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Asylum Information Database

VLUCHTELINGENWERK VLAANDEREN

ecre
European Council on Refugees and Exiles

2023 UPDATE

BELGIUM

# COUNTRY REPORT

# Acknowledgements & Methodology

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

This report draws on statistical information obtained from the competent administrative agencies, information attained through the monthly contact meetings between the asylum authorities and civil society, analysis of legislation, practices and case law. Vluchtelingenwerk Vlaanderen also gathers crucial information from its own activities. Vluchtelingenwerk has a legal helpdesk through which it receives numerous questions on the rights and position of asylum seekers, refugees and persons benefitting from subsidiary protection. It is also present at the entrance of the asylum authorities' office (the registration centre), where it provides newly arrived asylum seekers with crucial information about the asylum procedure and their rights in Belgium. This allows for the swift monitoring of any changes in asylum seekers' profiles and the registration practice. The information concerning the detention of migrants in Belgium is updated by the Move Coalition, a formal coalition of NGOs accredited to visit detention centres.

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Unless otherwise stated, the information in this report is up-to-date as 31 December 2023.

# 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 which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org It covers 23 countries, including 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, and SI) and 4 non-EU countries (Serbia, Switzerland, Türkiye, and the United Kingdom). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

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# Table of Contents


Glossary and list of abbreviations ..... 5
Overview of relevant documents during the asylum procedure ..... 7
Statistics ..... 8
Overview of the legal framework ..... 12
Overview of the main changes since the previous report update ..... 17
Asylum Procedure ..... 31
A. General ..... 31
1. Flow chart ..... 31
2. Types of procedures ..... 32
3. List of authorities intervening in each stage of the procedure ..... 32
4. Number of staff and nature of the determining authority ..... 33
5. Short overview of the asylum procedure ..... 34
B. Access to the procedure and registration ..... 37
1. Access to the territory and push backs ..... 37
2. Registration of the asylum application ..... 42
C. Procedures ..... 46
1. Regular procedure ..... 46
2. Dublin ..... 60
3. Admissibility procedure ..... 72
4. Border procedure (border and transit zones) ..... 73
5. Accelerated procedure ..... 77
D. Guarantees for vulnerable groups ..... 79
1. Identification ..... 79
2. Special procedural guarantees ..... 82
3. Use of medical reports ..... 85
4. Legal representation of unaccompanied children ..... 87
E. Subsequent applications ..... 89
F. The safe country concepts ..... 90
1. Safe country of origin ..... 90
2. Safe third country ..... 91
3. First country of asylum ..... 92
G. Information for asylum seekers and access to NGOs and UNHCR ..... 93
1. Provision of information on the procedure ..... 93
2. Access to NGOs and UNHCR ..... 95
H. Differential treatment of specific nationalities in the procedure ..... 96
Reception Conditions ..... 100
A. Access and forms of reception conditions ..... 101
1. Criteria and restrictions to access reception conditions ..... 101
2. Forms and levels of material reception conditions ..... 120
3. Reduction or withdrawal of reception conditions ..... 126
4. Freedom of movement ..... 130
B. Housing ..... 131
1. Types of accommodation ..... 131
2. Conditions in reception facilities ..... 133
C. Employment and education ..... 135
1. Access to the labour market ..... 135
2. Access to education ..... 136
D. Health care ..... 137
E. Special reception needs of vulnerable groups ..... 140
F. Information for asylum seekers and access to reception centres ..... 144
1. Provision of information on reception ..... 144

2. Access to reception centres by third parties ..... 145
G. Differential treatment of specific nationalities in reception ..... 145
Detention of Asylum Seekers ..... 147
A. General ..... 147
B. Legal framework of detention ..... 148
1. Grounds for detention ..... 148
2. Alternatives to detention ..... 152
3. Detention of vulnerable applicants ..... 155
4. Duration of detention ..... 157
C. Detention conditions ..... 158
1. Place of detention ..... 158
2. Conditions in detention facilities ..... 160
3. Access to detention facilities ..... 166
D. Procedural safeguards ..... 167
1. Judicial review of the detention order ..... 167
2. Legal assistance for review of detention ..... 170
E. Differential treatment of specific nationalities in detention ..... 171
Content of International Protection ..... 172
A. Status and residence ..... 172
1. Residence permit ..... 172
2. Civil registration ..... 172
3. Long-term residence ..... 174
4. Naturalisation ..... 175
5. Cessation and review of protection status ..... 179
6. Withdrawal of protection status ..... 181
B. Family reunification ..... 184
1. Criteria and conditions ..... 184
2. Status and rights of family members ..... 190
C. Movement and mobility ..... 191
1. Freedom of movement ..... 191
2. Travel documents ..... 192
D. Housing ..... 193
E. Employment and education ..... 194
1. Access to the labour market ..... 194
2. Access to education ..... 198
F. Social welfare ..... 198
G. Health care ..... 199
ANNEX I – Transposition of the CEAS into national legislation ..... 201

