” Belgium therefore seems to support the European Commission’s efforts to recommend the reinstatement of transfers by the beginning of next year. In the context of the reform of the Dublin system, the Secretary of State clarifies the need for asylum seekers to be obliged to apply in the first country of entry, to avoid disproportionate numbers of arrivals in Northern and Western Europe.
- ❖ **Safe countries of origin:** In 2016, the Belgian list of safe countries of origin was expanded to include Georgia and Albania, despite a ruling of the Council of State declaring the designation of Albania unlawful. The Secretary of State will take into account other Member States’ designations in the course of 2017 with a view to expanding the Belgian list.
- ❖ **Reduced legal aid:** The reform of the legal aid system, providing assistance to asylum seekers through Pro Deo lawyers, has sought to reduce appeals with no prospect of success.

Reception Conditions

- ❖ **Closing down emergency reception facilities:** In 2015 and 2016 the government opened a number of emergency reception facilities. In Belgium, the permitted period for setting up exceptional modalities of reception conditions as per Article 18(9) of the recast Reception Conditions Directive is legally limited to 10 days. However, in reality, we have noticed that asylum seekers have spent months in the emergency reception facilities, where social assistance, privacy and living conditions are limited. By the end of 2016 the government started closing down all emergency reception facilities.
- ❖ **Declining reception capacity:** In June 2016, the government announced the closure of more than 10,000 reception places in 2016. Reception capacity has declined from 35,697 places in May 2016 to 26,362 places in January 2017. This sharp reduction has put pressure on the reception network.

Detention of asylum seekers

- ❖ **Increased detention:** We have noticed an increased use of detention on grounds of protection of public order, on the basis of Article 54(2) of the Aliens Act. This has led to detention based on accusations that were later deemed untrue or which the judiciary decided not to prosecute. When courts later reviewed the legality of detention orders, they regularly ruled that they were illegal.

- ❖ **Plans for detention of children:** Belgian law currently prohibits the detention of families with children, as well as unaccompanied children, in line with related jurisprudence of the European Court of Human Rights. However, in his policy note presented in late 2016, the Secretary of State announces the establishment of closed centres for families close to the 127-Bis Repatriation Centre near the Brussels National Airport, with a view to carrying out returns. More generally, pre-removal detention capacity is to be increased in 2017.

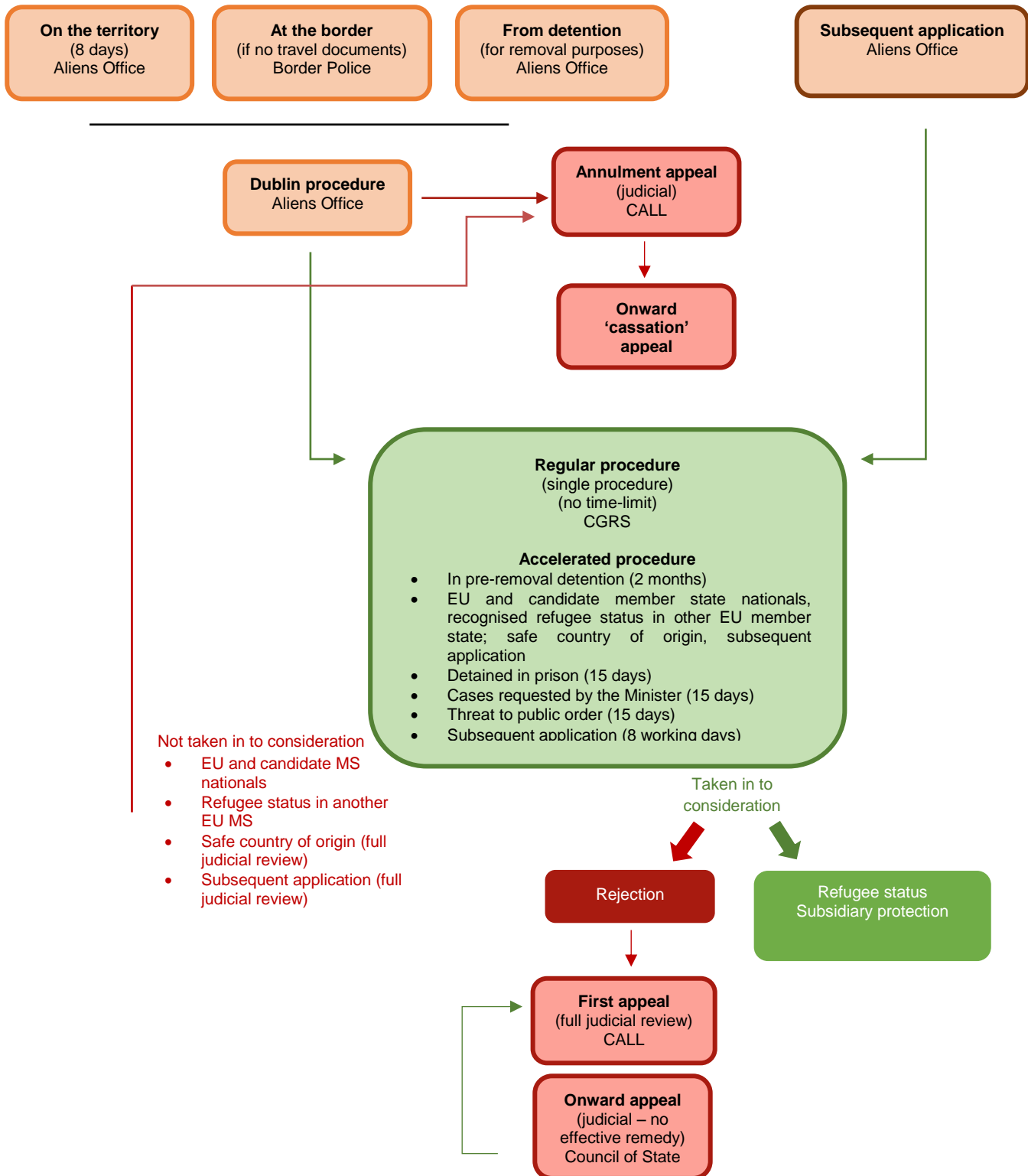
Content of protection

- ❖ **Residence permits:** The law was amended on 28 April 2016 to restrict the period of residence granted to beneficiaries of international protection. Refugees no longer receive permanent residence upon recognition, but a temporary right of residence of 5 years.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|--|---|--|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ³ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: ⁴ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ⁵ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: Regularisation procedure ⁶ | | |
| ❖ 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 (EN)	Competent authority (FR/NL)
Application		
❖ At the border	Federal Police (General Directorate of Administrative Police)	Police Fédérale (Direction générale de la police administrative) Federale politie (Algemene directie van de bestuurlijke politie)
❖ On the territory	Aliens Office (AO)	Office des étrangers (OE) Dienst Vreemdelingenzaken (DVZ)
Dublin	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	Council for Alien Law Litigation (CALL)	Conseil du contentieux des étrangers (CCE) / Raad voor Vreemdelingenbetwistingen (RvV)
❖ Onward appeal	Council of State	Conseil d'Etat / Raad van State
Subsequent application		
❖ Registration	Aliens Office (AO)	Office des étrangers (OE) Dienst Vreemdelingenzaken (DVZ)
❖ Admissibility	Office of the Commissioner General for Refugees and Stateless Persons	Commissariat général aux réfugiés et aux apatrides (CGRA) Dienst Vreemdelingenzaken (DVZ) Commissariaat-generaal voor Vluchtelingen en Staatlozen (CGVS)

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

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

⁵ Albeit not labelled as “accelerated procedure” in national law. See Article 31(8) APD.

⁶ Residence status is granted in the form of protection for medical reasons under a regularisation procedure rather than the asylum procedure, even where the serious risk of inhuman treatment upon return to the country of origin satisfies the criteria for subsidiary protection. See Article 9ter Aliens Act.

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)	[insert number]	State Secretary for Asylum and Migration, associated to the Minister of Home Affairs	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 four main stages:

1. **Pre-registration:** When an asylum seeker first presents him or herself at the Aliens Office he will receive a notification (*convocation*), with a reference number and a website link which he or she needs to check each day after 16:00 pm to verify if his or her number appears on the website. The day after his or her number appears on this website, the person should go in person to the Aliens Office for the proper registration of the asylum claim. The number is also published on the door of the Aliens Office and at the entrance of the accommodation centre where the person can sleep until he or she registers.
2. **Registration:** The registration of the asylum application and the examination of the criteria in the Dublin Regulation by the Aliens Office (AO) to determine whether Belgium is the responsible country;
3. **Examination of the merits:** The examination of the merits of the asylum application by the Commissioner-General for Refugees and Stateless Persons (CGRS);
4. **Appeal:** 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. The AO also only registers subsequent applications and transfers them to the CGRS.⁷

The **Office of the Commissioner General for Refugees and Stateless Persons (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. 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.⁸

⁷ Articles 57/6/2 and 51/8 Aliens Act.

⁸ Article 52/2(3) Aliens Act.

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.

Overview appeals procedures in asylum cases:⁹

Full judicial review (examination of factual elements as well as legal elements; suspensive)	Annulment procedure (examination of legal elements only; non-suspensive)
Asylum applications following the regular procedure Asylum applications from safe countries of origin Subsequent asylum applications	Asylum applications by EU nationals and nationals Asylum applications of applicants that have already received international protection in another EU-country Asylum applications that are still in the Dublin procedure, meaning an appeal against a Dublin transfer decision Asylum applications that were rejected for practical reasons (no choice of residence, not appearing on interview)

Full judicial review: 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. 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 juridiction*, or “full judicial review”. 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.

Accelerated admissibility procedure: 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;
- ❖ By asylum seekers from a safe country of origin (based on a list);
- ❖ By people who have already obtained refugee status in another EU Member State; or
- ❖ When asylum seekers introduce subsequent applications.

In the three 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.

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.

⁹ A full overview can be found here: EDEM, *Schéma de procédure: Tableau des différents types de procédures devant le Conseil du contentieux des étrangers*, available at: <http://bit.ly/2jGVmVr>.

Annulment procedure: An annulment appeal can be lodged with the CALL against:

- ❖ Decisions by the CGRS not to take an asylum application into consideration (but there is full judicial review for subsequent applications and safe country of origin applications).
- ❖ Decisions 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 from safe countries of origin (see the sections on [Admissibility Procedure](#), [Subsequent Applications](#) and [Safe Country Concepts](#)).

Accelerated procedure for asylum seekers in detention: 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.

The current appeal procedure does not seem to satisfy this requirement completely, given the short deadline to file an automatically suspensive urgent appeal.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? Yes No

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

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>.

nature of the ECHR prohibition on *refoulement*.¹² This has been sanctioned on more than one occasion by the ECtHR both under Article 3 and Article 6 ECHR.¹³

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

2. Registration of the asylum application

Indicators: Registration

- | | |
|---|---|
| 1. Are specific time-limits laid down in law for asylum seekers to lodge their application? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. If so, what is the time-limit for lodging an application? | |
| ❖ At the border | Immediately |
| ❖ On the territory / In detention | 8 days |

The Aliens Office (AO) is the authority responsible for the registration of asylum applications, which according to the law should be done immediately when the asylum seeker presents the application at their offices. However, since the summer of 2015 asylum applications are no longer registered immediately, but go through a pre-registration phase. During this phase the asylum seeker is not considered as an asylum seeker and therefore cannot open his rights as an asylum seeker. This phase is called the pre-registration phase and has no legal basis in the Belgian legislative framework. The Belgian authorities maintained the pre-registration phase throughout 2016 and will continue to do so in 2017. Asylum seekers receive a letter with a number which they can use online to verify the day on which they can register their application. This letter literally states: “You have not yet lodged your asylum application in Belgium”.

Although the Aliens Office commits itself to register the asylum claim as soon as possible, it also admitted that it could take up to two weeks, meanwhile leaving asylum seekers in a vulnerable situation. It should be noted that asylum seekers that have visible vulnerabilities (pregnant women, children, wheelchair patients, etc.) are being registered on the same day;

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

The asylum section of the AO is responsible for:

- ❖ Receiving the asylum application;
- ❖ Registering the asylum seeker in the so-called waiting register, a provisional population register for foreign nationals;

¹² 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 Centre for Equal Opportunities 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 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*.

¹³ 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.

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

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

At the AO, a short interview takes place to establish the identity, nationality and travel route of the asylum seeker. The AO and the asylum seeker, with the help of an interpreter 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. A lawyer cannot be present during this interview.

If Belgium is the responsible State under the Dublin Regulation, the file is sent to the CGRS. The questionnaire about the reasons for the asylum application and impossibility of a return to the country of origin is transferred to the CGRS as well.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.

For subsequent applications the AO is also competent 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.¹⁸ 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. However, no cases have been brought to our attention where this possibility was used. In times of high influx of asylum seekers subsequent applications are not always prioritised. Therefore, it can take some weeks before these asylum seekers can register their subsequent asylum claim.

In practice, the right to reception conditions under a subsequent application is only applied once the claim is taken into consideration by the CGRS,¹⁹ so it is important that the AO transfers them to the CGRS immediately. Nevertheless, in 2016 we have received signals that it can take up to 4 months before the CGRS has taken a decision whether or not it will take the asylum claim into consideration.

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 Article 51/8 Aliens Act.

¹⁹ However, Article 4 of the Act on Reception states that asylum seekers when submitting a subsequent application cannot be excluded automatically, but should receive an individually motivated decision. In practice these asylum seekers will receive a standardized decision that excludes of reception until the decision to take the claim into consideration.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: 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 31 December 2016:
 - ❖ AO 3.495 persons
 - ❖ CGRS 14,815 cases (18,902 persons)

The asylum applications for which Belgium is responsible according to the Dublin Regulation are transferred to the office of the CGRS to be examined on their merits. The CGRS, which is an independent administrative authority, is exclusively specialised in asylum decision-making. In a single procedure, the CGRS first examines whether the applicant fulfils the eligibility criteria for refugee status. If the applicant does not meet these criteria the CGRS will automatically examine whether the applicant is eligible for subsidiary protection.²⁰

The CGRS has the competence to:

- ❖ Grant or refuse refugee status or subsidiary protection status;
- ❖ 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;
- ❖ Apply cessation and exclusion clauses or to revoke refugee or subsidiary protection status (including on instance of the Minister);
- ❖ Confirm or refuse refugee status of a refugee recognised in another country;
- ❖ Reject asylum applications for technical reasons;²¹ and
- ❖ Issue civil status certificates for recognised refugees.²²

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).²³

In the second half of 2015, an exceptionally high number of asylum applications were filed in Belgium. As a result, the CGRS was unable to process all cases in a short term.

By mid-March 2016, 17,569 cases were still pending at the CGRS. By December 2016, this number was reduced to 14,851 cases. The CGRS tries to reduce the waiting period as much as possible. To achieve this, the CGRS has recruited additional staff and taken special measures to increase the number of decisions. As a result, the CGRS has increased the number of decisions taken every month. The CGRS does its utmost to take as many decisions as possible while still seeing to the quality of each decision.

²⁰ Article 49/3 Aliens Act.

²¹ 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.

²² 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).

²³ 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.

Before the sharp increase in the number of asylum applications, it took on average 3 to 6 months for the CGRS to process an asylum application. It is important to realise that this is no longer feasible. For many asylum seekers, the waiting period will now be longer.

1.2. Prioritised examination and fast-track processing

The CGRS treats the applications of Syrian asylum seekers with priority. For these applications the CGRS tries to organise interviews and decisions within a short and reasonable time frame, except for those files that require further investigation. Files may need further investigation when there are indications about dual nationality, elements that can lead to exclusion or elements related to national security or when there are indications the protection was already offered by another country.²⁴

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

At least one personal interview by a protection officer at the CGRS is imposed by law.²⁵ Generally, for every asylum application the CGRS conducts an interview with the asylum seeker, though the length and the substance of the questions can vary substantially, depending e.g. on the manifestly well-founded or unfounded nature of the claim, or the presence or absence of new elements presented in case of a subsequent application. The interview serves the CGRS to examine whether the asylum application is credible and qualifies for refugee status or subsidiary protection status. The lawyer and/or another person of confidence chosen by the asylum seeker can attend the interview.²⁶ The CGRS has elaborated an interview charter as a Code of Conduct for the protection officers, which is available on its website.²⁷

Asylum seekers 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.²⁸ 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.²⁹ 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.

²⁴ Information provided by the CGRS: Myria, Contact meeting, 21 September 2016, available at: <http://bit.ly/2kxOqOG>, para 17.

²⁵ Article 6 Royal Decree on CGRS Procedure.

²⁶ Article 13/1 Royal Decree on CGRS Procedure.

²⁷ CGRS, *Interview Charter*, available at: <http://bit.ly/1FAxkyQ>.

²⁸ Article 51/4 Aliens Act.

²⁹ CGRS, *Deontology for translations and interpretations*, available at: <http://bit.ly/1ROmcHs>.

There is no video or audio recordings of the interview, 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,³⁰ 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.³¹ The asylum seeker may order a copy of the interview report, together with the complete asylum file.

Since June 2016 the CGRS started to conduct interviews through videoconference in some of the detention centres. This is the case for the detention centre of **Merksplas** where all persons who applied for asylum are interviewed through video conference. This interview is organised the same way as a regular interview, meaning that there is an interpreter present at the office of the CGRS and the lawyer can present in **Merksplas** to attend the interview. The CGRS will evaluate this practice and extend it to other detention facilities. The video’s itself are not kept on file, and the CGRS will use the detailed report following the interview as the basis.³² The asylum seeker and his lawyer can request for an interview in person when to can provide elements of vulnerability that would justify such a request.³³

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

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

2. Average processing time for the appeal body to make a decision in 2016: Not available

A judicial appeal can be introduced before the CALL against all negative in-merit decisions of the CGRS within 30 days.³⁴ This appeal has automatic suspensive effect.³⁵

In those cases the CALL has a so-called “full judicial review” competence (*en pleine juridiction*) which allows it to reassess the facts and to take one of three possible decisions:

- ❖ Confirm the negative decision of the CGRS;
- ❖ Overturn it by granting refugee or subsidiary protection status; or
- ❖ Annul the decision and refer the case back to the CGRS for further investigation.³⁶

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.

³⁰ Article 17 Royal Decree on CGRS Procedure.

³¹ Articles 16-17 and 20 Royal Decree on CGRS Procedure.

³² Information provided by the CGRS: Myria, Contact meeting, 21 September 2016, available at: <http://bit.ly/2kxOqOG>, para 25.

³³ Information provided by the CGRS: Myria, Contact meeting, 19 October 2016, available at: <http://bit.ly/2jH91M9>, para 7.

³⁴ Article 39/57(1) Aliens Act.

³⁵ Article 39/70 Aliens Act.

³⁶ Article 39/2 Aliens Act.

The time-limits and suspensive effect of the appeal against in-merits decisions differs from Dublin decisions and admissibility decisions (see section on [Dublin 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.³⁷ At the hearing, the parties and their lawyer can orally explain their arguments to the extent that they were mentioned in the petition.³⁸ 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.³⁹ 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 concerning the applicants' nationality and protection status in a third country, which were questioned in the preceding full jurisdiction procedure.⁴⁰

For 2016 there were 4,830 full judicial review “*asylum contentieux*” appeals. There were 61 appeals against decisions of not taking into consideration application from safe countries of origin, 624 appeals against decisions of not taking into consideration subsequent applications, 128 accelerated appeals of subsequent applications in detention. There were 939 annulment appeals against Dublin-decisions and 270 extreme urgency procedure in asylum procedures.

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.⁴¹

³⁷ Article 39/69 Aliens Act.

³⁸ Article 39/60 Aliens Act.

³⁹ 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.

⁴⁰ ECtHR, *Singh and Others v Belgium*, Application No 33210/11, 2 October 2012.

⁴¹ FRA, *Access to effective remedies: The asylum-seeker perspective*, 2011, available at: <http://bit.ly/1KegxW>, 27-34.

Onward appeal to the Council of State

A possibility of onward appeal against decisions of the CALL exists before the Council of State, the Belgian supreme administrative court.⁴² 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.⁴³ 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.⁴⁴ If the decision under review is annulled (“quashed”), the case is sent back to the CALL for a new assessment of the initial appeal.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

Article 23 of the Belgian Constitution determines that the right to a life in dignity implies for every person *inter alia* the right to legal assistance. The Aliens Act guarantees free legal assistance by a lawyer to all asylum seekers, at every stage (first instance, appeal, cassation) of the procedure and in all types of procedures (regular, accelerated, admissibility, appeal in full jurisdiction, annulment and suspension), with the exception of the AO stage.⁴⁵ 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.⁴⁶

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

There are two types of free legal assistance: first line assistance and second line assistance.⁴⁷ The competence for the organisation of the first line assistance lies at the regional level.

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

⁴² Article 39/67 Aliens Act.

⁴³ Article 14(2) Acts on the Council of State.

⁴⁴ 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.

⁴⁵ Articles 39/56 and 90 Aliens Act.

⁴⁶ Article 33 Reception Act.

⁴⁷ Article 508/1-508/25 Judicial Code.

or to “second line assistance”, completely free of charge, regardless of income or financial resources. The first line assistance is organized in each judicial district by the Commission for Legal Assistance. Besides these lawyers’ initiatives, there are also other public social organisations and NGOs providing this kind of first line legal assistance.

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

The 2003 Royal Decree on Legal Aid determines the conditions under which one can benefit from this second line legal assistance free of charge. Different categories are defined, in general depending on the level of income or financial resources and, with regard to specific procedures, on the social group they belong to. For asylum seekers and persons in detention, among others, there is a rebuttable presumption of being without sufficient financial resources. With regard to children, unaccompanied or not, this presumption is conclusive. In theory, only asylum seekers who lack sufficient financial means should be entitled to free legal assistance, but due to the aforementioned presumption, 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.⁴⁸ However, this provision is only very rarely applied in practice. 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.⁴⁹

Since September 2016 the second line assistance has changed significantly. The most important change entails the introduction of a ‘flat fee’. This means that legal aid is no longer entirely free. However, certain categories of people in need of legal aid are exempted for this requirement:

- ❖ If you start proceedings to be recognised as a stateless person;
- ❖ If you apply for asylum;
- ❖ If you appeal a return decision or an entry ban
- ❖ If you do not have any means of existence.

If these persons wish to start other proceedings they will be required to pay the flat fee.

Example: an asylum seeker requests the assistance of a “pro-Deo” lawyer to assist him with his asylum application. He is exempted from the flat fee for the appointment of the lawyer and during the appeals procedure (if needed). However if he wishes to receive free legal aid concerning a rent dispute, he will not automatically be exempted from the flat fee as an asylum seeker. The asylum seeker will have to prove first that he has no sufficient means.

⁴⁸ Article 508/14 Judicial Code.

⁴⁹ 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.

The nomenclature that determines the number of points for each intervention and as such the remuneration for the lawyers, has been modified by Ministerial decree of 19 July 2016. In the previous version lawyers got a certain amount of points per intervention of action. Every point was worth 25 euros. Since 1 September 2016 every point equals one hour. The value per point has not yet been determined. This will only be done in 2018. The Ministerial Decree of 19 July 2016 lays down the nomenclature of the points per intervention.

Example: before the entry into force of a lawyer would receive 15 points for a procedure before the Commissioner-general for refugees and stateless persons. Since 1 September 2016 the lawyer receives a basis of 3 points plus 1 point per started hour of the interview he attended. For a first appeal in asylum cases a lawyer can receive a maximum of 11 points. For a second or subsequent asylum application the lawyer will no longer receive the basis points unless the CGRS takes into consideration the new application or when the lawyer can proof the examination of the new elements (as required in subsequent asylum applications) had taken up a considerable amount of time.

“Pro-Deo” Lawyers receive a fixed remuneration by the bureau for legal assistance, which are financed by the bar associations that receive a fixed annual subsidy “envelope” from the Ministry of Justice. In theory, costs can be re-claimed by the state if the asylum seeker would appear to have sufficient income after all, but this does not happen in practice. The 2016 Ministerial Decree on Second Line Assistance⁵⁰ has determined a list of points granted per service rendered.

Procedure	Points
Procedure at the CGRS	Basis of 3 points
Presence during the interview	+ 1 point per started hour
Appeal at CALL (full jurisdiction)	Basis of 5 points
Petition	+ 4 points

These developments certainly make the “pro-Deo” remuneration system less attractive for lawyers. The reform might have a significant impact on the quality of legal aid. Another obstacle for lawyers to engage in this area of legal work is the fact that they are only paid once a year for all the cases they have closed and reported to their bar association in the previous year. Closure of the case can only take place once all procedures are finished, which in reality is long after the actual interventions were undertaken by the lawyer.

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

2. Dublin

2.1. General

Application of the Dublin criteria

There is no information available on how the AO applies the Dublin criteria. 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.⁵¹

⁵⁰ For an overview of the full nomenclature, please consult the Ministerial Decree of 19 July 2016, available at: <http://bit.ly/2jAdVzs>.

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

The dependent persons and discretionary clauses

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 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”.

Until mid-2016 there were in principle no requests made to **Greece** at all, although 3 outgoing requests and 2 transfers took place to Greece in 2014.⁵² In the fall of 2016 the Aliens Office experimented with a couple of test cases to Greece. In the end they suspended this test.⁵³ 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 and Spain in specific cases of vulnerability or other). At the moment there are no transfers to **Hungary**. The Dublin examination will take place but Belgium will appoint itself as the responsible Member State.⁵⁴

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.

2.2. Procedure

Indicators: Dublin: Procedure

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

In practice, all asylum seekers are fingerprinted and checked in the Eurodac database after 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. During the interview the AO will ask about:

- ❖ The identity and country of the asylum seeker
- ❖ The route taken to Belgium

⁵² Number confirmed by the Aliens Office.

⁵³ Information provided by the AO: Myria, Contact meeting, 16 November 2016, available at: <http://bit.ly/2jGWKYp>, para 21

⁵⁴ Information provided by the AO: Myria, Contact meeting, 16 November 2016, para 34.

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.

- ❖ Problems in the country of origin. The AO uses a specific form with standard questions. This questionnaire is very important, as it will form the basis of the second interview at the Commissioner-General for Refugees and Stateless Persons.
- ❖ Submitting the applicant's documents.

During this interview asylum seekers can state their reasons for opposing a transfer to the responsible EU state.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").

The asylum seeker should specifically ask for a copy of the questionnaire at the end of the interview. Otherwise the lawyer will have to request a copy at the AO's. Practitioners have stated that it can take up to month or longer before they receive a copy of the questionnaire, which is often too late for the appeal or to prepare the interview at the CGRS.⁵⁹

A decision to transfer following a tacit or explicit agreement to take back or to take charge of an asylum applicant is delivered in a written decision containing the reasons for the decision in person (the so-called "Annex 26quater" – or "Annex 25quater" when in detention). However, the asylum seeker's lawyer does not automatically receive a copy of the decision sent to the asylum seeker.⁶⁰

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.⁶¹

Individualised guarantees

Following the 2014 ECtHR ruling in *Tarakhel v Switzerland*,⁶² 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.⁶³ The AO does not systematically 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.⁶⁴

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.⁶⁵ 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.⁶⁶

⁵⁸ Article 10 Royal Decree on AO Procedure.

⁵⁹ Myria, Contact meeting, 21 December 2016, available at: <http://bit.ly/2jGwYmM>, para 29.

⁶⁰ Article 71/3 Royal Decree 1981.

⁶¹ Article 51/7 Aliens Act.

⁶² ECtHR, *Tarakhel v Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

⁶³ Letter from the AO to CBAR-BCHV in response to questions concerning the implementation of the *Tarakhel* judgment, 17 November 2014, unpublished.

⁶⁴ See e.g. CALL, Judgment No 144544, 29 April 2015; Judgment No 155882, 30 October 2015.

⁶⁵ CALL, Judgment No 144188, 27 April 2015.

⁶⁶ CALL, Judgment No 144100, 28 April 2015.

In a ruling of October 2016, the CALL annulled the transfer decision under the Dublin III Regulation of an asylum seeker and her five minor children to Germany. The Aliens Office did not sufficiently take into account the best interests of the children, and the reception guarantees necessary to transfer the Afghan asylum seeker with her children to Germany, without a real risk of violating Article 3 ECHR.⁶⁷

Transfers

Persons whose claims are considered to be Dublin cases may in certain cases be detained (see section on [Grounds for Detention](#)). As a reaction to the increase of asylum applications from persons having transited through other Member States in August 2015, more asylum seekers seem to be detained since September 2015 even before any transfer agreement has been reached. 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. It concerned particularly Iraqi asylum seekers who were detained solely because they were in a Dublin procedure. The Commissioner for Human Rights of the Council of Europe expressed his concern and called on the authorities to review this practice, especially in cases in which no country had yet been identified to which the asylum seeker could be transferred.⁶⁸

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 persons concerned presents themselves to the AO again.

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 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 *démarche*. 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.⁶⁹

The average processing time between the asylum application and the delivery of a decision refusing entry (at the border) or residence on the territory based on the Dublin Regulation is not 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.

In 2015, the AO took 1,465 decisions of refusal of entry under the Dublin III Regulation (whereas 22.108 files were transmitted to the CGRS for in-merit examination). In 2014 it concerned 991 decisions of refusal (6% of the total) and 1,169 in 2013 (7% of the total). For 2016 no numbers on outgoing or incoming requests have been communicated yet, nor are numbers on actual transfers. There were 828 actual transfers to other Member States in 2015, an increase from 741 in 2014 and 738 in 2013.⁷⁰

⁶⁷ CALL, Judgment No 176046, 10 October 2016.

⁶⁸ Council of Europe, *Report by Nils Muižnieks Following his Visit to Belgium from 14 to 18 September 2015*, available at: <http://bit.ly/2jAmSZH>.

⁶⁹ Information provided by the AO: CBAR-BCHV, Contact meeting, 11 March 2014, available at: <http://bit.ly/1Qwc3MP>.

⁷⁰ AO, *Statistical Annual Report 2015*, available at: <http://bit.ly/2jZkh7u>.

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

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

Asylum seekers have to attend a specific Dublin interview in which they can state their reasons for opposing a transfer to the responsible EU state.⁷¹ 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.⁷² 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. It concerns elements that are relevant for determining if the sovereignty clause should be applied to avoid potential inhuman treatment of the person concerned, in case of transfer to another responsible EU or Schengen Associated state. The asylum seekers are asked why they cannot or do not want to return to that specific country, whether they have a specific medical condition and why they have come to Belgium.

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

When the AO accepts that Belgium is responsible for the asylum claim, it will transfer the file to the CGRS. However, the decision why Belgium is responsible is not motivated. The AO has not been very transparent about its application of the sovereignty clause neither. Therefore it is hard to assess the impact of the additional questions in the Dublin interview.

Since June 2016 the CGRS started to conduct interviews through videoconference in some of the detention centres. This is the case for the detention centre of **Merksplas** where all persons who applied for asylum are interviewed through video conference.

2.4. Appeal

Indicators: Dublin: Appeal

Same as regular procedure

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

⁷¹ Article 10 Royal Decree on AO Procedure.

⁷² Article 18 Royal Decree on AO Procedure.

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 *M.S.S. v. Belgium and Greece*. However, under the “extreme urgency” procedure, an appeal with short automatic suspensive effect may be provided (see section on [Admissibility Procedure: Appeal](#)).

The CALL verifies if all substantial formalities have been respected by the AO.⁷³ In 2016 this has included cases where the AO ordered a Dublin transfer without indicating which responsibility criterion was applicable.⁷⁴ The amenability to scrutiny of the correct application of the Dublin criteria has confirmed in the same year by the Court of Justice of the European Union (CJEU) in the cases of *Ghezelbash* and *Karim*.⁷⁵

The CALL also considers whether the sovereignty clause or the protection clause should have been applied by assessing potential breaches of Article 3 ECHR. In order to do this, the CALL takes into consideration all the relevant elements concerning the state of reception conditions and the asylum procedure in the responsible state where the 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.⁷⁶ Following the *Tarakhel* judgment, in these suspension and annulment appeals the CALL not only scrutinises the general reception and procedural situation in the responsible state on systemic shortcomings, but also evaluates the need for individual guarantees from such a state in case shortcomings are not systemic, where the applicant appears to be specifically vulnerable (see section on [Dublin: Procedure](#)).

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

As with all final judgments by administrative judicial bodies, a non-suspensive cassation appeal before the Council of State can also be introduced against the judgments of the CALL concerning Dublin transfers.⁷⁷

⁷³ Article 39/2(2) Aliens Act.

⁷⁴ CALL, Judgment No 165134, 31 March 2016, available at: <http://bit.ly/2kZHIUV>.

⁷⁵ CJEU, Case C-63/15 *Ghezelbash* and Case C-155/15 *Karim v. Migrationsverket*, Judgments of 7 June 2016.

⁷⁶ 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>.

⁷⁷ Article 14(2) Acts on the Council of State.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

Same as regular procedure

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

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

Sometimes, transfers under the Dublin Regulation are not executed either 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 judgment) of the CALL.

Greece: Following the *M.S.S. v. Belgium and Greece* judgment, there is a general suspension of transfers to Greece, based on the protection (“humanitarian”) clause. In his October 2016 Policy Note, the Secretary of State commits to reintroducing transfers to Greece, as the “only way for candidate applicants to understand that they may not choose their country of asylum.” Belgium therefore seems to support the European Commission’s efforts to recommend the reinstatement of transfers by the beginning of next year.⁷⁸ In the fall of 2016 the Aliens Office experimented with a couple of test cases to Greece. In the end they suspended this test and no transfers to Greece took place.⁷⁹

Hungary: The AO considers that there are no systemic problems with reception conditions or the asylum system in Hungary. Since mid-2015 and throughout 2016, the CALL has suspended many transfers to Hungary, mainly because it considers there is no guaranteed access to the asylum procedure or sufficient

⁷⁸ La Chambre, *Note de politique générale, Asile et Migration*, 27 October 2016, DOC 54 2111/017, available at: <http://bit.ly/2kX0S8p>.

⁷⁹ Information provided by the AO: Myria, Contact meeting, 16 November 2016, available at: <http://bit.ly/2jAgeCC>, para 21.

procedural safeguards or reception conditions for most Dublin returnees.⁸⁰ In the course of 2016, the AO stopped Dublin transfers to Hungary, and Belgium started to declare itself responsible instead of transferring to Hungary. The AO emphasised in December 2016 that it is not due to the circumstances for asylum seeker in Hungary as such, but because the total lack of cooperation on the part of Hungary for Dublin transfers.⁸¹

Italy: Following the *Tarakhel v Switzerland* ruling of the ECtHR regarding Italy, the CALL initially 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.⁸² With the exception of families with minor children, this has not led to a generalised AO practice to demand individualised guarantees from Italy. In 2016, the CALL has upheld transfers to Italy for most asylum seekers,⁸³ although it has ruled against transfers in some specific cases.⁸⁴

Bulgaria: The AO continues to decide that transfers of asylum seekers to Bulgaria do not automatically constitute a risk of inhumane treatment, but only executes a small part of those decisions. This practice is disputable, since it leaves asylum seekers in a limbo.

In 2016, the CALL annulled several transfer decisions to Bulgaria. The CALL rules that recent reports and information have shown that there is a deterioration of the quality of the asylum procedure and the reception conditions in Bulgaria.⁸⁵ For example, in an appeal decision taken on 1 June 2016, the CALL, suspended a Dublin transfer of an Afghan national to Bulgaria on grounds that such a transfer would lead to a breach of article 3 of the Convention. The Afghan national applied for asylum in Belgium on 20 August 2015 and received a return decision on 26 April 2016 after the acceptance of a take back request by Bulgaria.⁸⁶

There have also been suspensions of transfers on a case-by-case basis to **Poland**,⁸⁷ **Malta**,⁸⁸ **Croatia**,⁸⁹ **Spain**,⁹⁰ and even **Germany** in 2016.⁹¹ This has been done *inter alia* for reasons of specific vulnerability of the asylum seeker concerned, reception conditions for children or medical patients.

2.7. The situation of Dublin returnees

The AO considers part of the Dublin returnees as subsequent applicants. This is the case for Dublin returnees whose asylum application in Belgium has been closed, for example following an explicit and/or implicit withdrawal. In the case where an asylum seeker has left Belgium before the first interview, he or

⁸⁰ See e.g. CALL, Judgment No 148492, 25 June 2015; No 162395, 18 February 2016; No 164981, 31 March 2016; No 166392, 25 April 2016; No 166905, 29 April 2016; No 168142, 24 May 2016; No 171730, 12 July 2016, referring to the AIDA Hungary report.

⁸¹ Information provided by the AO: Myria, Contact meeting, 21 December 2016, available at: <http://bit.ly/2jGwYmM>.

⁸² CALL, Judgment No 138940, 20 February 2015; Judgment No 144488, 27 April 2015; Judgment No 144400, 28 April 2015.

⁸³ See e.g. CALL, Judgment No 165056, 31 March 2016; No 169601, 10 June 2016; No 172362, 26 July 2016; No 173670, 29 August 2016; No 174958, 26 September 2016; No 177208, 28 October 2016; No 1772652, 28 November 2016.

⁸⁴ See e.g. CALL, Judgment No 161166, 9 February 2016; No 162742, 25 February 2016; No 172924, 8 August 2016; No 176192, 12 October 2016.

⁸⁵ CALL, judgment No.175 351, 26 September 2016; CALL, judgments No. 178.479, 178.480, 178.481, 28 November 2016.

⁸⁶ CALL, Judgment No. 168.891, 1 June 2016, available at: <http://bit.ly/2jAyR9t>.

⁸⁷ CALL, Judgment No 178160, 22 November 2016.

⁸⁸ CALL, Judgment No 161122, 29 January 2016.

⁸⁹ CALL, Judgment No 172921, 8 August 2016.

⁹⁰ CALL, Judgment No 173295, 17 August 2016; No 177192, 27 October 2016; No 178640, 28 November 2016.

⁹¹ CALL, Judgment No 176046, 10 October 2016.

she will have gotten a “technical refusal” in his or her first asylum procedure. When this asylum seeker is then sent back to Belgium following a Dublin procedure and lodges his asylum application again, the CGRA is legally obliged to take it in consideration.⁹² Nonetheless, these asylum seekers often are still considered as subsequent applicants and therefore are without shelter until this decision is officially taken. When considered as a subsequent applicant, they have no automatic access to reception. They will fall under the general practice of reception for subsequent applications (see section on [Criteria and Restrictions to Access Reception Conditions](#)).⁹³

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

No specific admissibility procedure exists in Belgium. Nevertheless it is 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:

- ❖ The applicant is an EU citizen or EU accession country national;⁹⁴
- ❖ The applicant comes from a safe country of origin;⁹⁵
- ❖ The applicant has refugee status in an EU Member State which effectively protects him or her;⁹⁶
or
- ❖ A subsequent application presents no new elements.⁹⁷

Moreover, where another Member State is responsible under the Dublin Regulation (see section on [Dublin](#)),⁹⁸ 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

The applicant will only be notified of the reason on inadmissibility, meaning that only negative decisions are substantially motivated. 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.

⁹² Art. 57/6/2 Aliens Act.

⁹³ Information provided by the AO: Myria, Contact meeting, 21 June 2016, available at: <http://bit.ly/2k3obi9>, para 9.

⁹⁴ Article 57/6 Aliens Act.

⁹⁵ Article 57/6/1 Aliens Act.

⁹⁶ Article 57/6/3 Aliens Act.

⁹⁷ Article 51/8 and 57/6/2 Aliens Act, as amended by Law of 8 May 2013.

⁹⁸ Article 51/5 Aliens Act.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

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

A regular interview for the registration of the asylum application takes place at the AO.⁹⁹ Although there is no explicit legal obligation to enquire specifically and proactively about potential new elements in case of a subsequent asylum application or about conditions which oppose a Dublin transfer, the officer at the 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.¹⁰⁰

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.¹⁰¹ 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.

For subsequent applications, the CGRS will first decide whether or not to take into consideration the subsequent application, by examining the new elements. This decision is based, in principle, on the statement at the AO only and does not require another personal interview at the CGRS. An interview may, however, be organised exceptionally at this stage. If the CGRS decides to take into consideration the new application, the applicant will usually be invited for a personal interview at the CGRS.

Since June 2016, the CGRS has started conducting interviews through video conference in some of the detention centres. This is the case for the detention centre of **Merksplas** where all persons who have applied for asylum are interviewed through video conference. This interview is organised the same way as a regular interview, meaning that there is an interpreter present at the office of the CGRS and the lawyer can present in **Merksplas** to attend the interview. The CGRS will evaluate this practice and extend it to other detention facilities. The video's itself are not kept on file, and the CGRS will use the detailed report following the interview as the basis.¹⁰² The asylum seeker and his or her lawyer can request for an interview in person when to can provide elements of vulnerability that would justify such a request.¹⁰³

⁹⁹ Article 51/10 Aliens Act.

¹⁰⁰ Articles 10, 16 and 18 Royal Decree on AO Procedure.

¹⁰¹ Article 6 Royal Decree on CGRS Procedure.

¹⁰² Information provided by the CGRS: Myria, Contact meeting, 21 September 2016, available at: <http://bit.ly/2kZXWXC>, para 25.

¹⁰³ Information provided by the CGRS: Myria, Contact meeting, 19 October 2016, available at: <http://bit.ly/2kZXWXC>, para 7.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

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

The following deadlines apply for appeals against inadmissibility decisions:¹⁰⁴

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,¹⁰⁵ 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.¹⁰⁶

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,¹⁰⁷ 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,¹⁰⁸ 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.¹⁰⁹ Such

¹⁰⁴ Articles 39/57, 39/82 and 39/83 Aliens Act.

¹⁰⁵ 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 mistreatment and torture when decisions to return are executed), June 2012, available in Dutch at: <http://bit.ly/1ER9RtB>.

¹⁰⁶ Article 39/83 Aliens Act, as amended by Article 6 Law of 10 April 2014.

¹⁰⁷ 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>.

¹⁰⁸ Article 39/57 Aliens Act, as amended by Article 4 Law of 10 April 2014.

¹⁰⁹ Articles 39/82 and 39/83 Aliens Act, as amended by Articles 5 and 6 Law of 10 April 2014.

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.¹¹⁰ 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.¹¹¹

Scope of appeal and “full jurisdiction”

There are “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).¹¹²

It remains questionable if the legislative changes of 2014 regarding time-limits, suspensive effect and “full judicial review” are sufficient to guarantee that annulment appeal procedures are effective remedies, as the ECtHR has condemned Belgium once more for violation of Article 13 ECHR, in its February 2014 *Josef* judgment.¹¹³ 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 case was struck out the ECtHR Grand Chamber’s list in March 2015, as the applicant had already been granted residence status.¹¹⁴

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

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

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

 - ❖ Does free legal assistance cover:

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

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

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

 - ❖ Does free legal assistance cover

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

In first instance procedures leading to inadmissibility decisions as well as in the appeal procedures, the general provisions on the right and access to free legal assistance apply, are also raising the same

¹¹⁰ Article 39/82(4) Aliens Act.

¹¹¹ Article 39/82(4) Aliens Act.

¹¹² Articles 39/2 and 39/57 Aliens Act, as amended by Articles 16-17 Law of 10 April 2014. 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.

¹¹³ 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.

¹¹⁴ ECtHR, *SJ v Belgium*, Application No 70055/10, 19 March 2015.

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.

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
2. Can an application made at the border be examined in substance during a border procedure? Yes No
3. Is there a maximum time-limit for border procedures laid down in the law? Yes No
❖ If yes, what is the maximum time-limit? 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”).¹¹⁵ Such persons may submit an asylum application to the border police, which will carry out a first interrogation and send the report to the Border Control section of the AO.¹¹⁶ The “decision of *refoulement*” is suspended during the examination 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.¹¹⁷

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.¹¹⁸

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.¹¹⁹

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.¹²⁰ 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.

¹¹⁵ 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.

¹¹⁶ Articles 50ter and 50 Aliens Act.

¹¹⁷ Article 39/70 Aliens Act.

¹¹⁸ Article 74/5 Aliens Act.

¹¹⁹ Article 74/9 Aliens Act.

¹²⁰ 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.

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.¹²¹ 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.¹²² 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.¹²³ 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.¹²⁴

In 2016, 346 asylum applications were made at the border.¹²⁵

¹²¹ 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>.

¹²² And it will be too late to appeal against it in an effective way, as also the ECtHR has ruled in *Singh v Belgium*.
¹²³ Article 52/2 Aliens Act.

¹²⁴ 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 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.

¹²⁵ Information provided by the AO: CBAR-BCHV, Contact meeting, 20 October 2015, available at: <http://bit.ly/1OTAckJ>, para 3.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

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

As is the case in the regular procedure, every asylum seeker receives a personal interview by a protection officer of the CGRS, after the 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. Contacts with the outside world from within the closed centre are difficult in the short period of time between the arrival and the personal interview, which constitutes an extra obstacle for obtaining documents and evidence.