# Glossary and list of abbreviations

| | |
|---|---|
| **127-bis Repatriation Centre** | Detention centre near Brussels National Airport |
| **Caricole** | Detention centre near Brussels National Airport |
| **Pro Deo** | Second line free legal assistance |
| **Refusal of entry** | Decision of the Immigration Office that can accompany an order to leave the territory, and that prohibits the person access to the territory of Belgium or of the entire Schengen zone for a certain amount of time |
| **Social integration** | Financial assistance under social welfare \| intégration sociale \| maatschappelijke integratie |
| **Transit group** | Consortium of NGOs, comprising Nansen vzw, JRS Belgium, Caritas, Ciré and Vluchtelingenwerk Vlaanderen, coordinating immigration detention monitoring visits. Since 2021, the informal Transit group was substituted by the official Move coalition. |
| **CALL** | Council of Alien Law Litigation \| Conseil du contentieux des etrangers \| Raad voor vreemdelingenbetwistingen |
| **Carda** | Centre d'accueil rapproché pour demandeurs d'asile en souffrance mentale |
| **Cedoca** | Research service of the CGRS |
| **CGRS** | Office of the Commissioner General for Refugees and Stateless Persons \| Commissariat général aux réfugiés et aux apatrides \| Commissariaat-generaal voor de vluchtelingen en de staatlozen |
| **CIB** | Centre for Illegals of Bruges \| Centre pour les illégaux de Bruges \| Centrum voor illegallen van Brugge |
| **CIM** | Centre for Illegals of Merksplas \| Centre pour les illégaux de Merksplas \| Centrum voor illegallen van Merksplas |
| **CIRE** | Coordination et initiatives pour réfugiés et étrangers |
| **CIV** | Centre for Illegals of Vottem \| Centre pour les illégaux de Vottem \| Centrum voor illegallen van Vottem |
| **CJEU** | Court of Justice of the European Union |
| **EASO** | European Asylum Support Office |
| **ECHR** | European Convention on Human Rights |
| **ECtHR** | European Court of Human Rights |
| **ECSR** | European Committee for Social Rights |
| **EMN** | European Migration Network |
| **EUAA** | European Union Agency for Asylum |
| **Evibel** | Registration database of the Immigration Office |
| **Fedasil** | Federal Agency for the Reception of Asylum Seekers |
| **FGM** | Female genital mutilation |
| **INAD** | Centre for Inadmissible Passengers |
| **Inadmissible application** | Negative decision of the CGRS declaring an application inadmissible |
| **KCE** | Federal Knowledge Centre for Health Care |
| **LGBTI** | Lesbian, gay, bisexual, transsexual and intersex |

| | |
|---|---|
| **LRI** | Local reception initiative \| initiative locale d'accueil (ILA) \| lokaal opvang initiatief (LOI) |
| **NANSEN Vzw** | Belgian non-profit organisation created in 2017 assisting persons in need of international protection. |
| **OOC** | Observation and Orientation Centre for unaccompanied minors |
| **PCSW** | Public Centre for Social Welfare \| Centre public d'action sociale (CPAS) \| Openbaar centrum voor maatschappelijk welzijn (OCMW) |
| **RIZIV / INAMI** | National Institute for Health and Disability Insurance \| Institut national d'assurance maladie-invalidité \| Rijksinstituut voor ziekte- en invaliditeitsverzekering |
| **TP** | Temporary Protection |
| **TPD** | Temporary Protection Directive |
| **VVSG** | Association of Flemish Cities and Towns \| Vlaamse Vereniging voor Steden en Gemeenten |