Vulnerable asylum seekers also face specific difficulties related to this accelerated asylum procedure. Since no vulnerability assessment takes place before being detained, their vulnerability is not always known to the asylum authorities and as a result may not be taken into account when conducting the interview, assessing the protection needs and taking a decision.

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

The 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 (including for families in an open housing unit) is only 15 calendar days, instead of 30 calendar days in the regular procedure.¹²⁶ 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.¹²⁷ 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.

¹²⁶ Article 39/57 Aliens Act.

¹²⁷ Article 39/77 Aliens Act.

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.¹²⁸ 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. The AO on its turn 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.

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

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

 - ❖ Does free legal assistance cover:

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

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

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

 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> 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 by lawyers who do not have adequate experience. The contact between asylum seekers and their assigned lawyer is usually very complicated. Often no lawyer is present at the personal interview because asylum seekers cannot get in touch with their lawyer before the interview takes place, and lawyers tend not to visit their client before the interview to prepare it. When a negative first instance decision is taken by the CGRS, it is not always easy to contact the lawyer over the phone or in person to discuss the reasons given in the decision. Often the lawyer decides that there are no arguments/grounds to lodge an appeal with the CALL and advises the asylum seeker not to lodge an appeal without explaining the reasons why. Some bureaus of legal assistance have or intend to create pools and lists of specialised alien law lawyers to be exclusively assigned in this type of cases, but the necessary control and training to effectively guarantee quality legal assistance seems to be lacking.¹²⁹

¹²⁸ Article 74/4 Aliens Act.

¹²⁹ In some specific cases the system of exclusively appointing listed lawyers to assist asylum seekers at the border, seems to have attracted some lawyers for purely financial reasons rather than out of expertise or even interest in the subject matter or their client's case.

5. Accelerated procedure

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

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:¹³⁰

- ❖ The application is clearly based on reasons totally unrelated to asylum, fraudulent or manifestly unfounded;¹³¹
- ❖ 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;¹³²
- ❖ 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:¹³³
 - ❖ 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:¹³⁴

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

¹³⁰ Article 52(5) Aliens Act.

¹³¹ Article 52(1) Aliens Act.

¹³² Article 52(2) Aliens Act.

¹³³ Articles 52/2(1) and 74/6(1bis)(8)-(15) Aliens Act.

¹³⁴ Articles 52/2(2) and 74/8 Aliens Act.

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

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

- 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
- 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.¹³⁵ 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.¹³⁶ Also an interpreter is present during these interviews.

Since June 2016, the CGRS has started conducting interviews through videoconference in some of the detention centres. This is the case for the detention centre of **Merksplas** where all persons who applied for asylum are interviewed through video conference. This interview is organised the same way as a regular interview, meaning that there is an interpreter present at the office of the CGRS and the lawyer can present in **Merksplas** to attend the interview. The CGRS will evaluate this practice and extend it to other detention facilities. The video's itself are not kept on file, and the CGRS will use the detailed report following the interview as the basis.¹³⁷ The asylum seeker and his lawyer can request for an interview in person when they can provide elements of vulnerability that would justify such a request.¹³⁸

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

- 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

¹³⁵ Article 5 Royal Decree on CGRS Procedure.

¹³⁶ Article 13 Royal Decree on CGRS Procedure.

¹³⁷ Information provided by the CGRS: Myria, Contact meeting, 21 September 2016, available at: <http://bit.ly/2kZXWXC>, para 25.

¹³⁸ Information provided by the CGRS: Myria, Contact meeting, 19 October 2016, available at: <http://bit.ly/2k12InM>, para 7.

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 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](#)).¹³⁹

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](#).

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

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

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

The right to (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 might encounter difficulties in having a lawyer appointed in time due to practical obstacles.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?
 - Yes For certain categories No
 - ❖ If for certain categories, specify which: Insert category

2. Does the law provide for an identification mechanism for unaccompanied children?
 - Yes No

¹³⁹ Articles 39/57 and 39/77 Aliens Act.

In 2014 the AO started a “Vulnerability Unit” 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 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.¹⁴⁰ A recent report from the reception agency, Fedasil, highlighted that due to focus on medical vulnerabilities by the AO and the Dispatching service, there is a risk that attention is drawn away from less visible vulnerabilities.¹⁴¹ However, since August 2016 the AO uses a new registration form in which they should indicate if a person is a (non-accompanied) minor, + 65 years old, pregnant, a single woman, LGBTI, a victim of trafficking, victim of violence (physical, sexual, psychological), has children, or has medical or psychological problems.

The law on Guardianship of unaccompanied minors contains general provisions on the protection of unaccompanied minors, the role of the guardian. Based on this law, the Guardianship unit of the Federal Public Service of Justice has established a hotline that operates 24/7 to notify the detection of unaccompanied minor, so that the necessary arrangements can be made.¹⁴² The Aliens Act has specific provisions on the procedures for unaccompanied minors when they do not apply for asylum.

In gender-related asylum claims the official should check if the asylum seeker opposes to a protection officer of the other sex.¹⁴³ 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.¹⁴⁴

Similarly at the CGRS level, there are few specific provisions as to the screening, processing and assessing of vulnerabilities of asylum seekers. There is a general obligation to take into consideration the individual situation and personal circumstances of the asylum seeker, in particular the acts of persecution or serious harm already undergone, which could be considered a sort of specific vulnerability.¹⁴⁵ In case of a gender-related claim, one can oppose to be interviewed by a protection officer from the other sex.¹⁴⁶ Children should be interviewed in appropriate circumstances and their best interests should be decisive in the examination of the asylum application.¹⁴⁷

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 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

¹⁴⁰ 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.

¹⁴¹ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

¹⁴² Loi-programme (I) (art. 479), 24 December 2002 - Titre XIII - Chapitre VI : Tutelle des mineurs étrangers non accompagnés.

¹⁴³ Article 9 Royal Decree on AO Procedure.

¹⁴⁴ CGRS, *Women, girls and asylum in Belgium: Information for women and girls who apply for asylum*, available at: <http://bit.ly/2kvQCpP>. The brochure is not otherwise distributed or freely available.

¹⁴⁵ Article 27 Royal Decree on CGRS Procedure.

¹⁴⁶ Article 15 Royal Decree on CGRS Procedure.

¹⁴⁷ 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>.

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 2015.¹⁴⁸ (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.

Age assessment

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.¹⁴⁹ Following critiques around the accuracy of the medical test to establish the age of non-Western children by the Order of Physicians,¹⁵⁰ 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.¹⁵¹ 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.

The policy note presented in October 2016 by the Secretary of State for Asylum and Migration has announced a change in age assessment policy, with a view to responding to what is described as one of the most common examples of "abuse in the asylum system". The policy note recommends that responsibility for age assessment be transferred from the Guardianship service to the AO.¹⁵²

In 2016 there were 2,927 signalisations of unaccompanied minors. 1,076 of them applied for asylum. 2471 of the unaccompanied minors were boys and 465 were girls. The top 5 nationalities (among the signalisations) are:

- ❖ Afghanistan (995);
- ❖ Syria (271);
- ❖ Guinea (164);

¹⁴⁸ Information provided by the CGRS: CBAR-BCHV, Contact meeting, 15 September 2015, available at: <http://bit.ly/1GymMYx>, para 60.

¹⁴⁹ Article 7 UAM Guardianship Act.

¹⁵⁰ 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>.

¹⁵¹ 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.

¹⁵² La Chambre, *Note de politique générale, Asile et Migration*, 27 October 2016, DOC 54 2111/017, available at: <http://bit.ly/2kX0S8p>.

- ❖ Morocco (140);
- ❖ Eritrea (136).

Of the 1274 age assessments conducted in 2016, 902 were declared to be over 18 years old.¹⁵³

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?
 - Yes
 - For certain categories
 - No
 - ❖ If for certain categories, specify which: Unaccompanied minors, victims of torture or sexual violence

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.

3. Use of medical reports

Indicators: Use of medical reports

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

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.¹⁵⁴ The purpose of the psychologist's intervention was clearly not to confirm or contradict certain elements of the asylum application.

In September 2015 the CGRS declared to have abolished the Psy cell 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 guidelines on which information a (psycho-)medical report should contain.¹⁵⁵

¹⁵³ Information provided by the Guardianship Service, January 2017.

¹⁵⁴ CBAR-BCHV, *Trauma, geloofwaardigheid en bewijs in de asielprocedure*, August 2014, 74-80.

¹⁵⁵ Information provided by the CGRS: CBAR-BCHV Contact meeting, 10 February 2015, available at: <http://bit.ly/1MvsoVI>, para 22; Contact meeting, 10 March 2015, available at: <http://bit.ly/1XBcBXk>, para 22.

If an asylum seeker has psychological problems which impedes him to have a normal interview or an interview at all, the CGRS expects the asylum seeker and/or his lawyer to provide a medical attestation. There is no standardized procedure for these kind of cases but the CGRS evaluates on a case by case basis if an interview is possible or of special arrangements need to be made.¹⁵⁶

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.¹⁵⁷ 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.¹⁵⁸

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.¹⁵⁹ 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.¹⁶⁰

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.

¹⁵⁶ Information provided by the CGRS: Myria Contact meeting, 18 January 2017, available at: <http://bit.ly/2kx93eZ>, para 25.

¹⁵⁷ 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.

¹⁵⁸ Articles 10, 22, 17 and 27 Royal Decree on CGRS Procedure.

¹⁵⁹ 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.

¹⁶⁰ 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 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.¹⁶¹ This application of protection for medical reasons has been taken out of the asylum procedure, and a completely separate procedure with less procedural guarantees. 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 2015 this so-called medical ‘regularisation’ procedure has led to only 284 positive decisions to grant a temporary staying permit, out of 1975 applications.¹⁶²

In *M’Bodj and Abdida*,¹⁶³ 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.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

Every unaccompanied child who applies for asylum or is otherwise detected on the territory or at the border has to be referred to the Guardianship service at the Ministry of Justice. The so-called Programme Law of 24 December 2002 has established the service and procedures to be followed in such a case.¹⁶⁴

Once identified as being a minor, a tutor/guardian 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

¹⁶¹ Article 9ter Aliens Act.

¹⁶² AO, *Annual statistical report 2015*, available in Dutch at: <http://bit.ly/1HU9b8X>, 259.

¹⁶³ 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.

¹⁶⁴ Article 479 Title XIII, Chapter VI of Programme Law of 24 December 2002 (UAM Guardianship Act).

procedure,¹⁶⁵ 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.¹⁶⁶ 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.¹⁶⁷

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.¹⁶⁸

In 2016 there were 2,927 signalisations of unaccompanied minors. 1,076 of them applied for asylum. 2471 of the unaccompanied minors were boys and 465 were girls. The top 5 nationalities (among the signalisations) are:

- ❖ Afghanistan (995),
- ❖ Syria (271),
- ❖ Guinee (164),
- ❖ Morocco (140),
- ❖ Eritrea (136)

In 2015 the Guardianship service did not have enough guardians/tutors to make sure every unaccompanied minor was assisted by one. In 2016 the Guardianship service was able to manage this backlog. 631 new guardians were appointed. In 2016 the number of ongoing guardianships amount to 2375. At the beginning of 2017, there are 3500 ongoing guardianships.¹⁶⁹

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No
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 Yes No
Until the decision extreme urgency suspension, unless within 48 hours before removal

Subsequent applications lodged in 2016

	Number	Percentage
Total number of subsequent applications (in persons)	4,040	100 %
Afghanistan	540	13.4 %
Iraq	420	10.4 %
Russian Federation	315	7.8 %

¹⁶⁵ Article 61/15 Aliens Act, as amended by Article 2 Law of 26 February 2015.

¹⁶⁶ Article 479(9)(12) UAM Guardianship Law.

¹⁶⁷ Article 9 Royal Decree Asylum Procedure AO and Article 14 Royal Decree Procedure CGRS.

¹⁶⁸ Article 479(6) UAM Guardianship Law.

¹⁶⁹ Information provided by the Guardianship Service by e-mail, 12 January 2016.

Source: CGRS

Previously, a non-suspensive annulment appeal could be lodged against a decision not to take into consideration the subsequent asylum application. 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.¹⁷⁰

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 recently, this period was set at 3 days by the law.¹⁷¹ 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.¹⁷²

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.¹⁷³

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.¹⁷⁴ 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.¹⁷⁵ However, this system of appeals was found to be too complex to be an effective remedy by the ECtHR in *Josef v Belgium*.¹⁷⁶ 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).¹⁷⁷

¹⁷⁰ Articles 39/2 and 39/57 Aliens Act, as amended by Articles 16 and 17 Law of 10 April 2014.

¹⁷¹ Article 39/83 Aliens Act. See also on the *M.S.S. v. Belgium and Greece* and its impact on the automatic suspension of a decision to return or transfer ([Dublin: Appeal](#)).

¹⁷² 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.

¹⁷³ 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.

¹⁷⁴ Article 39/70 Aliens Act, as amended by Article 18 Law of 10 April 2014.

¹⁷⁵ Article 39/85 Aliens Act, as amended by Article 7 Law of 10 April 2014.

¹⁷⁶ ECtHR, *Josef v Belgium*, para 103.

¹⁷⁷ Article 57/6/2 Aliens Act.

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.¹⁷⁸ 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.

F. The safe country concepts

Indicators: Safe Country Concepts

- | | | |
|--|---|--|
| 1. Does national legislation allow for the use of “safe country of origin” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

1. Safe country of origin

The safe country of origin concept was introduced in the Aliens Act in 2012.¹⁷⁹ 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.¹⁸⁰ 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.¹⁸¹

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

¹⁷⁸ *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.

¹⁷⁹ Article 57/6 Aliens Act.

¹⁸⁰ 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.

¹⁸¹ Article 57/6/1 Aliens Act.

Affairs. The list must be reviewed annually and can be adjusted.¹⁸² The Royal Decree of 3 August 2016 on Safe Countries of Origin reconfirmed the list with the same 7 safe countries of origin that was adopted for the first time in 2012: **Albania, Bosnia-Herzegovina, FYROM, Kosovo, Serbia, Montenegro and India and added Georgia to it.**¹⁸³

On 23 June 2016, the Council of State once again quashed the inclusion of **Albania** in the Royal Decrees of 2015,¹⁸⁴ after having done so in 2015 and 2014 with the Royal Decrees of 2012, 2013 and 2014, 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.¹⁸⁵ The 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 several 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 2013.¹⁸⁶ 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. (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.¹⁸⁷

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

In 2016, a total 1,433 persons from safe countries of origin applied for asylum. The break-down per nationality is as follows:

Applications from a safe country of origin

Country	2016	2015	2014	2013
Kosovo	331	737	842	1268
Albania	817	827	732	775
FYROM	165	335	403	424
India	50	79	84	70
Bosnia-Herzegovina	56	58	150	171
Montenegro	14	15	19	20

¹⁸² Article 57/6/1 Aliens Act.

¹⁸³ Royal Decree of 3 August 2016, available at: <http://bit.ly/2jGWBUEH>.

¹⁸⁴ Council of State, Judgment No 235211, 23 June 2016, available at: <http://bit.ly/2I3IH10>.

¹⁸⁵ 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/1GIW5U9> respectively.

¹⁸⁶ Constitutional Court, Judgment No 107/2013, 18 July 2013, available in Dutch at: <http://bit.ly/1GuVxNO> and French at: <http://bit.ly/1JDj4Lv>.

¹⁸⁷ Information provided by the CGRS: CBAR-BCHV, Contact meeting, 16 June 2015, available at: <http://bit.ly/1WtvJUD>, para 19.

Total	1,433	2,051	2,230	2,678
--------------	--------------	--------------	--------------	--------------

Source: CGRS

2. 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) and (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).

3. 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 Procedure](#)).¹⁸⁸

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.¹⁸⁹ 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.¹⁹⁰ The CALL has repeatedly refused to refer a preliminary question to the CJEU on the interpretation of the new concept of “real protection”.

Recently the CGRS has confirmed it also applies the concept in other situations, e.g. in the case of Syrian refugees from a non-specified country from the Middle East (probably Jordan) because it was accepted that they it was possible to return to that country, they had a residence permit there and because of their socio-economic situation.¹⁹¹

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.

¹⁸⁸ Article 57/6/3 Aliens Act.

¹⁸⁹ Article 48/5(4) Aliens Act.

¹⁹⁰ See e.g. CALL, Judgment No 129911, 23 September 2014; Judgment No 123682, 8 May 2014.

¹⁹¹ Myria, contact reunion, April 2016, p. 9, nr. 28: available at: <http://bit.ly/2jGUHTW>.

G. Relocation

Indicators: Relocation

- | | |
|--|---------------|
| 1. Number of persons effectively relocated since the start of the scheme | not available |
|--|---------------|

In 2016 Belgium initially agreed to relocate between 3794 and 3812 asylum seekers.¹⁹² Belgium made its relocation commitment dependent on the decent functioning of the hotspot system. Until May 2016 only 24 asylum seekers were relocated coming from Italy. None were coming from Greece. Due to the decreasing number of asylum applications in Belgium, Belgium pledged in April 2016 to take 100 asylum seekers from Greece, and added a 100 more in May 2016.¹⁹³

By September 2016 103 asylum seekers arrived in Belgium:¹⁹⁴

- ❖ 19 Eritreans coming from Italy
- ❖ 70 Syrians of which 69 coming from Italy and 1 from Greece
- ❖ 11 Iraqis coming from Greece
- ❖ 3 'undetermined' (i.e. Palestinians) coming from Greece.

The total number of pledges has been reduced to 1510 persons for Belgium. This reduction follows a general reduction of the number of pledges at the European level. Until September 2017 there will 100 persons coming through relocation (of which 65 from Greece, and 35 from Italy). During the last two months the number will be increased to 150/month.

How does the procedure for relocation to Belgium work?¹⁹⁵

Belgium sends out its number of pledges to Italy and Greece indicating its preferences (nationality, family composition, etc). This happens through the official way and via Dublinnet. Greece and Italy will try to find a match in their database. Greece and Italy will send individual files to the Dublin-unit of the Aliens Office. The AO will review the files and perform a security check. A case can be refused for reasons of public order or when there an indication of exclusion under 1F.

Once the case has been accepted the Dublin-unit of the AO will send an individual invitation with its acceptance to Greece or Italy.

The follow-up is different in Greece and Italy.

Greece: Greece invites the individuals for notification of the decision. The files will then be transferred to IOM Greece to arrange the transfer. IOM will arrange with Belgium when the transfer can take place. In the meantime IOM organizes a cultural orientation and a medical consultation.

Italy: there is no personal invitation. Belgium arranges with the Italian Dublin-unit when the transfer will take place. IOM arranges the transfer.

There is a commitment to realize the transfer within two months after reception of the file. At the moment it is impossible to respect this commitment.

¹⁹² Myria, *Migratie in Cijfers en in rechten 2016*, available at: www.myria.be, 33.

¹⁹³ Myria, *Migratie in Cijfers en in rechten 2016*, available at: www.myria.be, 35.

¹⁹⁴ Information provided by the CGRS: Myria, Contact meeting, 21 September 2016, available at: <http://bit.ly/2kZXWXC>, para 28.

¹⁹⁵ Information provided by the AO: Myria Contact meeting, 18 January 2017, available at: <http://bit.ly/2kx93eZ>, para 9-10.

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

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

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.¹⁹⁶

In 2015 and 2016 the government regularly gave letters to asylum seekers containing misleading information. For example, it presented legislative proposals as being already the law in force and stated that asylum seekers who were fingerprinted elsewhere in the EU would be sent back to that state. The letters did not state that asylum seekers with family members could stay in Belgium. Moreover, the leaflet on the Dublin procedure, as required by Article 4(2) by the Dublin III Regulation, was not distributed until January 2016, nearly two years late. Some of these letters were directed to all asylum seekers, while others specifically targeted Iraqi and Afghan citizens. The government did not hide that this kind of 'information' was part of a larger deterrence campaign, and even admitted so in Parliament and in its latest police note for 2017.

Modes of information provision

A brochure entitled "Asylum in Belgium", published by the CGRS and the reception agency, Fedasil, explains the different steps in the asylum procedures, the reception structures and rights and obligations of the asylum seekers. 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.¹⁹⁷

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.

The Guardianship unit of the Federal Public Service of Justice has developed a leaflet about on how the Guardianship unit can help an unaccompanied minor. This leaflet is available in 15 languages.¹⁹⁸

¹⁹⁶ Articles 2-3 Royal Decree on AO Procedure.

¹⁹⁷ CGRS & Fedasil, *Asylum in Belgium: Information brochure for asylum seekers regarding the asylum procedure and reception provided in Belgium*, available at: <http://bit.ly/2kvQCpP>.

¹⁹⁸ The leaflets can be consulted at: <http://bit.ly/2l019Xb>.

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.¹⁹⁹

In August 2016, Vluchtelingenwerk Vlaanderen, launched the website www.asyluminfo.be containing accessible information on the asylum procedure in Belgium in seven languages (Dutch, French, English, Arabic, Somali, Farsi and Pashtu).

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

Specialised national, Flemish and French speaking NGOs such as Vluchtelingenwerk Vlaanderen (Flemish Refugee Action), Ciré (Coordination and Initiatives for Refugees and Aliens), ADDE (Association for Aliens Law), JRS Belgium and Caritas International, BCHV-CBAR (Belgian Refugee Council), – to name some – have developed a whole range of useful and qualitative sources of information and tools, accessible on their respective websites or through their first line legal assistance helpdesks.²⁰⁰

In August 2016, Vluchtelingenwerk updated its handbook for professionals assisting asylum seekers in 2014 (in Dutch) and published two guidelines for lawyers both in French and Dutch: one on Dublin,²⁰¹ and one on the right of reception in case of subsequent applications.²⁰²

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).²⁰³

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.²⁰⁴

¹⁹⁹ CGRS, *Publications*, available at: <http://bit.ly/2kvQCpP>.

²⁰⁰ 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.

²⁰¹ Available at: <http://bit.ly/2kkX4Os>.

²⁰² Available at: <http://bit.ly/2jGWfNK>.

²⁰³ More info available at: <http://bit.ly/1XdLNdx>.

²⁰⁴ 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>.

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which: Syria
2. Are applications from specific nationalities considered manifestly unfounded?²⁰⁵ 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.

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.

Since October 2015, **Iraqi asylum seekers** are no longer granted subsidiary protection status merely because they originate from Bagdad. A thorough assessment of the present situation in Bagdad showed that the situation is still problematic and that many people are still in need of protection. However, it also appears that the situation is not such that every person from Bagdad runs a real risk of falling victim to random violence. As is the case for persons from Southern or Northern Iraq, the CGRS still assesses on an individual basis if there are any indications of a well-founded fear of persecution or a real risk in case of return. If there are such indications, refugee status or subsidiary protection status is granted. If there aren't any indications, the CGRS takes a decision of refusal.²⁰⁶

The AO and the Secretary of Asylum himself also had an intense 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.²⁰⁷ The campaign certainly had an effect. In 2016 25 % of the voluntary return assisted by IOM concerned Iraqi nationals. Nevertheless in 2016 Iraq remained in the top 3 countries of origin for recognition of refugee status. This shows once more that for persons from Iraq, still have a strong need for protection.

Burundi: The CGRS acknowledges that the situation in Burundi is very problematic but is of the opinion that the situation is not such that every Burundian national should be granted international protection merely on account of his or her nationality. The CGRS is of the opinion that there are no serious grounds to consider that there is currently in Burundi a situation of armed conflict leading to indiscriminate violence by reason of which a civilian runs a risk of serious and individual threats to his or her life or person in case of a return (determination of subsidiary protection status). Applicants from Burundi are therefore not automatically eligible to subsidiary protection status merely on account of their origin.²⁰⁸

Gaza (Palestine): until November 2016 refugees coming from Gaza were almost automatically recognised refugee status, based on the fact that it was nearly impossible to return to Gaza. Seeing that this has changed, the CGRS declared that it will no longer automatically grant protection. Protection will be granted based on the individual situation, and no longer because of provenance from Gaza.²⁰⁹

²⁰⁵ Whether under the "safe country of origin" concept or otherwise.

²⁰⁶ CGRS, 'CGRS Iraq policy: no more freezing of decisions for Bagdad', 14 October 2015, <http://bit.ly/2ku17u9>.

²⁰⁷ 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>.

²⁰⁸ CGRS, *Burundi: Recent country of origin information and updated policy paper*, 16 August 2016, available at: <http://bit.ly/2k88VRv>.

²⁰⁹ Information provided by the CGRS: Myria, Contact meeting, 21 December 2016, available at: <http://bit.ly/2jGwYmM>, para 7.

Resettlement

Belgium aimed to resettle a total of 550 refugees in 2016, with a majority of Syrians.

In 2016, 452 refugees arrived in Belgium through the resettlement programme. 448 of them are Syrians and come from Lebanon and Turkey (including 102 Syrians under the EU-Turkey agreement), but some were resettled from Jordan and Egypt. In addition, 4 Congolese refugees from Burundi were resettled in Belgium in September 2016.²¹⁰

²¹⁰ CGRS and Fedasil, *Resettlement of Refugees in Belgium*, available at: <http://bit.ly/2ktMSWm>.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions available to asylum seekers in the following stages of the asylum procedure?
- | | | | |
|---------------------------|---|---|-----------------------------|
| ❖ Regular procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Dublin procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Admissibility procedure | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Border procedure | <input type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Accelerated procedure | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ First appeal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Onward appeal | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Subsequent application | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? Yes No

1.1. Right to shelter and assignment to a centre

According to the 2007 Reception Act, every asylum seeker has the right to material reception from the moment he or she has registered his or her asylum application, that allow him or her to lead a life in human dignity.²¹¹

There is no limit to this right connected to the nationality of the asylum seekers. Asylum seekers from safe countries of origin will have a reception place assigned to them, as will those who have a recognised refugee status in another EU country. EU citizens applying for asylum and their family members are entitled to reception as well, although in practice they are not accommodated by Fedasil anymore (see section on [Differential Treatment of Specific Nationalities in Reception](#)). So all these categories have the right to shelter at the start of the asylum procedure, even though they may have different kinds of asylum procedures and their right to shelter may be limited in time (see further “Ending of the right to reception”),

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.²¹² Expenses made for material aid already delivered can also be recovered in such cases.²¹³ 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 already at the moment of the intake. Also, in practice, the withdrawal of the material aid is only rarely applied, since Fedasil does not have the capacity to control and have the expenses already made effectively reimbursed (see section on [Reduction and Withdrawal of Reception Conditions](#)).

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”).²¹⁴ The applicant should go to the assigned centre immediately. An asylum seeker can, however, also choose not to accept the offered place in a reception

²¹¹ Article 3 Reception Act.

²¹² Article 35/2 Reception Act.

²¹³ Article 35/1 Reception Act.

²¹⁴ Articles 9-10 Reception Act.

centre and to stay at a private address, but in that case he or she will only be entitled to medical care and legal aid. The applicant can nonetheless always opt in again in the material aid, as long as his asylum procedure is pending.

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. 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.

Since the beginning of 2016, the asylum seeker is first pre-registered after which the applicant receives a convocation. First time applicants are subsequently sent to a transit or temporary reception centre until they are invited for registration and get a permanent reception structure assigned by Fedasil.²¹⁵

1.2. Right to reception: subsequent applications

The Reception Act provides the possibility for Fedasil to refuse reception to asylum seekers who lodge a second or further subsequent asylum application, until their asylum application is taken into consideration by the CGRS.²¹⁶ This unless Fedasil is informed that they have a pending or granted request for a prolongation of the reception.²¹⁷ Between the moment of the subsequent application and the decision of the CGRS to take the application in consideration the asylum seekers have the right to medical assistance from Fedasil and to free legal representation. Once the CGRS has taken the application into consideration the right to reception is reactivated. The asylum seeker should then present him- or herself to Dispatching to obtain a place.

When the asylum seeker has not obtained reception from Fedasil during the first stage and the CGRS decides to declare the subsequent asylum application inadmissible he or she will also have no right to reception during the appeal with the CALL.

According to the law, Fedasil has to take all elements of vulnerability into account when taking this kind of decision. Furthermore Fedasil is obliged to motivate this decision on an individual base. According to the Constitutional Court this decision is only legal in case of abuse of the asylum procedure, and so when the person applies for asylum only to extend the right to reception.²¹⁸ In reality Fedasil refuses systematically to assign a reception place to subsequent applicants until their asylum application is taken into consideration by the CGRS. By law the CGRS has 8 days to decide whether the asylum application is taken into consideration. Often this takes longer (in some cases up until a few months).. Labour Tribunals have ordered Fedasil at multiple occasions to motivate such decisions individually taking into account all elements of the case.²¹⁹ Regularly subsequent applicants obtain reception after going to these courts. The Federal Mediator has also drawn attention to this problem in his annual report of 2015.²²⁰

²¹⁵ De Redactie, 'Procedure registratie asielzoekers gewijzigd "als extra veiligheidscheck"', 10 March 2016, available at: <http://bit.ly/2jH67qX>.

²¹⁶ Article 4 Reception Act.

²¹⁷ 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>.

²¹⁸ Constitutional Court, Judgment No 95/2014, 30 June 2014.

²¹⁹ Labour Tribunal, Brussels, Judgment of 17 February 2015, available in French at: <http://bit.ly/1Q3cOBn>; Labour Tribunal, Brussels, Judgment of 14 November 2016, Case No 16/1384/A; Labour Tribunal, Brugge, Case No 16/8K, Judgment of 11 October 2016.

²²⁰ Federal Mediator, *Annual report 2015*, available at: <http://bit.ly/2jAm6f7>.

1.3. Right to reception: Dublin procedure

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,²²¹ 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.²²² 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).²²³ 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, as described below.²²⁴

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 (non-automatically suspensive) appeal procedure against an AO transfer decision under the Dublin Regulation.²²⁵

Asylum seekers who are sent back to Belgium following a Dublin procedure are often considered as subsequent applications. As a consequence they often only get shelter after their asylum application is taken into consideration by the CGRS. In the case where an asylum seeker has left Belgium before the first interview, he or she will have gotten a “technical refusal” in his or her first asylum procedure. When this asylum seeker is then sent back to Belgium following a Dublin procedure and lodges his asylum application again, the CGRA is legally obliged to take it in consideration.²²⁶ Nonetheless, these asylum seekers often are still considered as subsequent applicants and therefore are without shelter until this decision is officially taken.

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

²²¹ 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.

²²² 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.

²²³ Labour Court, Brussels, Judgment of 4 December 2013; Labour Tribunal, Antwerp, Judgment of 6 March 2014, available in Dutch at: <http://bit.ly/1FGadUL>.

²²⁴ Fedasil, *Instruction on the change of place of mandatory registration of asylum seekers having received a refusal decision following a Dublin take charge*, 20 October 2015, available in Dutch at: <http://bit.ly/1MulnwV>. This instruction replaces point 2.2.4. of the Instructions of 15 October 2013.

²²⁵ ECtHR, *V.M. and others v. Belgium*, Application No 60125/11, Judgment of 7 July 2015 (referred to the Grand Chamber), available at: <http://bit.ly/1MYGPvr>.

²²⁶ Art. 57/6/2 Aliens Act

The Law of 19 January 2012 brought about some modifications to the reception system, introducing the concept of a so-called “return track” for asylum seekers.²²⁷ 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. This return track procedure has been updated in October 2015 by new instructions from Fedasil.²²⁸

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

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

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

When these derogations are granted, the asylum seeker can stay in the first reception centre until the conditions for the derogation are no longer met. At the end of the derogation the asylum seeker can ask for a new designation at an open reception centre, or simply leave the old centre.

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

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

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

Minors who receive a negative decision are not transferred to an open reception place until they are adult. Then they can apply for a place in an open reception centre.

1.5. End of the right to reception

The right to material reception ends when:²²⁹

- ❖ A legal stay for more than three months is granted; or
- ❖ An order to leave the territory is delivered and the delay on this order has expired, and there is no possibility left for introducing a suspensive appeal.

Non-suspensive appeals are appeals against:

²²⁷ Article 6/1 Reception Act.

²²⁸ Fedasil, *Instruction concerning the return track and the assignment to an open return place*, 20 October 2015, available in Dutch at: <http://bit.ly/1Nof30n>, and *Instruction concerning the modification of the reception place of asylum seekers who have received a negative decision on the basis of the Dublin Regulation*, 20 October 2015.

²²⁹ Article 6 Reception Act.

- ❖ A decision of the AO (like a Dublin decision or an order to leave the territory);
- ❖ An inadmissibility decision of the CGRS with regard to asylum applications by EU nationals and nationals of EU accession candidate countries;
- ❖ An inadmissibility decision of the CGRS with regard to asylum seekers who have already obtained refugee status in another EU Member State;
- ❖ A decision of the CALL after a suspensive appeal.

During these appeals there is no right to shelter, unless:

- ❖ the CALL suspends or annuls the decision of the AO or CGRA
- ❖ the Council of State declares a cassation appeal against a decision of the CALL admissible

Therefore, in practice, the right to reception in the open return place ends when the order to leave the territory expires. In case of a negative Dublin decision this delay is mentioned on the 26-quater (see section on [Right to Reception: Dublin Procedure](#)). In case of a negative decision after a suspensive appeal with the CALL, the AO does not deliver any new order to leave the territory, but just prolongs the time period to execute the order delivered after the CGRS decision by 10 days,²³⁰ so the right to material reception conditions in the open return centre will only be prolonged for this period.

Until the end of the delay of the order to leave the territory, every asylum seeker (whether he or she collaborates with voluntary return or not) is entitled to full material reception conditions. The order to leave the territory can be renewed for two extra periods of 10 days, only if the person collaborates on his or her return.²³¹ 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.

In case of a negative outcome of the asylum procedure and thus the end of the right to reception, there are some humanitarian and other circumstances in which a prolongation of the right to reception conditions can be applied for with Fedasil:

- to end the school year (from the beginning of April until the end of June);
- during the last 2 months of pregnancy until 2 months after giving birth;
- when a family reunification procedure with a Belgian child has been started up;
- when it is impossible for the person to return to their country of origin for reasons beyond their own will;
- for medical reasons, when an application for legal stay has been made on this ground at the AO; or
- whenever respect for human dignity demands it.²³²

Fedasil has adopted internal instructions about these possibilities and how to end the accommodation in the reception structures in practice.²³³

In case of a positive outcome of the asylum procedure, and thus after a decision granting a protection status, or another legal stay (for example, a medical regularisation procedure – which has been started up parallel with an asylum procedure - with a positive outcome and thus a legal stay of more than 3 months), the person concerned can stay for a maximum of 2 more months in the reception place. These 2 months should allow the person to look for another place to live and to transit to financial help of the PCSW if necessary. Persons staying in collective structures at the moment of recognition (or other legal stay) will be offered the choice between moving to an individual reception structure for 2 months or leave

²³⁰ Law of 8 May 2013.

²³¹ Article 6/1 Reception Act and Article 52/3 Aliens Act.

²³² Articles 7 Reception Act.

²³³ Fedasil, *Instructions on the termination and the prolongation of the material reception conditions*, 15 October 2013.

the collective structure within 10 working days. In the last case they will receive food cheques during one month. The delay of two months can be extended. In general a prolongation of one month is common, after that the request for further prolongation should be very well motivated. Fedasil has adopted internal instructions about this.²³⁴

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 1 January 2017 (in original currency and in €): ²³⁵		
❖	Accommodated single adult, incl. food	€180-212
❖	Accommodated single adult	€244-280

Material or financial aid?

Since the adoption of the 2007 Reception Act, 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). Nevertheless, the help can be partially delivered in cash, as is the case in the LRI (see further). The whole reception structure is coordinated by Fedasil. Fedasil regularly issues internal instructions on how to implement specific rights provided for in the Reception Act, as referred to throughout this report

Only in exceptional cases, the social welfare services provided by the PCSW deliver financial aid to asylum seekers.²³⁶ This could be the case for example when the asylum seeker wants to live together with his or her partner who already has a legal stay in Belgium. However, this is only exceptional and can only be the case after explicit permission of Fedasil. To obtain this permission the asylum seeker should ask for an abrogation of the designated reception place (Code 207).²³⁷

Collective or individual?

For the assignment to a specific centre, Fedasil should legally take into consideration the occupation rate of the centre, the family situation of the asylum seeker, his or her age, health condition, vulnerability and the procedural language of his or her asylum case. There are no monitoring or evaluation reports about the effective assessment of all these elements in practice. Although legally provided criteria, they don't seem to be always taken into consideration.²³⁸

In theory, an asylum seeker or their social assistants can ask to change centre at any given time during the procedure, based on these criteria. Fedasil itself can decide as well to change the location of reception, on the basis of these criteria.²³⁹ Currently, the possibilities to change on the request of the asylum seeker are very limited in practice.

²³⁴ Fedasil, *Instructions on the transition from material reception to financial help: measures for residents of collective centres and the accompaniment in transition in the individual structures*, 20 July 2016.

²³⁵ Note that these cash amounts are given in the individual reception structures of the LRI. Collective centres provide most assistance in kind.

²³⁶ Article 3 Reception Act.

²³⁷ Article 13 Reception Act

²³⁸ 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.

²³⁹ Article 12(2) Reception Act.

The new reception model of which implementation started in 2016 assigns people generally to collective reception centres. Only asylum seekers with very specific vulnerabilities are directly assigned to specialised NGO reception structures or Local reception initiatives (LRI).^{240 241} According to the law, after 6 months in a collective centre, all asylum seekers can apply to be transferred to an individual accommodation structure.²⁴² Where the person's asylum application has already been refused at first instance procedure by the CGRS, the transfer will be refused or postponed. Nonetheless, due to the increase in asylum applications in 2015, and thus persons entitled to accommodation, these transfers have been put on hold.²⁴³ Ever since these transfers have not retaken. This means that asylum seekers stay much longer in collective structures.

There are two exceptions;

- ❖ Persons with a high chance of recognition (nationality with recognition rate above 90 percent e.g. Syrians, Libyans and Burundians) are assigned to LRI after a 4 month stay in collective reception centres.²⁴⁴
- ❖ Persons staying in collective structures at the moment they are granted a legal stay of more than 3 months, for example the refugee status, will be offered the choice between moving to an individual reception structure for 2 months or leave the collective structure within 10 working days. In this case they will receive meal vouchers during one month.²⁴⁵

In the collective centres most help is delivered in a material way.

Pocket money

All asylum seekers receive a fixed daily amount of pocket money in cash, so those who reside in collective reception centres as well.²⁴⁶ In 2017 adults and all children from 12 years on who attend school receive €7.50 a week, younger children and children 12 years of age or older who do not attend school receive €4.60 a week, and unaccompanied children during the first phase of shelter (in "the observation and orientation centres") receive €5.80 a week.

Allowances in individual reception facilities (NGO or LRI)

Asylum seekers in NGOs or Local Reception Initiatives (LRI) all receive a weekly amount in cash or in meal vouchers, to provide for material needs autonomously; this also includes the pocket money. For 2017, 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:²⁴⁷

Category of applicant	Allowance in LRI with food provided	Allowance in LRI with no food provided
Single adult	€180-212	€244-280
Additional adult	€136-156	€180-200
Additional child <3 years	€92-116	€124-136
Additional child 3-12 years	€48-60	€68-76

²⁴⁰ Myria, Contact meeting, 21 June 2016, available at: <http://bit.ly/2k3obi9>.

²⁴¹ Regeerakkoord, 9 October 2014, available at: <http://bit.ly/2k2yJfn>.

²⁴² Article 12 Reception Act.

²⁴³ Information provided by Fedasil: CBAR-BCHV, Contact meeting, 15 September 2015, available at: <http://bit.ly/1GymMYx>, para 88.

²⁴⁴ Myria, Contact meeting, 19 October 2016, available at: <http://bit.ly/2jHkICx>.

Fedasil, *Instruction concerning transfers from collective reception to a Local reception Initiative (LRI) – designation of asylum seekers with a high rate of recognition*, 13 October 2013.

²⁴⁵ Meal vouchers are vouchers that can be used in almost any supermarket to buy food or food related items. Employees (in all kind of sectors) often receive meal vouchers as part of their salary as well.

²⁴⁶ Article 34 Reception Act.

²⁴⁷ Extrapolated from the weekly amount, times 4: Information provided by the VVSG.

Additional child 12-18 years	€60-68	€76-84
Single-parent extra allowance	€24-32	€32-40
Unaccompanied child	€180-212	€244-280

Besides this, the organising authority of the accommodation remains in charge of certain material needs such as transport, clothing, school costs, interpreters, etc. Since these 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.

Allowances in case of no material reception

If all reception structures would be completely saturated and Fedasil decides to not assign a reception place the asylum seeker has the right to financial aid provided by the PCSW.²⁴⁸ The applicant would then obtain the full amount of the financial social welfare allowance, equally and in the same way as every national or other legal resident of the country. This is also the case when the obligatory designated reception place (Code 207) is abrogated officially by Fedasil because of exceptional circumstances, for example when Fedasil allows the asylum seeker to live with a partner who already has a legal stay in Belgium. Since 1 June 2016, these amounts are as follows per person per month:²⁴⁹

Category	Belgian nationals on “social integration”
Single adult	€867,40
Cohabitant	€578,27
Person with family at charge	€1.156,53€

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*,²⁵⁰ the CJEU ruled that in case the accommodation facilities are overloaded, asylum seekers may be referred to the PCSW, provided that that system ensures that the minimum standards laid down in the Reception Conditions Directive are met. In particular, the total amount of the financial allowances shall be sufficient to ensure a dignified standard of living, adequate for ensuring the health of the asylum seekers and capable of ensuring their subsistence. That general assistance should also enable them to find housing, if necessary, meeting the interests of persons having specific needs, pursuant to Article 17 of that Directive.

Reception after a resettlement procedure

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

This procedure is not the same for asylum seekers coming to Belgium after *relocation*. These persons receive the same reception conditions as any other asylum seeker in Belgium.

²⁴⁸ Article 11(4) Reception Act.

²⁴⁹ Article 14 Law on Social Integration, available at: <http://bit.ly/2kopTt5>.

²⁵⁰ CJEU, Case C-79/13 *Federaal agentschap voor de opvang van asielzoekers (Fedasil) v Selver Saciri and OCMW Diest*, Judgment of 27 February 2014.

3. 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.

Sanctions

- ❖ Different limitations to the enjoyment of reception conditions can be imposed for infractions of the internal code of conduct of a reception centre. The possible sanctions are enumerated in the Reception Act, one of them is for example the temporary withdrawal or reduction of the daily allowance.²⁵¹ The procedures on how to apply them can be found in a Royal Decree.²⁵²
- ❖ As a sanction for having seriously violated the internal code, and thereby putting others in a dangerous situation or threatening the security in the reception facility, the right to reception can be suspended for maximum one month.²⁵³ This measure was taken for 32 persons in 2015 (January-October), 15 persons in 2014, 42 in 2013 and 14 in 2012.

As of 15 August 2016, a new sanction was introduced which makes it possible to withdraw reception permanently.²⁵⁴ The sanction can only be used for persons, who had been temporarily excluded from reception before (sanction above) or in serious cases of physical or sexual violence. Sanctions are taken by the managing director of the centre and have to be motivated. The person who received the sanction has to be heard prior to the decision. Most sanctions can be appealed before the managing authority of that reception centre (the Director-General of Fedasil, the NGO partner or the administrative council of the PCSW). An onward appeal is possible with the Labour Court.²⁵⁵ As with every other administrative or judicial procedure, the asylum seeker is entitled to legal assistance, which will be free of charge if he or she has no sufficient financial means. In all of these cases, the reception conditions will be reinstated as soon as the sanction – mostly temporary in nature – has elapsed.

The sanctions that exclude the asylum seeker from the reception facilities (one month or permanently) have to be confirmed within three days by the Director-General of Fedasil. If they are not confirmed, the sanction is lifted. During the time of exclusion the asylum seeker still has the right to medical assistance from Fedasil. He or she also has the legal right to ask Fedasil for a reconsideration of this sanction, in case he or she can demonstrate that he or she has no other possibility to ensure living conditions in accordance with human dignity. Fedasil should answer this request within 5 days. An onward appeal is again possible with the Labour Court.²⁵⁶

The new sanction to exclude someone permanently was, before it was adopted, met with critics by UNHCR who highlighted that article 20 (1-4) of the Reception Directive 2013/33/EU only allows a limited amount of situations in which reception facilities can be withdrawn or reduced, and that exclusion as a sanction is not one of them. UNHCR recommends that attention should be given to article 20 (5) which

²⁵¹ Article 45 Reception Act.

²⁵² Royal Decree of 15 May 2014 on the procedures for disciplinary action, sanctions and complaints of residents in reception centres.

²⁵³ Article 45(8) Reception Act.

²⁵⁴ Article 45(9) Reception Act.

²⁵⁵ Article 47 Reception Act.

²⁵⁶ Article 45 Reception Act

guarantees an individual, impartial and objective decision which takes into account the particular situation of the person (especially when he or she is vulnerable) and the principle of proportionality. Health care and a dignified standard of living should at all times be ensured. Further recommendations were to make sure the law mentions the possibilities on how to ensure dignified living conditions explicitly and to describe clearly in which situations this sanction applies.²⁵⁷

The Council of State advised as well that there should be an explicit guarantee in the law on how to ensure dignified living conditions for those excluded from the reception facilities.²⁵⁸

The possibilities on how to ensure dignified living conditions were in the end not clearly mentioned in the law, although Fedasil, during the preparatory works of the law, made clear they have a cooperation with an organisation that works for homeless people to which they could refer some of those excluded from shelter. In practice it is not clear yet how the new sanction will be applied.

Other situations of withdrawal or reduction of reception conditions

- ❖ The assignment of a reception place might be refused if such a place has been abandoned by the asylum seeker. The asylum seeker has the right to ask for a new place but can be sanctioned.²⁵⁹
- ❖ 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.²⁶⁰ 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.
- ❖ Reception in case of employment: If an asylum seeker resides in a reception facility (LRI or collective) and is employed, he or she has an obligation to contribute with a percentage of his or her income to the reception facility (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.²⁶¹ 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

²⁵⁷ UNHCR, *Commentaires du Haut Commissariat des Nations Unies pour les réfugiés relatifs à l'avant projet de loi modifiant la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (ci-après « avant-projet de loi »), introduisant des sanctions supplémentaires en cas de manquement grave au régime et règles de fonctionnement applicables aux structures d'accueil*, 22 April 2016, available at: <http://bit.ly/2kVJLHh>.

²⁵⁸ Council of State, Opinion 59/196/4, 27 April 2016, available at: <http://bit.ly/2kVBgvT>.

²⁵⁹ Articles 4 Reception Act.

²⁶⁰ Articles 35/1 and 35/2 Reception Act.

²⁶¹ Articles 35/1 Reception Act and Royal Decree, 12 January 2011, on Material Assistance to Asylum Seekers residing in reception facilities and who are employed (original amounts without indexation).

accommodated asylum seekers have contributed financially to some extent. In 2014, another 8 persons have had their reception rights temporarily 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 numbers of 2015 and 2016 are unknown, as it is very difficult for Fedasil to keep track of this.

4. Freedom of movement

Indicators: Freedom of Movement

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

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

On the other hand, an asylum seeker cannot choose his place of reception. As explained above, the reception structure is assigned by Fedasil’s dispatching service. 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 for longer than a couple of days 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.²⁶²

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

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of collective reception centres:²⁶³ 69
2. Total number of places in the collective reception centres: 15,135
3. Total number of places in LRI: 10,917
4. Total number of places in open return places 310
5. Type of accommodation most frequently used in a regular procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other
6. Type of accommodation most frequently used in an accelerated procedure:
 Reception centre Hotel or hostel Emergency shelter Private housing Other

²⁶² Article 4 Reception Act.

²⁶³ 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, studio or flat,²⁶⁴ depending on the profile of the asylum seeker and the phase of the asylum procedure the asylum seeker is in (see section on [Forms and Levels of Material Reception Conditions](#)).

Fedasil was established in 2001 to manage the network of reception centres in an efficient and coordinated way and has fallen under the competence of the Secretary of State for Migration and Integration since the end of 2011. Fedasil is in charge of the management and coordination of the network, which includes collective and individual reception places, in addition to other responsibilities such as coordinating the voluntary return programs, the observation and orientation of unaccompanied children and the integration of reception facilities in the municipalities.²⁶⁵ 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.²⁶⁶ The partners include the Flemish and the Francophone Red Cross, Vluchtelingenwerk Vlaanderen, Ciré, Caritas International and the communal PCSW. In 2015 private companies (eg. Senior Assist, Bridgestock, G4S) also became temporarily reception partners. With the closure of 10,000 reception places in 2016, the privately run reception structures are currently all closing.

The 64 collective reception centres as of 4 January 2017 are mainly managed and organised by:

Collective reception centres: Management and capacity		
Partner	Number of centres	Total capacity
Fedasil	19	5,317
Croix Rouge	25	5,396
Rode Kruis	15	2,751
Private companies	5	620

Source: Fedasil, *Statistics*: <http://bit.ly/2kvWgls>, 4 January 2017.

The individual reception initiatives are mainly run by the PCSW and by NGO partners. As of 4 January 2017, the PCSW have 9,292 places in LRIs, while NGO partners currently have 11288.

As of 4 January 2017, the asylum reception network had a total capacity of 26,362 places, out of which 22,743 were occupied (86%). In June 2016, the government announced the closure of more than 10,000 reception places in 2016 mainly in temporary collective reception structures.²⁶⁷ In January 2017, the State Secretary announced a second reduction of the reception capacity will follow. Thus the reception capacity has declined from 35,697 places in May 2016 to 26,362 places in January 2017. This sharp reduction has put pressure on the reception network.

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

²⁶⁴ Article 16, 62 and 64 Reception Act.

²⁶⁵ Article 56 Reception Act.

²⁶⁶ Article 62 Reception Act.

²⁶⁷ Fedasil, 'Reorganisatie van het opvangnetwerk', 3 June 2016.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres?²⁶⁸ < 6 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,²⁶⁹ but in practice places are mostly assigned according to availability and the preferences within the new reception model. 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. Since August 2016 and a renewed implementation of the model of reception, asylum seekers are mostly assigned to the reception centre that has a place available, while taking into account the family composition or urgent medical needs as far as possible (see [Forms and Levels of Material Reception Conditions](#)).

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

- ❖ unaccompanied minors
- ❖ pregnant minors,
- ❖ vulnerable single women with or without young children, ,
- ❖ single minors with children,
- ❖ minors with behavioural problems (time-out),
- ❖ persons with psychological problems,
- ❖ victims of trafficking (although these places are not managed by Fedasil),,
- ❖ refugees who were resettled,
- ❖ vulnerable persons who received the refugee status or subsidiary protection and who are experiencing problems (linked to their vulnerability) with finding their own house and leaving the shelter.

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

- ❖ Persons with limited mobility, for example when they are in wheelchairs
- ❖ Persons who are unable to take care of themselves (prepare food, hygiene, eat, take medication...) without help
- ❖ Persons with a mental or physical disability
- ❖ Persons who receive medical help in a specific place for example dialyse, chemo
- ❖ Persons with a serious psychological dysfunction
- ❖ Persons for who it is necessary to have adapted conditions of reception due to medical reasons: for example special diet, a private toilet, a private room (see section on [Special Reception Needs](#)).

The minimum material reception rights for asylum seekers are described in the Reception Act, most only in a very general way.²⁷⁰ Fedasil puts them into 4 categories of aid:²⁷¹

- 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;

²⁶⁸ Information as of November 2015, concerning at least 80% of asylum seekers: Agentschap Integratie en Inburgering, *Monitoring asielinstream*, 15 January 2016, available at: <http://bit.ly/2ku2xVx>.

²⁶⁹ Articles 11, 22, 28 and 36 Reception Act.

²⁷⁰ Articles 14-35 Reception Act.

²⁷¹ Fedasil, *About the Reception Centres*, available at: <http://bit.ly/1luc6u>.

- c. Daily life, including leisure, activities, education, training, work and community services; and
- d. Neighbourhood associations.

Many of those aspects such as the social guidance during transition to financial aid after a person has obtained a legal stay, the general house rules and the quality norms for reception facilities have not yet been regulated by implementing decrees as the law has stipulated. Until then, those are left to be determined by the individual reception facilities themselves or in a more coordinated way by Fedasil instructions.²⁷² Due to this, the quality norms for reception facilities for example are also still not a public document to this day. 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, which 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.²⁷³ In 2015 Fedasil started a specific study on the reception needs of vulnerable persons. They interviewed many social workers all through the reception network on this theme during 2015 and 2016. As of February 2017 Fedasil published their first findings in this study.²⁷⁴ For their conclusions see section on [Special Reception Needs](#).

As of the end of 2016, there is still no independent, external and structural monitoring system 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.²⁷⁵ The Federal Ombudsman also examines individual complaints.²⁷⁶ 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 practice the quality control department of Fedasil still does not have sufficient capacity to perform regular evaluations. Furthermore Fedasil has to evaluate their own structure which does not guarantee independent control.

In 2013 Fedasil evaluated its own reception model and came to the following conclusions:²⁷⁷

- ❖ A system of buffer capacity is preferable to emergency accommodation;
- ❖ 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;
- ❖ The accompaniment needs more specialisation; and
- ❖ 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 yet, it is not possible for Fedasil to keep track of asylum seekers throughout the period they are in the reception network. During 2016, Fedasil worked on a centralised system for the whole network, “Match-It”. This is currently in a testing phase. The most recent sample test in November 2015 indicated that almost 80% of the asylum seekers stayed for less than 6 months in the reception network. However, 13.5% stayed for more than 12 months.²⁷⁸

²⁷² Vluchtelingenwerk Vlaanderen, *Annual Report 2013*, available at: <http://bit.ly/1dvBxgS>, 7-8.

²⁷³ EMN, *The organisation of reception facilities in Belgium*, August 2013, 18-20, 23-24.

²⁷⁴ Fedasil, *Syntheserapport kwetsbare personen 2016*, February 2017, available at: <http://bit.ly/2kvZyef>.

²⁷⁵ Article 46 Reception Act

²⁷⁶ EMN, *The organisation of reception facilities in Belgium*, August 2013, 21-22.

²⁷⁷ Fedasil, *Report on the reception model and recommendations*, April 2013, available in Dutch and French, unpublished.

²⁷⁸ Agentschap Integratie en Inburgering, *Monitoring asielinstream*, 15 January 2016.

At the beginning of 2015, most families still 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. As a consequence many asylum seekers stayed for a long time, if not during their whole procedure, in overcrowded emergency shelters. The situation was normalised again in 2016, although the new reception model is currently being implemented, which means that priority is still given to reception in collective centres (see [Forms and Levels of Material Reception Conditions](#)).

Furthermore, the government is planning to cut the budget of Fedasil by €22 million in 2017.²⁷⁹

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 has disappeared altogether.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

Employment

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

²⁷⁹ De Standaard, 'Francken werkt aan afbouwplan bis', 7 January 2017, available in Dutch at: <http://bit.ly/2l09VVI>.

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.²⁸⁰ Only once new regional parliaments execute this competence will the old federal law cease to be applicable.

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 are allowed to work with a permit card C. By Royal Decree of 29 October 2015, the federal government brought this period to from 6 to 4 months.²⁸¹ These asylum seekers can work until a decision is taken by the CGRS, or in case of an appeal, until a negative decision has been notified by the CALL. 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.²⁸²

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.²⁸³ 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.

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.

If an asylum seeker resides in a reception facility (LRI or collective) and is employed, he or she has an obligation to contribute with a percentage of his or her income to the reception facility and is excluded from any material reception conditions if his or her income is higher than the social welfare benefit amounts mentioned above and the working contract is sufficiently stable.²⁸⁴ Read more in the section on [Reduction or Withdrawal of Reception Conditions](#).

Self-employment

Asylum seekers are also eligible for self-employed labour under the condition that they apply for a professional card. Only small-scale and risk-free projects will be admitted in practice.

Volunteering

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

Community services

Asylum seekers are also entitled to perform certain community services (maintenance, cleaning) within their reception centre as a way of increasing their pocket money.²⁸⁵

²⁸⁰ Article 22 Special Law of 6 January 2014 relating to the Sixth Reform of the State.

²⁸¹ 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>.

²⁸² Article 17 Royal Decree on Foreign Workers.

²⁸³ Article 3 Royal Decree on Foreign Workers.

²⁸⁴ Articles 35/1 Reception Act and Royal Decree, 12 January 2011, on Material Assistance to Asylum Seekers residing in reception facilities and who are employed (original amounts without indexation).

²⁸⁵ Article 34 Reception Act.

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

Schooling is mandatory for all children between 6 and 18 in Belgium, irrespective of their residence status. Classes with adapted course packages and teaching methods, the so-called “bridging classes” (in the French speaking Community schools) and “reception classes” (in the Flemish Community schools), are organised for children of newly arrived migrants and asylum seekers. Those children are later integrated in regular classes once they are considered ready for it. 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.²⁸⁶

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.²⁸⁷ The regional Offices for Employment organise professional training for asylum seekers who are allowed to work with the purpose of assisting them in finding a job. Also, they can enrol in adults’ education courses for which a certain level of knowledge of one of the national languages is required, but not all regions equally take charge of the subscription fees and transport costs.

The costs of transportation to school and trainings should be paid by the reception centres (this is part of the funding Fedasil gives) but due to the fact that the quality norms are not a public document (See section [Conditions in Reception Facilities](#)) this varies in practice among the different reception facilities.

D. Health care

Indicators: Health Care

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

The material aid an asylum seeker is entitled to includes the right to medical care necessary to live a life in human dignity.²⁸⁸ This entails all the types of health care enumerated in a list of medical interventions

²⁸⁶ Labour Court, Charleroi, Judgment of 6 May 2014, available at: <http://bit.ly/1F5Hyqq>.

²⁸⁷ Article 35 Reception Act.

²⁸⁸ Article 23 Reception Act.

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.²⁸⁹

In most collective reception centres a doctor is present in the centre. This doctor may refer asylum seekers to a specialist if necessary. If no doctor is present in the reception structure, asylum seekers are referred to a local doctor. Asylum seekers who are staying in official reception structures are not allowed to visit a doctor other than the one they are referred to by the social assistant. In other words asylum seekers 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 some areas in Belgium there is a general lack of general physicians which has an impact on asylum seekers as well. Certainly for some LRIs it's difficult to guarantee a doctor. Asylum seekers, unlike nationals, do not have to pay a so-called "franchise patient fee",²⁹⁰ 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. Additionally there is a lack of qualified translators. 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. Furthermore, medical care in LRI is reimbursed by another fund than the other reception infrastructures. This generates differences in access to certain treatments e.g. private psychologists. The Reception Act allows for Fedasil or reception partners to make agreements with specialised services. Although the necessary royal decree which should define the rules for this type of agreement was never created.

When the material reception conditions are reduced or withdrawn as a sanction measure, the right to medical aid will not be affected.²⁹¹ Although in practice accessing medical care can be difficult. Asylum seekers who are not staying in a reception structure (by choice or as a sanction) have to ask for a (promise of repayment (*requisitorium*) before going to a doctor. This can be a very time-consuming process. It can take up to a few weeks before the medical service of Fedasil answers. 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.²⁹²

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

Detection of vulnerabilities

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.²⁹³

²⁸⁹ Article 24 Reception Act and Royal Decree of 9 April 2007 on Medical Assistance.

²⁹⁰ "Remgeld / ticket modérateur", 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.

²⁹¹ Article 45 Reception Act.

²⁹² Article 57 Article 57ter/1 of the Organic Law of 8 July 1976 on the PCSW.

²⁹³ Article 36 Reception Act.

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. Since August 2016 the AO uses a new registration form in which they should indicate if a person is a (non-accompanied) minor, + 65 years old, pregnant, a single woman, LGBTI, a victim of trafficking, victim of violence (physical, sexual, psychological), has children, or has medical or psychological problems.²⁹⁴ In addition to this, the Dispatching does its own evaluation, but this is mostly on medical grounds. A medical worker of Dispatching meets personally with the asylum seeker in case the AO has mentioned a medical problem during the registration, in case the workers of dispatching notice a medical problem themselves, or in case an external organisation draws attention to the specific reception needs of an asylum seeker. In case there is a need for a specifically adapted place due to medical reasons the medical worker of dispatching will fill in a “medical checklist” and Fedasil will look for the most adapted place possible. The identification of vulnerability in general is not conducted in a formalised assessment. In practice most asylum seekers are assigned to a collective centre, only exceptionally, mostly in case of serious health problems, they will be directly assigned to individual housing of NGOs or LRIs (see section on [Forms and Levels of Material Reception Conditions](#)). It is mostly only in the reception centres that other vulnerabilities than medical ones are identified by the social workers.

A legal mechanism is put in place to assess specific needs of vulnerable persons once they are allocated in the reception facilities. Within 30 calendar days after having been assigned a reception place, the individual situation of the asylum seeker should be examined to determine if the accommodation is adapted to his or her personal needs. Particular attention has to be paid to signs of vulnerability that are not immediately detectable.²⁹⁵ A Royal Decree has formalised this evaluation procedure, requiring an interview with a social assistant, followed by a written evaluation report within 30 days, which has to be continuously and permanently updated, and should lead to a conclusion within a maximum of 6 months. The evaluation should contain a conclusion on the adequacy of the accommodation to the individual medical, social and psychological needs, with a recommendation as to appropriate measures to be taken, if any.²⁹⁶ A finding of vulnerability may lead to a transfer to more adequate accommodation, if necessary. In practice, a transfer is often not possible because of insufficient specialised places.

In a new report from February 2017, Fedasil has highlighted several barriers to identification of vulnerable persons with specific reception needs.²⁹⁷ These include a lack of time, language and communication barriers, a lack of information handover and a lack of training and experience related to vulnerable persons. The report also found that the identification tools are not applied in a coordinated manner and strongly influenced by the reception context. In terms of communication, adapted means of communication with deaf and blind persons are lacking, as well as specialised interpreters. The study concluded that the way in which reception is organised can have an impact on vulnerable persons due to location (remote small villages), size (less privacy in big centres) and facilities (lack of adapted sanitary facilities).

Specific and adapted places

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

- ❖ Unaccompanied minors;
- ❖ Pregnant minors;

²⁹⁴ Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: <http://bit.ly/2jA2Yhj>.

²⁹⁵ Article 22 Reception Act.

²⁹⁶ Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.

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

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

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

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

Unaccompanied children should in principle first be accommodated in specialised reception facilities: in centres for observation and orientation. While staying in these centres a decision should be made on which reception facility is most adapted to the needs of the specific minor.²⁹⁸ In practice there are some specialised centres, and specific places in regular reception facilities like collective centres and NGOs and LRIs as well. Although it is important to add that in an instruction of 9 November 2016, Fedasil provides the possibility of accommodating minors who are older than 17 years old, and minors about who there is a test pending to clarify their age, in general collective centres for adults. As of February 2017 there are no minors left in these adult places. According to Fedasil, all the minors who were in adult places were transferred to specific minor places in the centres, unless their tutor decided this was not in their best interests.

Currently, there are 190 places in the centres for observation and orientation (currently occupied at 62%), 2,124 places in collective reception centres (currently occupied at 77.21%) and 325 places in individual reception facilities (currently occupied at 94.76%). Currently there is enough capacity in the centres for observation and orientation to be able to follow-up the minors correctly, according to their needs and vulnerabilities. In the second phase, when the minor should be transferred to another shelter, Fedasil can currently take into account for example the age of the minor: when he/she is under 15 and is in need of a more structured and small scale shelter, Fedasil can refer to “AGAJ – Administration Générale de l’aide à la Jeunesse” (for the French-speaking side) and “AJW – Agentschap Jongerenwelzijn” (for the Dutch-speaking side). According to Fedasil, currently there is enough place in these facilities. Through Mentor-Escale and Minor Ndako, some unaccompanied minors can also be sheltered in a foster home. For minor pregnant girls or young girls with children there are specific places. Minors with behavioural problems or minors who need some time away from their reception place can be temporarily transferred to “time-out” places: in the reception centres of **Sint-Truiden**, **Sugny**, **Synergie 14**, and **Pamex-SAM asbl Liège**. There is a high demand for these places so during 2017 additional places will be created.

For unaccompanied minors who have not applied for asylum there is a special reception facility in **Sugny** that meets the requirements needed for their particular vulnerabilities (for example, often they have been living on the street, or had a lack of structure for longer periods of time). Unaccompanied minors whose asylum procedure ends with a negative decision can apply for a specific accompaniment in the collective

²⁹⁸ Article 41 Reception Act; Royal Decree of 9 April 2007 on the centres for the orientation and observation of unaccompanied minors.

centres in **Bovigny** and **Arendonk**. There they will be helped intensively to make informed decisions on their future. They are advised on their further options like voluntary return, future in illegal stay and secondary migration.

There are only about 70 places in 21 apartments (run by Caritas in **Louvranges** – this is 25 places for women + maximum 53 children) and some individual reception initiatives for single women with children, where they get a specifically adapted accompaniment.

Further there are 30 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 (**Payoke, Pagasa, Surya**, which are 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, of which 5 places for minors) and “medical rooms” in the regular network adapted for people with specific medical needs and their family members (84 places in Fedasil centres – and 147 places run by Ciré and Vluchtelingenwerk 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.

Next to asylum seekers and unaccompanied minors, Fedasil also has to ensure the reception of a third category: families with children without legal stay when the parents cannot guarantee the basic needs.²⁹⁹ To this end the open return centre in **Holsbeek** was created. 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 and social assistance focusses mainly on return assistance. Additionally 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.³⁰⁰ The Bruges and Liege Labour Courts have also ruled this conditionality to be a violation of the fundamental rights of the child. They ordered Fedasil, and not the AO, to provide accommodation also after the 30-day period for the execution of the return decision. This would be in accordance to the Royal Decree 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.³⁰¹

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. The argument was that it only provides in accommodation for 30 days instead of accommodation according to the needs, health and development of the child. Nevertheless, the judgement allowed Fedasil to subcontract their obligation to the AO.³⁰² In June 2015 the open return centre in **Holsbeek** was closed due to a lack of staff in detention centres. Up

²⁹⁹ Article 60 Reception Act and Royal Decree of 24 June 2014, about the conditions and modalities for reception of minors who reside in Belgium illegally with their families.

³⁰⁰ Federal Ombudsman, *Annual Report 2013*, available at: <http://bit.ly/1AZrewH>, 26-30.

³⁰¹ 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>.

³⁰² Council of State, Judgment No 230.947 of 23 April 2015, available in French at: <http://bit.ly/1RZgJg8>.

until today it has not been reopened. The families currently are sheltered in “open return houses” organised by the AO. These houses are used as an alternative for detention for families with children as well.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The Reception Act requires Fedasil to provide the asylum seeker with an information brochure on the rights and obligations of the asylum seekers as well as on the competent authorities and organisations that can provide medical, social and legal assistance, in a language he or she understands (see section on [Information to Asylum Seekers and Access to NGOs and UNHCR](#)).³⁰³ The brochure “Asylum in Belgium” currently distributed is available in ten different languages³⁰⁴ and in a DVD version. These brochures are being distributed in the reception facilities.

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). According to the Reception Act this should be a general document applicable in all reception facilities and regulated by Royal Decree.³⁰⁵ Currently Fedasil is working on a harmonised internal code of conduct as a preparation for this Royal Decree. Until this is ready the content differs between different reception facilities.

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

By law asylum seekers accommodated in one of the reception structures should have access to the interpretation and translation services to exercise their rights and obligations.³⁰⁶ In practice in many reception structures there are not enough translators available.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?

Yes

With limitations

No

The Reception Act provides for a guaranteed access to first and second line legal assistance.³⁰⁷ In practice most centres refer to the free assistance of lawyers. Although some of them provide first line legal advice themselves as well. So there are substantial differences between the different reception centres in the way the asylum seeker is assisted in the follow-up of his or her asylum procedure and in the contact with his or her lawyers.³⁰⁸ Asylum seekers are entitled to public transport tickets to meet with their lawyer at the lawyer’s office.

Further, according to the law, Lawyers and (representative NGOs of) UNHCR have the right to visit their clients in the reception facilities to be able to advise them. Only in case of security threats their access

³⁰³ Article 14 Reception Act.

³⁰⁴ Dutch, French, English, Albanian, Russian, Arabic, Pashtu, Farsi, Peul and Lingala, available on the website of Fedasil and of the CGRS: <http://bit.ly/2kvQCpP>.

³⁰⁵ Article 19 Reception Act.

³⁰⁶ Article 15 Reception Act.

³⁰⁷ Article 33 Reception Act.

³⁰⁸ 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.

can be refused. Collective centres also have to make sure there is a separate room in which private conversations can take place.³⁰⁹

In practice, access does not seem to be problematic, but only few lawyers go visit asylum seekers in the centres themselves. UNHCR and other official instances have access to the centres, but for NGOs and volunteer groups access depends on the specific centre. In some reception centres visitors are limited to the visitors' area.

G. Differential treatment of specific nationalities in reception

In the Reception Act, there is no difference in treatment with regard to reception based on nationality. Asylum seekers from safe countries of origin will have a reception place assigned to them, as will those who have a recognised refugee status in another EU country.

EU citizens applying for asylum and their family members are entitled to reception as well, although in practice they are not accommodated by Fedasil anymore. Fedasil argues that EU citizens are legally on the territory since they are exercising their freedom of movement, but the Federal Ombudsman has discarded this argument because it goes against the interpretation of "legal residence" by the 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.³¹⁰ EU citizens applying for asylum can challenge the formal refusal decision of Fedasil (known as the "Code 207 no show") before the Labour Court.

In the new reception model, asylum seekers with a nationality which has a recognition rate above 90 percent are entitled to be transferred from collective asylum centres to individual places after 4 months. People from other nationalities can only ask for a transfer after 6 months. In practice only the first group is transferred (see [Forms and Levels of Material Reception Conditions](#)).

At the height of the influx in the autumn of 2015, Iraqis and, to a lesser extent, Afghans were deterred from applying for asylum in personalised written communications from the State Secretary, only registered with delays of up to more than two weeks and were thus not able to secure an accommodation place quickly. This has led to at least one judgment of the Labour Court condemning Fedasil to provide for accommodation for an Afghan asylum seeker.

³⁰⁹ Article 21 Reception Act.

³¹⁰ Federal Ombudsman, *Annual Report 2013*, available at: <http://bit.ly/1AZrewH>, 30-35.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2016: ³¹¹	Not available
2. Number of asylum seekers in detention at the end of 2016:	Not available
3. Number of detention centres:	5
4. Total capacity of detention centres:	452 (in 2015)

No final and unambiguous numbers on the detention of asylum seekers are made publicly available by the AO.

Belgium has a total of 5 detention centres, commonly referred to as “closed centres”:³¹² the **127bis** repatriation centre; the “**Caricole**” near Brussels Airport;³¹³ 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.

In his Policy Note of October 2016, the State Secretary noted that there were 583 detention places. By the beginning of 2017, this could increase to 632.

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,³¹⁴ 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](#)).³¹⁵ 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

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

³¹¹ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

³¹² For an overview, see Getting the Voice Out, ‘What are the detention centres in Belgium?’, available at: <http://bit.ly/1GxZAJd>.

³¹³ In May 2012, Caricole replaced the Centre for Inadmissible Aliens (INAD) and the 127 repatriation centre.

³¹⁴ Articles 52 and 52/2 Aliens Act.

³¹⁵ Articles 39/57 and 39/77 Aliens Act.

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.³¹⁶

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:³¹⁷

- (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;
- (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,³¹⁸ or who have served a sentence or been placed at the disposal of the government,³¹⁹ are also detained during the asylum procedure. In 2016 we have noticed an increased use of this possibility, even though official numbers are not available. 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.³²⁰ 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.³²¹ However no objective criteria that

³¹⁶ Article 74/5 Aliens Act.

³¹⁷ Article 74/6(1bis) Aliens Act.

³¹⁸ Article 52/4 Aliens Act.

³¹⁹ Article 74/8 Aliens Act.

³²⁰ Article 51/5 Aliens Act.

³²¹ Information provided by the AO: CBAR-BCHV, Contact meeting, 11 February 2014, available at: <http://bit.ly/1MHJADu>, para 20.

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
3. Number of persons subject to alternatives in 2016 not available

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 necessity or proportionality by the AO, and the judicial review is mostly limited to the question of legality (see [Procedural Safeguards: Judicial Review](#)).³²²

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.³²³ Following the ECtHR's

³²² 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>.

³²³ 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.

Muskhadzhiyeva judgment,³²⁴ and before *Kanagaratnam*,³²⁵ 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.³²⁶ 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.³²⁷ This only applies to those unaccompanied children with regard to whom no doubts were raised about the fact that they are below 18 years of age and are identified as such by the Guardianship service (see [Asylum Procedure: Identification](#)). Also, this OOC is legally considered to be a detention centre at the border, which means that the unaccompanied child is not considered to have formally entered the territory yet.³²⁸ 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.

In his policy note presented in late 2016, the Secretary of State announces the establishment of closed centres for families close to the 127-Bis Repatriation Centre near the Brussels National Airport, with a view to carrying out returns. In a letter addressed to the Secretary of State for Migration and Asylum of Belgium, Commissioner for Human Rights Muižnieks of the Council of Europe warns against resuming the practice of detaining migrant families with children. The Commissioner for Human Rights states that Immigration detention, even as a measure of last resort and for a short period of time, should never apply to children because it is a disproportionate measure which may have serious detrimental effects on them.³²⁹

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.³³⁰

³²⁴ 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.

³²⁵ 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.

³²⁶ Article 74/19 Aliens Act.

³²⁷ Article 40 Reception Act.

³²⁸ 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.

³²⁹ Council of Europe, ‘Belgium urged not to resume detention of migrant children and to expand alternatives to immigration detention for families with children’, 19 December 2016, available at: <http://bit.ly/2i6v9iQ>.

³³⁰ Articles 74/5 and 74/6 Aliens Act.

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.³³¹ 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](#)).³³²

In 2014, the last year for which data were published, the average overall detention period per closed centre was as follows: 11.75 days at **TC Caricole**; 29.4 days at the **RC127bis**; 30.04 days at the **CIB**; 39.9 days at the **CIM**; and 40.2 days at the **CIV**.³³³

When detained at the border, asylum seekers generally spend more time in detention than other migrants in detention. For people detained on the territory the average detention period is less long for Dublin-asylum seekers as for other asylum seekers whose application is deemed to be suspicious.

The longest detention period concerns those people in irregular stay who have applied for asylum once detained in a closed centre. On average they are detained for 59 days.³³⁴

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.³³⁵ The Criminal Procedures Act, as well as the Aliens Act, provide for a strict separation of persons illegally entering or residing on the territory and criminal offenders or suspects.³³⁶ 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.

Detention centre	Capacity
127 bis (Steenokkerzeel)	120
Caricole	90

³³¹ Article 51/5 Aliens Act.

³³² ECtHR, *Firoz Muneer v Belgium*, Application No 56005/10, 11 April 2013, *MD v Belgium*, Application No 56028/10, 13 November 2013.

³³³ Vluchtelingenwerk Vlaanderen, *Gesloten centra voor vreemdelingen in België, een stand van zaken – 2016*, available at: <http://bit.ly/2klkWRy>, 35.

³³⁴ Vluchtelingenwerk Vlaanderen, *Gesloten centra voor vreemdelingen in België, een stand van zaken – 2016*, available at: <http://bit.ly/2klkWRy>, 36.

³³⁵ Article 4 Royal Decree on Closed Centres, referring to Articles 74/5 and 74/6 Aliens Act.

³³⁶ 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.

Centrum voor 'illegalen' Brugge (CIB)	112
Centrum voor 'illegalen' Merksplas (CIM)	142
Centrum voor 'illegalen' Vottem (CIV)	107

Source: Vluchtelingenwerk Vlaanderen, Gesloten centra voor vreemdelingen in België, een stand van zaken – 2016.

In 2015, the overall capacity of the closed centres was of 452 places (506 in 2013). In 2015, 6229 persons were being detained in a detention centre.³³⁷ In its Policy Note the State Secretary noted that in October 2016 there were 583 places. By the beginning of 2017 this could increase to 632. On 23 January several Belgian human rights organisations released a report on the state of closed centres for administrative detention in Belgium. The report states that one third of the detained persons are asylum seekers and detention is systematically applied in the border procedure.³³⁸

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”.³³⁹ Children are able to go to school and adults can go out if they get permission to do so.³⁴⁰

In 2015 there were 27 housing units with a capacity of 169 beds spread over 5 communes. In 2015, 342 persons (adults and minors) resided in one of the units.³⁴¹

This alternative to detention has been broadly recognised as a good practice, also by NGOs.³⁴² Nevertheless, the Belgian State Secretary for asylum announced that he intends to reinstate detention for families and unaccompanied children, a practice suspended after Belgium was convicted by the European Court of Human Rights in the past.³⁴³

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.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? Yes No
 ❖ If yes, is it limited to emergency health care? Yes No

So far, the 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.

³³⁷ Myria, *Migratie in cijfers en rechten 2016*, available at: <http://bit.ly/2kwaBES>, 220.

³³⁸ Vluchtelingenwerk Vlaanderen, *Gesloten centra voor vreemdelingen in België, een stand van zaken – 2016*, available at: <http://bit.ly/2klkWRY>.

³³⁹ 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.

³⁴⁰ Royal Decree on Closed Centres, amended in October 2014.

³⁴¹ Myria, *Migratie in cijfers en rechten 2016*, 220.

³⁴² 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/1luVZJD> 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/111cjju>.

³⁴³ ECtHR, *Muskhadzhiyeva and others against Belgium*, January 2010

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.³⁴⁴ The AO organises training for the security personnel at the detention centres on the use of coercion, as provided for by law.³⁴⁵ 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.

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.³⁴⁶ 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.³⁴⁷ The doctor attached to the centre can decide that a person has to be transferred to a specialised medical centre.³⁴⁸ 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.³⁴⁹ At the same time, the quality of the health care available depends a lot on the medical infrastructure and individual doctor in the centre; in some cases it might even be better than the one dispensed at some open reception centres.

When the medical doctor finds a person not suited for detention or forced removal because it could damage his or her mental or physical health, the managing director of the centre has to transfer these observations to the Director-General of the 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.³⁵⁰ After every failed attempt of removal, the doctor has to examine the person concerned.³⁵¹ 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

³⁴⁴ Articles 85-111/4 Royal Decree on Closed Centres.

³⁴⁵ Article 74/8 Aliens Act and Royal Decree on the Use of Coercion for Security Personnel.

³⁴⁶ Article 83 Royal Decree on Closed Centres.

³⁴⁷ Article 53 Royal Decree on Closed Centres.

³⁴⁸ Article 54-56 Royal Decree on Closed Centres.

³⁴⁹ 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.

³⁵⁰ Article 61 Royal Decree on Closed Centres.

³⁵¹ Article 61/1 Royal Decree on Closed Centres.

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.³⁵²

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.³⁵³

The ‘Transit Group’, a group of several Belgian human rights organisations, released a report on the state of closed centres for administrative detention in Belgium. Caritas, Vluchtelingenwerk Vlaanderen, Ciré and others worked together to produce this report, which is the first of its kind in 10 years.³⁵⁴ It does not concern the detention conditions as such but treats subjects such as the profiles of the detainees, the legality control on detention, the right to family life, etc.

3. Access of third parties to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

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

Lawyers always have access to their client in detention.³⁵⁵ Also, UNHCR has the right to access, as do the Children’s Rights Commissioner, the Federal Migration Centre (Myria) and supranational human rights institutions.³⁵⁶ NGOs need to get permission from the AO managing director in advance to get access to the detention centres.³⁵⁷ 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 formerly the 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.³⁵⁸ 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.³⁵⁹

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.³⁶⁰ 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.³⁶¹ All visits, except for the so called ‘undisturbed’ (intimate) ones, in case of serious illness and those by the lawyer,

³⁵² Articles 10 and 11 Royal Decree on OOCs.

³⁵³ Article 82 Royal Decree on Closed Centres.

³⁵⁴ Vluchtelingenwerk Vlaanderen et al., *Closed centres for foreigners in Belgium*, January 2017, available in French at: <http://bit.ly/2k3PIQD>, and in Dutch at: <http://bit.ly/2klkWRY>.

³⁵⁵ Article 64 Royal Decree on Closed Centres.

³⁵⁶ Article 44 Royal Decree on Closed Centres.

³⁵⁷ Article 45 Royal Decree on Closed Centres.

³⁵⁸ Articles 33, 42 and 43 Royal Decree on Closed Centres.

³⁵⁹ Articles 37 and 40 Royal Decree on Closed Centres.

³⁶⁰ Article 34 Royal Decree on Closed Centres.

³⁶¹ Article 36 Royal Decree on Closed Centres.

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.³⁶²

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.³⁶³ The asylum seekers get the opportunity to wash themselves on a daily basis and toiletries are at their disposal free of charge.³⁶⁴ The asylum seeker can have clothes delivered at their own expense, but the centre is to provide free clothing in case he does not dispose of appropriate clothing.³⁶⁵

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.³⁶⁶

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.³⁶⁷ 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.³⁶⁸ Calls can be made at the asylum seekers' own expenses during daytime to an unlimited extent.³⁶⁹

The social service of the centre has to organise sport, cultural and recreational activities.³⁷⁰ Every centre has a library at the disposal of the inhabitants and newspapers and other publication can be purchased at their own expense.³⁷¹

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.³⁷² The Council

³⁶² Articles 29-30 Royal Decree on Closed Centres.

³⁶³ Articles 79-80 Royal Decree on Closed Centres.

³⁶⁴ Article 78 Royal Decree on Closed Centres.

³⁶⁵ Article 76 Royal Decree on Closed Centres.

³⁶⁶ Articles 46-50 Royal Decree on Closed Centres.

³⁶⁷ Articles 19, 22 and 23 Royal Decree on Closed Centres.

³⁶⁸ Articles 20-21/2 Royal Decree on Closed Centres.

³⁶⁹ Article 24 Royal Decree on Closed Centres.

³⁷⁰ Articles 69-70 Royal Decree on Closed Centres.

³⁷¹ Articles 71-72 Royal Decree on Closed Centres.

³⁷² Article 71 Aliens Act.

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.³⁷³ 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.³⁷⁴

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*.³⁷⁵ 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.³⁷⁶ 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.³⁷⁷ 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),³⁷⁸ 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

³⁷³ Article 72 Aliens Act.

³⁷⁴ Article 74 Aliens Act.

³⁷⁵ ECtHR, *Saadi v the United Kingdom*, Application No 13229/03, Judgment of 29 January 2008.

³⁷⁶ See for examples of jurisprudence and more on this issue, BCHV-CBAR, *Grens-Asiel-Detentie, Belgische wetgeving - Europese en internationale normen*, January 2012.

³⁷⁷ Articles 7 and 27 Aliens Act.

³⁷⁸ 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.

individual case however, the Indictment Chamber of Antwerp has ordered the liberation of asylum seekers held in detention with the only motivation that the Dublin provisions apply.³⁷⁹ 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.³⁸⁰ 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.³⁸¹

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.³⁸²

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”)³⁸³ 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.³⁸⁴

³⁷⁹ Court of Appeal Antwerp, Indictment Chamber, Judgment No K/2060/2015 of 7 September 2015, not published.

³⁸⁰ Law of 20 July 1990 concerning pre-trial detention, available in French at: <http://bit.ly/1B626nE> and Dutch at: <http://bit.ly/1KpjZzR>.

³⁸¹ ECtHR, *Firoz Muneer v Belgium; MD v Belgium*.

³⁸² Articles 62 and 63 Royal Decree on Closed centres.

³⁸³ Including *inter alia* JRS, Vluchtelingenwerk, Ciré, Caritas and BCHV-CBAR.

³⁸⁴ Vluchtelingenwerk Vlaanderen et al., *Closed centres for foreigners in Belgium*, January 2017, available in French at: <http://bit.ly/2k3PIQD>, and in Dutch at: <http://bit.ly/2kikWRY>.

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

A recent report of December 2016 from the 'Transit Group', a group of several Belgian human rights organisations, shows that access to quality legal aid remains difficult. It reiterated that access to quality legal aid remains one of the basic principles that should be respected.³⁸⁵

E. Differential treatment of specific nationalities in detention

In 2015, **Iraqi** asylum seekers were detained solely because they were in a Dublin procedure. This was used as a measure to dissuade Iraqi asylum seekers to apply for asylum in Belgium. The Commissioner for Human Rights of the Council of Europe expressed his concern and called on the authorities to review this practice, especially in cases in which no country had yet been identified to which the asylum seeker could be transferred.³⁸⁶ The risk of absconding should be effectively assessed in each individual case and less coercive alternatives to detention should be considered.

³⁸⁵ The full report can be consulted in French here: <http://bit.ly/2k3PIQD>, or in Dutch: <http://bit.ly/2kIkWRY>.

³⁸⁶ Council of Europe Commissioner for Human Rights, *Report of the visit to Belgium from 14 to 18 September 2015*, CommDH(2016) 1, 28 January 2016, available at: <http://bit.ly/2jAmSZH>.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

- | | |
|--|---------|
| 1. What is the duration of residence permits granted to beneficiaries of protection? | |
| ❖ Refugee status | 5 years |
| ❖ Subsidiary protection | 1 year |

On 28 April 2016, the Parliament adopted a new law to shorten the duration of the right to residence for recognised **refugees** from an unlimited time to 5 years.³⁸⁷ The previous provision allowed refugees to obtain the right to residence for an unlimited time, but status could be revoked within the first 10 years after the asylum application or even after in some cases (see section on [Cessation and review of status](#)). Under the new provision the residence right for recognised refugees is limited to 5 years, then to become unlimited unless the CGRS would decide cessation or revocation of the status according to Article 55/3 or 55/3/1 of the Aliens Act. Upon recognition, refugees receive an electronic “A card” valid for 5 years from the moment of the asylum application.³⁸⁸ After these 5 years they can receive an electronic B card.

Persons granted **subsidiary protection** are only entitled to a right to residence for a limited time. Beneficiaries of subsidiary protection receive a residence right for one year. Unless the Aliens Office is convinced the situation motivating the status has changed, the residence right will be renewed after the first year and then after two years again. Five years after the asylum application, the subsidiary protection beneficiary received an unlimited right to residence, unless the CGRS would decide cessation or revocation of the status according to Article 55/5 or 55/5/1 of the Aliens Act.³⁸⁹ Persons with subsidiary protection status receive an electronic “A card” valid for one year, renewable for two years twice. Upon receiving the right to residence for unlimited time the beneficiary receives an electronic B card.³⁹⁰

Once a person is recognised as a refugee, he or she can get registered in the Aliens Register at the commune and receives a residence permit (A card). This does not happen automatically, however; the refugee has to present the certificate of the CGRS stating he or she has been recognised. Due to the administrative burden on the CGRS during the increase in asylum applications in the second half of 2015, a substantial backlog in issuing those certificates was created. At times, the waiting period took up to 3 months or even longer, while recognised refugees are only allowed to stay in reception centres for 2 more months after recognition (see section on [Housing](#)). Many refugees could not register at the commune and thus receive their residence card. This led to problems with renting a place of residence and getting access to certain social welfare rights. By the end of 2016, these problems seem to have been resolved.

If subsidiary protection status is granted, however, the Aliens Office itself gives instructions to the commune to register the person in the Aliens Register and issue the residence permit, which is an electronic A card in this situation.

Renewal of the residence card has to be demanded at the commune between the 45th and 30th day before its expiration date. When applied for in time, but the Aliens Office cannot timely prolong the card, a paper document temporarily covering the right to residence is issued by the commune, named an Annex 15.³⁹¹

³⁸⁷ Article 49 Aliens Act.

³⁸⁸ Article 76 Royal Decree 1981.

³⁸⁹ Article 49/2(2)(3) Aliens Act.

³⁹⁰ Article 77 Royal Decree 1981.

³⁹¹ Article 33 Royal Decree 1981.

2. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2016: Not available

The criteria and conditions for obtaining long-term resident status are laid down in Chapter IV of the Aliens Act, which refers to the Long-term residence Directive.³⁹² Some modalities can be found in the Royal Decree 1981. Refugees and subsidiary protection beneficiaries are included in the scope of the Long-term residence Directive since 2011 and thus circumvent the first condition of being a third-country national. Other conditions to be cumulatively fulfilled are that the person concerned has to:

- ❖ have a right to residence for unlimited time (*in casu* electronic B card);
- ❖ having stayed legally and continuously within Belgium for five years immediately prior to the submission of the relevant application;
- ❖ possess stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. For 2016 the required amount was set at 793 euro per month, plus 264 euro per dependent person.³⁹³
- ❖ sickness insurance in respect of all risks normally covered in Belgium.

The legal and continuous stay within Belgium for five years only includes half of the time between lodging an asylum application and receiving either refugee status or subsidiary protection. Only if this period exceeds 18 months, the whole period will be taken into account. Periods of absence are not excluded if they are not longer than 6 consecutive months and do not exceed 10 months in total during the 5 years.

Excluded categories from long-term residence include asylum seekers and people who benefit from other forms of international protection. However, even though referred to in Article 15bis(1)3°, in current Belgian legislation there is no third category of international protection. Also excluded from long-term residence status are persons considered a threat to public policy and public security.

The request to become the status of long-term resident (the so-called Annex 16) is lodged at the municipal authorities of the applicant's place of residence.³⁹⁴ The municipal authorities confirm this by issuing a certificate of receipt which is called an Annex 16bis.³⁹⁵ The municipal authorities afterwards transfer the request to the Aliens Office, which takes a decision within 5 months. In the event of a positive decision, or the absence of a decision after 5 months, the applicant will be included in the civil register and receive an electronic D-card with a validity of 5 years and the notion '*EC – long-term resident*'. In addition to this the notion '*international protection granted by Belgium on [DATE]*' is written on the residence permit for long-term residents.³⁹⁶ The duration of validity of long-term residence status is unlimited, contrary to the residence card D itself.³⁹⁷

In the event of a refusal, the municipal authorities will notify the applicant with a so-called Annex 17.³⁹⁸ Against this decision an appeal procedure is available. The possibilities for appeal are listed on the refusal document and are listed in Article 39/82 and 39/2(2) of the Aliens Act.

Article 18(3) of the Aliens Act holds the exception that in case the protection status of a beneficiary of international protection is revoked on the basis of Article 55/3/1(2) or 55/5/1(2) Aliens Act, the minister or his delegate holds the right to revoke the long-term residence status. Should this be the intent of the

³⁹² Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L016, 44-53.

³⁹³ More info available at: <http://bit.ly/2jAyqvU>.

³⁹⁴ Article 29(1) Royal Decree 1981.

³⁹⁵ Article 29(2) Royal Decree 1981.

³⁹⁶ Article 30(2) Royal Decree 1981.

³⁹⁷ Article 18(1) Aliens Act.

³⁹⁸ Article 30(1) Royal Decree 1981.

minister or his delegate, several things such as the family bonds, the duration of stay in Belgium and the family, cultural and social ties to the country of origin have to be taken into account.

3. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	5 years
2. Number of citizenship grants to beneficiaries in 2016:	Not available

There are multiple systems for acquiring the Belgian nationality available for aliens. The main system is named 'declaration of nationality', whereas an exceptional system named 'naturalisation' is also available for certain categories of aliens.

1) Naturalisation

Naturalisation in the narrow sense is a concessionary measure granted by the House of Representatives which is only available under the cumulative conditions laid down in the law on nationality.³⁹⁹

- ❖ The applicant has to be 18 years or older;
- ❖ The applicant has to stay legally in Belgium;
- ❖ The applicant must have achieved great things which shed a favourable light on the Kingdom of Belgium.

This achievement (i.e. *honoris causa*) can be either scientific, sportive or cultural and social. Since the law of 4 December 2012 amending the Code of Belgian nationality, this possibility is not available anymore for recognised refugees or beneficiaries of subsidiary protection.⁴⁰⁰ Legal stay implies a right to residence of unlimited duration.⁴⁰¹

The second possibility to become a Belgian citizen by naturalisation in the narrow sense through concessionary granting by the House of Representatives is only available for recognised stateless people who are 18 years or older and are staying legally in Belgium with a right to residence for unlimited time.⁴⁰²

2) Declaration of nationality

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

- ❖ 5 years of legal stay and integration;⁴⁰³
- ❖ marriage to a Belgian citizen;⁴⁰⁴
- ❖ being the parent of a minor with Belgian citizenship;⁴⁰⁵
- ❖ being handicapped, disabled or having reached pension age;⁴⁰⁶
- ❖ 10 years of legal stay.⁴⁰⁷

For each of these possibilities a registration fee of 150 EUR has to be paid. Proof of payment of the registration fee is an essential condition for the treatment of a file.

³⁹⁹ Article 19 Code of Belgian nationality & circular of 8 March 2013, published on 14 March 2013, available at: <http://bit.ly/2klqOL2>.

⁴⁰⁰ Law of 4 December 2012 on changes to the Code of Belgian nationality in order to make obtaining Belgian nationality migration-neutral, 14 December 2012, 2012009519, 79998.

⁴⁰¹ Article 7bis(2)(1°) Code of Belgian nationality.

⁴⁰² Article 19(2) Code of Belgian nationality.

⁴⁰³ Article 12bis(1)2° Code of Belgian nationality.

⁴⁰⁴ Article 12bis(2)3° Code of Belgian nationality.

⁴⁰⁵ Article 12bis(2)3° Code of Belgian nationality.

⁴⁰⁶ Article 12bis(2)4° Code of Belgian nationality.

⁴⁰⁷ Article 12bis(2)5° Code of Belgian nationality.

A) 5 years of legal stay and integration⁴⁰⁸

The first option requires 5 years of uninterrupted legal stay and proof of integration. In order to acquire Belgian citizenship through this option an applicant has to be 18 years or older, have stayed legally in Belgium as primary residence for 5 years uninterrupted and prove knowledge of languages, social integration and economical participation. Legal stay again implies a right to residence of unlimited duration.⁴⁰⁹

The Code of Belgian nationality provides for several options in order to prove social integration, such as having completed vocational training of 400 hours, having following an integration course, having been employed or working as an entrepreneur for 5 years or having obtained a degree. The language requirement is automatically fulfilled if integration is proved. Documents that prove sufficient knowledge of the national languages are listed in Article 1 of the Royal Decree 2013.⁴¹⁰ In a judgement of the Court of Appeal in Ghent, the court decided that if one of the listed documents is provided, the actual knowledge of the languages is irrelevant.⁴¹¹ *In casu* a woman unable to speak any of the three national languages, was able to provide the document referred to in Article 1(5)(a) of the Royal Decree, which led to the conclusion that she satisfied the language condition. The court thus confirmed that the Belgian legislator opted for a documentary system and is not allowed to test the language condition in a conversation.

Economical participation can be proven by either having worked as an employee for 468 days during the past 5 years, or by having paid social contribution during at least 6 quarters in the past 5 years as an entrepreneur. The duration of either obtaining a degree or completing vocational training, as mentioned in the social integration condition can be subtracted from the 468 days or 6 quarters. Examples of this subtraction are provided in the circular March 2013.⁴¹² Specific details on the documents available to prove social integration, knowledge of languages and economic participation are provided for in the March 2013 Circular.⁴¹³

B) Marriage to a Belgian citizen⁴¹⁴

Another possibility to acquire Belgian citizenship arises in case an alien is married to a Belgian citizen. The conditions to be fulfilled are similar to those of the integration-possibility. First of all the applicant has to be 18 years or older and have stayed legally and uninterrupted in Belgium for the past 5 years. Legal stay again implies a right to residence of unlimited duration.⁴¹⁵ Additional requirements are proof of knowledge of the national languages, social integration and being married to a Belgian national and having lived with the spouse for 3 years before the declaration of nationality. The spouse has to possess Belgian citizenship at the time of the declaration of nationality, not during the antecedent period of the marriage.

The interpretation of the conditions is largely similar to the procedure under Article 12bis(1)2° of the Code of Belgian nationality. However, *in casu* the social integration can be proved by either having obtained a degree, having completed an integration or having completed vocational training in combination with some work experience. This experience amounts to having worked 234 days in the past 5 years as an employee or having contributed social payments during 3 quarters in the past 5 years. Proving economical participation is thus not required, but can serve as evidence for proving social integration.

⁴⁰⁸ Article 12bis(1)2° Code of Belgian nationality.

⁴⁰⁹ Article 7bis(2)(1°) Code of Belgian nationality.

⁴¹⁰ Royal Decree of 14 January 2013 executing the law of 4 December 2012 on changes to the Code of Belgian nationality in order to make obtaining Belgian nationality migration-neutral, 21 January 2013, 2013009022, 2596.

⁴¹¹ Court of Appeal Ghent, 2014/AR/1095, 24 December 2015.

⁴¹² IV A(1)(1.2)(3°)(b.2) of Circular of 8 March 2013 concerning certain aspects of the law of 4 December 2012 on changes to the Code of Belgian nationality in order to make obtaining Belgian nationality migration-neutral, 14 March 2013, 2013009118.

⁴¹³ IV A(1)(1.2) Circular March 2013.

⁴¹⁴ Article 12bis(2)3° Code of Belgian nationality.

⁴¹⁵ Article 7bis(2)(1°) Code of Belgian nationality.

C) Being the parent of a minor with Belgian citizenship

The third possibility to acquire Belgian citizenship is very similar to the marriage-option and is also laid down in Article 12bis(1)3° The only difference is that the applicant is required to either have a child under 18 with Belgian citizenship of his/her own or having adopted one instead of the marriage condition. The rest of the conditions are exactly the same.

D) Being handicapped, disabled or having reached pension age

Article 12bis(1)4° provides for the possibility of acquiring Belgian citizenship in the event of being handicapped or invalided. The requirement of 5 years of legal stay and right to residence of unlimited duration also applies to this possibility, but there is no proof of knowledge of languages, social integration or economical participation required. On the other hand proof of either a handicap or invalidity is required.

The Royal Decree 2013 lists the documents that can be used to prove invalidity.⁴¹⁶ The article specifies that a 'lasting' invalidity is required. The Circular clarifies that 'lasting' means an invalidity with a long duration and not necessarily definitive. An invalidity of 5 years is accepted as lasting invalidity in the light of a declaration of nationality.⁴¹⁷ In case of a handicap, the required document is laid down in the same article of the Royal Decree.⁴¹⁸ The rest of the conditions are exactly the same.

The conditions for a person who wishes to acquire Belgian nationality and has reached pension age are largely similar. The pension age is set at 65 years old in Belgium.⁴¹⁹ The applicant will merely have to provide proof of payment of the registration fee and a birth certificate (or a similar document) in order to prove that he/she has reached the age of 65.

E) 10 years of legal stay

The final option is laid down in Article 12bis(1)(5°) of the Code of Belgian nationality and refers to people who have legally stayed in Belgium for 10 years without a significant interruption. The first requirement is to have stayed in Belgium for 10 years and to have a right of residence of unlimited duration. The language requirement is explicitly mentioned as well. The new condition for this option is the fact that an applicant has to prove participation to life in the receiving society. There is no strict legal definition for 'receiving society' but the Circular of 2013 specifies that 'receiving society' cannot be interpreted as meaning the society of people of the same origin as the applicant.⁴²⁰ The circular also specifies that participation to life in the receiving society can be proven by any means. Some indications mentioned in the circular are school attendance, vocational training and participation in associations.

3) Procedure

As previously mentioned the registration fee of 150 EUR is required and quintessential for the treatment of a file. The details of the procedure are laid down in the Code of Belgian nationality.⁴²¹ After completing the payment, the applicant has to make the actual declaration at the municipal services of his/her current place of residence. The civil servant will issue a document proving that the applicant has made the declaration. Within 30 days of the making of the declaration, the civil servant has to check the file for incompleteness and if so, the civil servant flags the missing documents and gives the applicant 2 months' time to complete the file. If the file is complete, the civil servant issues a certificate of receipt within 35 days of the declaration. If the file was previously incomplete, the civil servant only has 15 days to issue the certificate of receipt after the 2 months of extra time given to the applicant. In the event that the file would still be incomplete, the civil servant issues a document within 15 days stating that the application is inadmissible.

⁴¹⁶ Art 9(4°) Royal Decree 2013.

⁴¹⁷ IV A(1)(1.1)(3°) Circular March 2013.

⁴¹⁸ Art 9(4°) Royal Decree 2013.

⁴¹⁹ IV A(1)(1.1)(3°) Circular March 2013.

⁴²⁰ IV A(1)(1.1)(4°) Circular March 2013.

⁴²¹ Article 15 Code of Belgian nationality.

If the file is complete, the civil servant has 5 days to send the file to the prosecutor of the first instance courts, the Aliens Office and National Security. The prosecutor of the court of first instance has to notify the civil servant of receipt promptly. The prosecutor has 4 months after the issuance of the certificate of receipt to issue a binding advice on the declaration of nationality. Several situations can occur at this stage:

- ❖ *The prosecutor does not respond at all:* In the case where the court does not even issue a certificate of receipt it is expected that the file did not arrive at the court, which leads to an automatic dismissal of the declaration of nationality. The applicant can appeal this by sending a registered letter to the civil servant asking him to resend the file to the court of first instance.
- ❖ *The prosecutor issues a certificate of receipt but does not issue an advice:* If this is the case, the declaration is automatically accepted. The civil servant will notify the applicant and register the applicant. The applicant is a Belgian citizen from the day of registration.
- ❖ *The prosecutor does not stand against the declaration:* If the prosecutor does not stand against the declaration the civil servant notifies and registers the applicant. The applicant is a Belgian citizen from the day of registration.
- ❖ *The prosecutor stands against the declaration:* If the prosecutor stands against the declaration it issues a registered letter to the civil servant and the applicant. The applicant can appeal this decision by sending a registered letter to the civil servant asking him to send the file to the court of first instance.

In the two situations where the applicant can appeal to the court of first instance, the applicant has 15 days, starting from receiving the negative advice or the notification of the civil servant, to demand the civil servant to transfer the case to the court of first instance. The judge in the court of first instance will have to make a motivated decision on the negative advice and will hear the applicant. The registry of the court of first instance will notify the applicant of the decision.

A second appeal is available with the court of appeal for both the applicant and the prosecutor. The time limit is again 15 days. The procedure however is expensive and can take a long time. The court will rule after advice from the general prosecutor and the applicant will be heard. In the event of a positive decision the prosecutor will send the outcome to the civil servant. The civil servant will subsequently notify and register the applicant. The applicant is a Belgian citizen from the day of registration. In the event of a negative outcome, the procedure ends there.

Both appeal possibilities come with an additional registration fee of €100. This used to be only €60 but a legislative change in 2015 increased the fee.⁴²²

4. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

The grounds for cessation of refugee status are laid down in Article 55/3 of the Aliens Act. The article refers to the situations in Article 1C of the 1951 Convention. If a refugee would fall under Article 1C(5) or 1C(6), the authorities have to check whether the change in circumstances in connexion with which the

⁴²² Law of 28 April 2015 changing registration, mortgage and registrar fees in order to reform registrar rights, 26 May 2015, 2015003178.

refugee has been recognised is sufficiently significant and of a non-temporary nature. During the period of 5 temporary residence granted to recognised refugees, the Aliens Office can ask the CGRS to cease refugee status on the basis of actions that fall under Article 1C of the 1951 Convention.⁴²³ The Aliens Act however requires the authorities to take the level of integration in society into account.⁴²⁴ The possibility of cessation of refugee status was included in the Aliens Act after a legislative amendment in 2016.⁴²⁵

Cessation of beneficiary of subsidiary protection status is provided for in Article 55/5 of the Aliens Act and applies to situations where the circumstances on which subsidiary protection was based cease to exist or have changed in such a way that protection is no longer needed. Again the authorities have to check whether the change in circumstances in connexion with which the refugee has been recognised is sufficiently significant and of a non-temporary nature. Cessation of status is possible during the 5 years of temporary residence as provided for in Article 49/2 of the Aliens Act.⁴²⁶ The Aliens Office has to request the CGRS to cease the status. The Aliens Act requires that the authorities take the level of integration in society into account.⁴²⁷ This situation is not applicable when a beneficiary of subsidiary protection can put forward compelling reasons originating from previously incurred harm to refuse protection from the country of which the beneficiary used to possess the nationality.

The CGRS always informs the beneficiary of the reasons for re-investigating the granting of the status but will not necessarily hear the refugee or beneficiary of subsidiary protection during the procedure. The CGRS does however have the possibility to ask the person concerned to formulate his arguments to retain the status in writing or orally.⁴²⁸

Article 5 of the Law of June 2016 changed the wording of Article of the Aliens Act, thereby allowing the Aliens Office to end the right to residence of a person whose protection status is ceased. The Aliens Act requires that when the protection status is ceased on the grounds of Article 55/3 or 55/5 Aliens Act, the authorities take the level of integration in society into account.⁴²⁹ Furthermore, in the event of a cessation on the aforementioned grounds, the Aliens Office has to assess the proportionality of an expulsion measure. This requires the Aliens Office to take the duration of residence in Belgium, the existence of family, cultural and social ties with the country of origin and the nature and stability of the family into account.

So far there has not been any policy of systematically applying cessation for certain nationalities because the situation in the country of origin would have changed in a durable manner. In practice this only happens for individual reasons such as return to the country of origin or acquisition of another nationality. In 2016 the protection status of 21 persons was ceased.⁴³⁰ This is remarkably higher than the 12 and 7 ceased protection statuses in respectively 2015 and 2014.

⁴²³ Article 49(1) Aliens Act.

⁴²⁴ Article 11(3)(1°) Aliens Act.

⁴²⁵ Article 7(2°) of the Law of 1 June 2016 changing the Aliens Act, 28 June 2016, 2016000388.

⁴²⁶ Article 49/2(3) Aliens Act.

⁴²⁷ Article 11(3)(1°) Aliens Act.

⁴²⁸ Article 35/2 Royal Decree on CGRS Procedure.

⁴²⁹ Article 11(3)(1°) Aliens Act.

⁴³⁰ CGRS, Asylum statistics December 2016, 15, available at: <http://bit.ly/2kv515d>.

5. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

Revocation of refugee status is provided for in Article 49(2) of the Aliens Act *juncto* Article 55/3/1 of the Aliens Act. The articles state that during the first 10 years of residence the Aliens Office can ask the CGRS to revoke refugee status when the person concerned should have been excluded from refugee status or when refugee status was obtained on a fraudulent basis.⁴³¹ The exclusion clause refers to Articles 1 D, E and F of the 1951 Geneva Convention.⁴³² This fraudulent basis can be wrongfully displayed facts, withheld facts, false declarations, fraudulent documents or personal behaviour that proves that the applicant no longer fears persecution.

Refugee status can be revoked anytime the refugee is considered a danger to society, sentenced for a very serious crime or when there are reasonable grounds to consider the refugee a threat to national security.⁴³³ This ground for revocation was added in 2015 and is not limited in time.⁴³⁴

The Aliens Office sends the CGRS every element that could justify a revocation of refugee status on the basis of Article 55/3/1 Aliens Act. The CGRS will take a decision within 60 days and inform the Aliens Office of the outcome. In the event of a revocation of refugee status on the grounds of Article 55/3/1(1) or 55/3/1(2)² of the Aliens Act, the CGRS will also issue an advice on the compatibility of an expulsion measure with Articles 48/3 and 48/4.

Subsidiary protection can be revoked on the grounds listed in Article 49/2 and 55/5/1 of the Aliens Act. The GCRS can revoke the subsidiary protection status during the first 10 years of residence when the beneficiary has merely left his/her country of origin in order to escape sentences related to one or multiple committed crimes that do not fall under the scope of Article 55/4(1) Aliens Act and would be punishable with a prison sentence if they would have been committed in Belgium.⁴³⁵ This ground for revocation was only included in 2015 and is not limited in time.⁴³⁶

Status can always be revoked when the beneficiary should have been excluded from protection according to Article 55/4(1) and (2). This article relates to persons having committed a crime against peace, a war crime, or a crime against humanity. Other exclusion possibilities listed are being guilty of acts contrary to the purposes and principles of the United Nations and having committed a serious crime.⁴³⁷ The subsidiary protection status can also be revoked anytime when the beneficiary is considered to be a threat for society or national security.⁴³⁸ The final possibility for the CGRS to revoke subsidiary protection status is when the status was granted on a fraudulent basis. This fraudulent basis can be wrongfully displayed facts,

⁴³¹ Article 55/3/1(2) Aliens Act.

⁴³² Article 55/2 Aliens Act.

⁴³³ Article 55/3/1(1) *juncto* 49(2) Aliens Act.

⁴³⁴ Article 8 of the Law of 10 August 2015 changing the Aliens act to take threats to society and national security into account in applications for international protection, 24 August 2015, 2015000440.

⁴³⁵ Article 55/5/1(1) Aliens Act.

⁴³⁶ Article 10 Law of 10 August 2015.

⁴³⁷ The crimes listed in Article 55/4(1) Aliens Act are also known as the 'exclusion clause' 1F of the 1951 Refugee Convention.

⁴³⁸ Article 55/4(2) Aliens Act.

withheld facts, false declarations, fraudulent documents or personal behaviour that proves that the applicant no longer fears persecution.⁴³⁹ Revocation on the grounds of a fraudulent basis can only occur during the first 10 years of residence in Belgium.

The Aliens Office sends the CGRS every element that could justify a revocation of refugee status on the basis of Article 55/5/1 Aliens Act. This also applies when it is feared that the beneficiary is a threat for society or national security. The CGRS will take a decision within 60 days and informs the Aliens Office and the person concerned of the outcome. If subsidiary protection status is revoked on the basis of exclusion clauses or the committing of a crime punishable with a prison sentence in Belgium, the CGRS issues an advice on the compatibility of an expulsion measure with Articles 48/3 and 48/4.

The CGRS informs the person concerned of the reasons for the reinvestigation of the protection status and always calls the beneficiary for a hearing where the alien has the opportunity to refute the allegations.

Article 5 of the Law of June 2016 changed the wording of Article of the Aliens Act, thereby allowing the Aliens Office to end the right to residence of a person whose protection status is revoked on the grounds of Article 55/3/1(1) or 55/5/1(1) Aliens Act. A person can also be ordered to leave the territory if the protection status is revoked on the grounds of Article 55/3/1(2) or 55/5/1(2) Aliens Act. In the event of a revocation on the aforementioned grounds, the Aliens Office has to assess the proportionality of an expulsion measure. This requires the Aliens Office to take the duration of residence in Belgium, the existence of family, cultural and social ties with the country of origin and the nature and stability of the family into account.

There have been more cases of revocation of the protection status than cessations. There have been 93 revocation in 2016.⁴⁴⁰ From January to August the number of revocations remained relatively stable between 5 and 8 revocations per month, whereas September to December showed a gradual increase from 12 to 16 revocations. Again, this number is remarkably higher than the previous years where 41 and 45 statuses were revoked in respectively 2015 and 2016.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary of international protection can apply for family reunification? Yes No
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application? Yes No
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement?⁴⁴¹ Yes No

Certain family members of beneficiaries of international protection enjoy the right to join the beneficiary in Belgium through family reunification. The legal base for family reunification is Article 10 of the Aliens Act.

⁴³⁹ Article 55/5/1(2)(2°) Aliens Act.

⁴⁴⁰ CGRS, Asylum statistics December 2016, 15, available at: <http://bit.ly/2kv515d>.

⁴⁴¹ During the first year after recognition there is no income obligation. When family members apply for family reunification one year or more after the protection status was obtained, the beneficiary of international protection must provide proof of sufficient income.

Four categories of persons may join a beneficiary in Belgium.

- ❖ a spouse, equalled partner,⁴⁴² or registered partner
- ❖ an underage child
- ❖ a child of age with a disability
- ❖ parent of an unaccompanied minor with protection status

In order to reunify with a spouse or equalled partner, certain conditions have to be fulfilled.⁴⁴³ Both partners have to be over the age of 21, unless the union took place before arrival in Belgium, in which case the minimum age is reduced to 18. The spouse or equalled partner must come and live with the beneficiary in Belgium. Polygamous marriages are excluded, only one of the wives can join the beneficiary.⁴⁴⁴ In practice an investigation to whether the marriage or equalled registered partnership is a marriage of convenience is often carried out. However this does not suspend the family reunification procedure. If the investigation shows there is a marriage of convenience, the Aliens Office can revoke the right to residence.⁴⁴⁵

The conditions for a registered partner are largely similar but require proof of a “stable and lasting” relationship.⁴⁴⁶ Evidence of this can either be a common child, having lived together in Belgium or abroad for at least 1 year before applying or proof that both partners have known each other for at least 2 years and have regular contact by telephone or have met at least 3 times, amounting to a total of at least 45 days, during the 2 years preceding the application. The registered partners also have to be unmarried and not be in a lasting relationship with another person.

Underage children wishing to join their parents residing in Belgium as a beneficiary of international protection have to be unmarried and set to live under the same roof as the parents. If a child wishes to join only 1 of his parents in Belgium, the situation depends on the custody arrangement. In the event of sole custody, a copy of the judgment granting sole custody will have to be provided. If custody is shared, consent of the one parent that the child can join the other parent in Belgium is required.

Children of age with a disability or handicap have the possibility to join their parent(s) with international protection if they provide a document certifying their state of health. In order to be considered disabled, the person concerned has to be unable to provide for his/her own needs as a result of the disability. The child also has to be unmarried and come and live with the beneficiary.

If the beneficiary of international protection is an unaccompanied minor, the beneficiary’s parents can enter Belgium through family reunification.⁴⁴⁷

The normal procedure requires the applicant to apply for family reunification at the Belgian embassy or consulate in the country where the applicant resides. At the Belgian embassy they have to apply for a D visa for family reunification and provide certain documents to complete the file.

All applicants require a valid travel document (national passport or equivalent), a visa application form (including proof of payment of the handling fee of 180 EUR), a birth certificate, a copy of the beneficiary’s

⁴⁴² An equalled partner is a partnership registered in certain countries. These countries are Denmark, Germany, Finland, Iceland, Norway, the United Kingdom and Sweden. Article 12, Royal Decree of 17 May 2007 establishing the implementation modalities of the law of 15 September 2006 changing the law of 15 December 1980 on the regarding the entry, residence, settlement and removal of aliens, 31 May 2007, 2007000527, 29535.

⁴⁴³ Article 10(1)(4°) Aliens Act.

⁴⁴⁴ Children from a polygamous marriage are not excluded if they meet the general conditions. Constitutional Court, decision of 26 June 2008, No. 95/2008.

⁴⁴⁵ Article 11(2) and 12bis Aliens Act.

⁴⁴⁶ Article 10(1)(5°) Aliens Act.

⁴⁴⁷ Article 10(1)(7°) Aliens Act.

residence permit in Belgium, a copy of the decision granting protection status, a medical certificate no more than 6 months old and an extract from the criminal record.

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

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

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

Beneficiaries of international protection are exempt from certain conditions such as adequate housing, health insurance and sufficient, stable and regular means of subsistence. However, if the applicant for family reunification is submitted more than a year after recognition of the status, these conditions will have to be fulfilled. This however does not apply to parents of unaccompanied minors wishing to join them in Belgium.⁴⁴⁸

To establish family ties, Belgian law foresees a cascade system.⁴⁴⁹ Ties are preferably proven by official documents, other valid proof or an interview or supplementary analysis (i.e. a DNA test). If an applicant is unable to produce official documents, the inability has to be “real and objective”, meaning contrary to the applicants own will, such as Belgium not recognising the country concerned, an inability to enter into contact with the authorities or a specific situation in the country of origin such as not functioning authorities or authorities that no longer exist. If this inability is established, the Aliens Office can take other valid proof into account.⁴⁵⁰ In the absence of other valid proof, the Belgian authorities may conduct interviews or any other inquiry deemed necessary, such as a DNA test.⁴⁵¹

After submitting all the legalized and translated documents, the file is complete and the applicant will receive proof of submission of the application (a so-called Annex 15quinquies). The file then gets sent to the Aliens Office for examination. When the proof of submission is delivered, a 9 month period starts during which the Aliens Office must take a decision on the visa application. This period can be prolonged with a 3 month extensions twice in the event of a complex case or when additional inquiries are necessary.

If the Aliens Office decides that all conditions are fulfilled it will issue a positive decision and the family member will receive a D type visa mentioning “family reunification”. This visa is valid for 1 year and allows the applicant to travel to Belgium via other Schengen countries or stay in another Schengen country for a maximum total duration of 3 months within a period of 6 months.

⁴⁴⁸ Constitutional Court, decision No. 95/2008 of 26 June 2008.

⁴⁴⁹ Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, Belgian Official Gazette, 2 July 2009.

⁴⁵⁰ Article 12bis (5) Aliens Act.

⁴⁵¹ Article 12 bis(6) Aliens Act.

2. Status and rights of family members

After arrival in Belgium, the applicant has to register in the municipality where he/she stays within the first 8 days of the arrival.⁴⁵² The applicant has to show the family reunification visa and will receive an Annex 15 temporarily covering stay in Belgium until a residence control. After a positive residence control, the municipality will register the applicant in the Aliens Register and issue an electronic A card valid for 1 year.

During the first 5 years, the A card will be renewed if the conditions for family reunification are still satisfied.⁴⁵³ The person will have to request a new card every year between the 45th and 30th day before the expiry date of the residence permit.

The Aliens Office can review the situation every time an electronic A card has to be renewed, but also at any moment when the Aliens Office has well-founded suspicions of fraud or a marriage of convenience. If after a review the Aliens Office concludes the conditions are not fulfilled anymore, it can end the right to residence. This is only possible in one of the following situations:

- ❖ An applicant no longer fulfils the conditions for family reunification;
- ❖ The partners do not have an actual marital life anymore;
- ❖ One of the partners has concluded a marriage or registered equalled partnership with another person;
- ❖ One of the partners commits fraud;
- ❖ There is a marriage of convenience.

The Aliens Office then issues an Annex 14ter to leave the territory. However, before ending the right to residence, the Aliens Office has to take the duration of residence in Belgium, the existence of family, cultural and social ties in the country of origin and the solidity of the family bond into account.

If an applicant no longer lives with the person on which family reunification was based due to domestic violence the Aliens Office cannot end the right to residence. Rape, deliberate assault and battery and attempts to poison all fall under this exception.⁴⁵⁴ Proof of domestic violence suffices, a conviction is not required. Psychological violence also suffices, but the Aliens Office requires more proof for this type of violence.

An applicant can lodge a suspensive annulment appeal with the CALL against the revocation of the right to residence by the Aliens Office within 30 days. The municipality will then issue an Annex 35. This is a temporary right to residence that is monthly extended for the duration of the appeal. In the absence of an appeal, the applicant's residence in Belgium is unlawful.

If the person still fulfils the conditions for family reunification after 5 years, the right to residence become unlimited in duration. The person concerned has to apply for an electronic B card at the municipality during the duration of his electronic A card. If the applicant still fulfils the conditions, he/she receives a definitive, unconditional and unlimited right to residence. The municipality will issue an electronic B card valid for 5 years.

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

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

⁴⁵² Circular of 21 June 2207 on amendments to the rules regarding residence by foreigners after the entry into force of the the Law of 15 September 2006, Belgian Official Gazette, 4 July 2007.

⁴⁵³ Article 13(3) Aliens Act.

⁴⁵⁴ Article 375, 398-400, 402, 403 and 405 of the Penal Code.

An applicant can lodge a suspensive annulment appeal with the CALL against the revocation of the right to residence by the Aliens Office within 30 days. The municipality will then issue an Annex 35. This is a temporary right to residence that is monthly extended for the duration of the appeal. In the absence of an appeal, the applicant's residence in Belgium is unlawful.

This procedure is slightly different for parents of an unaccompanied minor. Article 13 of the Aliens Act contains the modalities for obtaining an unlimited right to residence after 5 years. Added to the usual condition of continuously satisfying the conditions for family reunification, the applicant will also have to prove that he/she possesses stable and sufficient resources. If after 5 years the applicant does not have stable and sufficient resources, he/she can ask that the limited duration (the electronic A card) is extended, but only for as long as the child is a minor. When the child becomes of age, the Aliens Office will investigate the personal situation of the applicant and may still prolong the duration of the right to residence.⁴⁵⁵

Resources are considered sufficient when they are 120% of the living wage of the category 'person with a dependent family'.⁴⁵⁶ Currently this amounts to €1387.83 per month. The Constitutional Court ruled that as soon as the threshold is reached, the Aliens Office is not allowed to further investigate the exact amount of resources.⁴⁵⁷ The resources also have to be stable, meaning interim jobs, trial work and temporary jobs are often refused. Even if the applicant is unable to prove stable and sufficient resources, the Aliens Office is not allowed to automatically refuse the unlimited right to residence, but is required to first make an analysis of the needs of the family.⁴⁵⁸ On the basis of that analysis the Aliens Office can adjust the threshold.

C. Movement and mobility

1. Freedom of movement

Provide information on freedom of movement insofar as it differs from freedom of movement of asylum seekers. Are there differences between refugees and subsidiary protection beneficiaries?

Beneficiaries of international protection are allowed to freely move within Belgium. Their freedom of movement is not restricted in any way. In October, the Reference Point Migration-Integration released statistics showing that recognised refugees or beneficiaries of international protection often move after their recognition.⁴⁵⁹ Preferred destinations are major cities such as Antwerp, Brussels or Ghent, whereas Wallonia in general and smaller towns in Flanders are places often left behind.⁴⁶⁰

Due to the recent closure of several (emergency) reception centres, several asylum seekers, including unaccompanied asylum-seeking children have had to move to other centres. There has been some public outcry about this, especially as to the effect this has on young children.⁴⁶¹

⁴⁵⁵ Circular letter of 13 December 2013 on the application of the articles of the Aliens Act that were interpreted by the Constitutional Court in the judgment nr. 121/2013 of 26 September 2013, 20 December 2013, 101510.

⁴⁵⁶ Article 10(5) Aliens Act.

⁴⁵⁷ Constitutional Court, nr. 121/2013, 23 September 2013.

⁴⁵⁸ Article 12bis(2) Aliens Act.

⁴⁵⁹ Reference Point Migration-Integration, monitoring movements, October 2016. Available at: <http://bit.ly/2kWCldt>.

⁴⁶⁰ More information available at: <http://bit.ly/2jx04dh>.

⁴⁶¹ De Redactie, *Schooldirecteur over sluiting asielen centrum: nieuwe traumatische ervaring*, 7 June 2016. Available at: <http://bit.ly/2jACXyF>.

2. Travel documents

Belgium issues travel documents for both refugees and beneficiaries of international protection.⁴⁶² The duration of validity of both documents is 2 years.⁴⁶³ Travel documents for beneficiaries of subsidiary protection are issued only if beneficiaries are unable to obtain one from their national authorities. Travel documents for refugees are known as Blue Passports, whereas the travel document for beneficiaries of subsidiary protection is named 'travel document for foreigners'. Blue Passports and travel documents for beneficiaries of subsidiary protection have to be applied for at the provincial administration, where a federal passport service deals with it.⁴⁶⁴ Travel documents lose their validity as soon as the beneficiary loses status or loses the right to residence.

Documents required for requesting a refugee travel documents include an identity card and a passport picture. If there are one or more children in the household, a family declaration form, which can be obtained at the municipality, is required as well. If the applicant lives in the Brussels-Capital Region, a certificate of family composition is needed.⁴⁶⁵

If a beneficiary of subsidiary protection wishes to travel, the beneficiary has to possess a valid passport and the visas required for the countries the beneficiary wishes to visit.⁴⁶⁶

D. Housing

Indicators: Housing

- | | |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | 2 months |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2016 | Not available |

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.⁴⁶⁷

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.⁴⁶⁸

In April 2015 a pilot project was launched where people receiving a status would leave the collective reception centres and move to an LRI, where they would receive intensive support with the search for a place to live and the transition to financial PCSW support. The project was considered successful and circulars were issued to expand the plan into a new reception model. The planned reception model provides for a so called "transit reception" phase for persons who got a protection status, transferring the

⁴⁶² Article 57(3) Consular Code.

⁴⁶³ Circular on travel documents for non-Belgians, 20 May 2015, update 7 September 2016.

⁴⁶⁴ Article 6 Ministerial Decree of 19 April 2014 on the issuance of passports, 4 June 2014, 2014015129, 42636.

⁴⁶⁵ CGRS Information Brochure for recognised refugees, 10.

⁴⁶⁶ CGRS Information Brochure for beneficiaries of subsidiary protection, 11.

⁴⁶⁷ 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 precedes over the Fedasil decisions on the prolongation of the reception.

⁴⁶⁸ Articles 6 and 7 Reception Act.

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).⁴⁶⁹ This phase has been put on hold due to the current overburdening of the reception system.

Several civil society organisations are describing the current situation as a 'housing crisis' since one in five recognised refugees has to extend stay in the collective centres due to a lack of housing.⁴⁷⁰ Fedasil and VluchtelingenWerk Vlaanderen have created an internet platform named '*mijn huis, jouw thuis*' to link refugees and beneficiaries of subsidiary protection with people who rent their house.⁴⁷¹ Other organisations such as Caritas also offer support to refugees and beneficiaries of subsidiary protection in search of a place to stay.

E. Employment and education

1. Access to the labour market

Recognised refugees are free to access the labour market after recognition without requiring a work permit.⁴⁷² They are equally exempt from a professional card.⁴⁷³ These exemptions are based on the status as a refugee and are therefore not affected by the recent limitation of the duration of the residence permit and the subsequent change from an electronic B card to an electronic A card for the first five years. No labour market tests or sector limitation are applied. These rules apply to work as an employee or as an entrepreneur.

Beneficiaries of subsidiary protection require a work permit C if they want to work as an employee during their first 5 years of limited right to residence. To work as an entrepreneur, a beneficiary of subsidiary protection needs a professional card.

In order to obtain a work permit C, the employee has to apply for one at the Department of Economic Migration in the province where the applicant resides. The documents required are:⁴⁷⁴

- ❖ A fully completed application form with indication of the residence status (*in casu* subsidiary protection).
- ❖ A fully completed information sheet in which it is confirmed by the Mayor of the place of residence or his representative that the information listed on this information sheet corresponds with the information in the possession of the Municipality;
- ❖ A copy of the current residence permit of the person concerned;
- ❖ An extract from the Aliens' Register or Pending Applications Register with indication of the residence history of the person concerned to be obtained at the municipality.

If the Department takes a positive decision, they send the work permit C to the municipality, which will notify the applicant. In the event of a negative decision, the Department notifies the applicant of its

⁴⁶⁹ 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/20qlzrE>; *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>.

⁴⁷⁰ De Standaard, *Deze wooncrisis kan je alleen oplossen met crisismanagement*, 22 September 2016. Available at: <http://bit.ly/2jZl4EE>.

⁴⁷¹ Website available at: <http://bit.ly/2jHd3nU>.

⁴⁷² Article 2(5°) of the Royal Decree of 9 June 1999 executing the law of 30 April 1999 on the employment of foreign employees, 26 June 1999, 1999012496, 24162.

⁴⁷³ Article 1(4°) Royal Decree professional card.

⁴⁷⁴ Article 2 Royal Decree of 2 April 2003 on the modalities of requesting and receiving a Work Permit C, 9 April 2003, 2003200475, 17774.

motivated decision in a registered letter. The applicant can appeal this decision with the Regional Minister within 30 calendar days after notification of the registered letter whereby the decision to refuse was served. After a decision of the Minister, a second appeal is possible within 60 days to the Council of State. The Council of State only checks the correctness of the proceedings and does not judge on the reasons for refusal.

A work permit C is valid for 1 year after which renewal can be asked under the same conditions and in accordance with the same procedures as those which apply in the case of a first application. An applicant for renewal however has to be submitted at the latest one month before the expiration of the current work permit C.⁴⁷⁵ As soon as the beneficiary receive an unlimited right to residence, a work permit C is no longer required.

Beneficiaries of subsidiary protection need a professional card if they wish to work as an entrepreneur. Apart from possessing an electronic A card to prove the right to residence, some other conditions have to be fulfilled related to the activity the beneficiary wishes to pursue.⁴⁷⁶ The activity has to be compatible with the reason of stay in Belgium, not in a saturated sector and may not disrupt public order. The documents required are:

- ❖ Front Page giving an overview of all evidence attached to your application form;
- ❖ An extract of the applicant's criminal record (no more than 6 months old);
- ❖ Proof of payment of the application fee of EUR 140;
- ❖ Copy of the residence permit.

An appeal is open with the Regional Minister within 30 calendar days after notification of the registered letter whereby the decision to refuse was served. The Minister seeks the advice of the Council for Economic Investigation regarding Foreigners who will hear the applicant and issue an advice within 4 months to both the Minister and the applicant. The Minister has 2 months to decide whether to follow the advice of the Council or not. In the absence of a Council advice, the Minister has 2 months to take an autonomous decision. In the absence of both a Council advice and a decision by the Minister, the application is considered rejected. After a decision of the Minister, a second appeal is possible within 60 days to the Council of State. The Council of State only checks the correctness of the proceedings and does not judge on the reasons for refusal. If an application is definitely refused, an applicant can only file a new application after 2 years of waiting unless the refusal was based on inadmissibility, new elements arose or the new application is for a new activity.

The professional card is valid for maximum 5 years, but usually issued for 2 years. The holder of a professional card has to ask for renewal 3 months before the expiration date of the current professional card. As soon as beneficiary of subsidiary protection receives a right to unlimited residence

Asylum seekers, recognised refugees and beneficiaries of subsidiary protection can have their diploma obtained in other countries recognised by specific authorities in Belgium.

- ❖ Flanders: NARIC;⁴⁷⁷
- ❖ French community: Equivalences CFWB.⁴⁷⁸

In both Flanders and the French community, asylum seekers, refugees and beneficiaries of subsidiary protection are exempt from the payment of administrative fees.

⁴⁷⁵ Article 5 Royal Decree Work Permit C.

⁴⁷⁶ Article 1 Royal Decree of 2 August 1985 executing the Law of 19 February 1965 on entrepreneurial activities of foreigners, 24 September 1985, 1985018112, 13668.

⁴⁷⁷ Website available at: <http://bit.ly/2k42fn5>.

⁴⁷⁸ Website available at: <http://bit.ly/2kVQS2r>.

2. Access to education

The access to education for child beneficiaries is equal to that of child asylum-seekers. This means that children immediately have the right to go to school and are obliged to receive schooling from 6 years old until their 18th birthday. Children have to be enrolled in a school within 60 following their registration in the Aliens Register. Classes with adapted course packages and teaching methods, the so-called “bridging classes” (in the French speaking Community schools) and “reception classes” (in the Flemish Community schools), are organised for children of newly arrived migrants, a category which includes children of beneficiaries of international protection. Those children are later integrated in regular classes once they are considered ready for it.

F. Health care

Recognised refugees and beneficiaries of subsidiary protection can get health insurance as soon as their status is confirmed by the CGRS. The beneficiary will have to show the electronic A or B card or the Annex 15 with proof of recognition by the CGRS if the electronic card is not issued yet.

There are two ways to get health insurance in Belgium a refugee or beneficiary of subsidiary protection. A beneficiary can either sign up as an entitled person or as a dependent person. As an entitled person you can register either in the capacity as an employee or entrepreneur or on the basis of the right to residence.⁴⁷⁹ As an employee, the beneficiary needs proof of social security submission filled in by the employer, a written declaration of the employer mentioning the social security number (an employment contract for instance) and proof of payment of social security. As an entrepreneur the only document required is a certificate of enrolment with the social insurance fund for self-employed entrepreneurs.

The other way to get health insurance as an entitled person is on the basis of the right to residence. This is possible when the person concerned is allowed to stay over 3 months and registered in the Aliens Register, allowed to stay for over 6 months or has an unlimited right to residence and is registered in the Aliens Register. Both an electronic A and B card are therefore valid possibilities.

Dependent persons of an entitled persons include the spouse, (grand)child, (grand)parent and cohabitant.⁴⁸⁰ To be registered as a spouse both the marriage certificate and proof of living together have to be provided.⁴⁸¹ A dependent (grand)child has to be under the age of 25 and the applicant requires a birth certificate (or certificate of adoption) and live in Belgium, however it is not required that the child and the entitled person live together.⁴⁸² Living together is not required when the relationship is that of parent-child, but it is required when the entitled person is the spouse or life-partner or when the entitled person is a foster parent for instance. The dependent can prove living together with an extract from the Civil Register. To be dependent as a cohabitant there can be no dependent spouse, no entitled spouse living with the entitled person and no other dependent cohabitant.

The PCSW might pay some of the costs of medical treatment if the person concerned is in need, but the PCSW will first conduct a social investigation. This social investigation includes enquiries about the identity, the place of residence, the means of existence, the possibilities of concluding an insurance, the reasons of stay in Belgium and the right to residence.⁴⁸³

⁴⁷⁹ Article 32 of the Law of 14 July 1994 on insurance for medical care and benefits, 27 August 1994, 1994071451, 21524.

⁴⁸⁰ Article 123 of the Royal Decree of 3 July 1996 executing the Law of 14 July 1994 on insurance for medical care and benefits, 1996022344, 20285.

⁴⁸¹ Article 124(3) Royal Decree 1996.

⁴⁸² Article 123(3) Royal Decree 1996.

⁴⁸³ Circular Letter of 14 March 2014 on the minimum conditions for a social investigation in the light of the Law of 26 May 2002 on the right to societal integration and in the light of societal integration by PCSWs which is paid back by the State according to provisions in the Law of 2 April 1965, 4 July 2014, 2014011203, 51594.

ANNEX I – Transposition of the CEAS into national legislation

Directives and other CEAS measures transposed into national legislation

Directive	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/1NFI1u4 (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	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Directive 2013/33/EU Recast Reception Conditions Directive	Remaining provisions	20 July 2015	No draft available.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Regulation (EU) No 604/2013 Dublin III Regulation		Directly applicable 20 July 2013	No draft available.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No