| | |
|---|---|
| Annex 26 | This document is proof of the lodging the asylum application at the Immigration Office. This document in itself does not constitute a valid proof of identity or nationality. The applicant for international protection is required to present themselves with this document within 8 working days at the commune in which they are staying, upon which an ”attestation of matriculation” (*attestation d'immatriculation / immatriculatie-attest* or “orange card”) is delivered by the communal authorities.<br>The handwritten dates on the Annex 26 refer to the dates on which the applicants must present themselves to the Immigration Office (e.g. for interviews). An example of the Annex 26 is available here. |
| Annex 25 | If a person applies for asylum at the border while being in detention, they will receive an Annex 25. This document does not grant access to the Belgian territory. It only serves as a proof of the application for international protection. An example of the Annex 25 is available here. |
| Annex 26 quinquies | This document indicates that a person has lodged a subsequent application for international protection. It covers the legal stay in Belgium until the Commissioner General for refugees and stateless persons (CGRS) has taken a decision. An example of the Annex 26 quinquies is available here. |
| Annex 26 quater | This is a document issued by the Immigration Office, which states that Belgium is not responsible for the examination of the asylum claim, based on the Dublin III regulation. The document contains both a refusal of residence and an order to leave the territory. An example of the Annex 26 quarter is available here. |
| Attestation of matriculation (AI or ‘orange card’) | An attestation of matriculation is a temporary residence permit that certifies that the applicant is ‘in procedure’. Asylum applicants can obtain this card at the local commune as soon as they have received an Annex 26. It is valid for four months, after which it is extendable for additional periods of 4 months. |
| Electronic A-card | The A-card is a temporary residence permit that is, amongst others, granted to beneficiaries of international protection. If the applicant receives refugee status, they will receive an electronic identity card, type A, that is valid for 5 years. If they are granted subsidiary protection status, they receive a residence permit in the form of an A-card for a period of one year. The municipality may then renew it each time for a period of two years. |
| Electronic B-card | The B-card is a permanent residence permit that is, amongst others, provided to beneficiaries of international protection after a temporary residence of 5 years, counting from the day of the application for international protection. The B-card is issued after instruction by the Immigration Office. |

# Statistics

**Overview of statistical practice**

The Office of the Commissioner General for Refugees and Stateless persons (CGRS) publishes monthly statistical reports, providing information on asylum applicants and first-instance decisions.[1] In addition, statistical information may be found in the Contact Group on International Protection reports, bringing together national authorities, UNHCR and civil society organisations[2] and in annual reports of national asylum authorities.[3]

**Applications and granting of protection status at first instance: figures for 2023**[4]

| | Applicants in 2023 (1) | Pending at end of 2023 (2) | Total decisions in 2023 (3) | Total in merit decisions (4) | Refugee status | Subsidiary protection | Humanitarian protection (5) | In merit rejection (6) | Total rejection (7) |
|---|---|---|---|---|---|---|---|---|---|
| **Total** | 35,507 | 31,998 | 29,885 | 22,208 | 12,355 | 424 | 0 | 9,429 | 15,581 |

Breakdown by countries of origin of the total numbers

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Syria** | 4,152 | | 3,215 | 2,810 | 2,682 | 57 | N/A | 71 | 411 |
| **Afghanistan** | 3,718 | | 7,502 | 6,267 | 2,593 | 2 | N/A | 3,672 | 4,787 |
| **Palestine** | 3,249 | | 1,528 | 1,059 | 934 | 14 | N/A | 111 | 433 |
| **Türkiye** | 2,570 | | 1,222 | 943 | 530 | 0 | N/A | 413 | 616 |
| **Eritrea** | 2,201 | | 1,980 | 1,797 | 1,758 | 0 | N/A | 39 | 201 |
| **Guinea** | 1,355 | | 1,018 | 741 | 246 | 2 | N/A | 493 | 720 |
| **DRC** | 1,089 | | 756 | 605 | 174 | 1 | N/A | 430 | 557 |
| **Cameroon** | 1,214 | | 604 | 428 | 173 | 12 | N/A | 243 | 377 |
| **Moldavia** | 986 | | 652 | 280 | 0 | 0 | N/A | 280 | 514 |
| **Russia** | 931 | | 304 | 78 | 65 | 0 | N/A | 13 | 63 |

Source: CGRS, statistics provided in March 2024.

(1) In 2023, 29,305 persons applied for international protection in Belgium for the first time. 284 additional persons filed a first application for international protection in the context of a resettlement procedure. 5,918 persons introduced a subsequent (2nd, 3rd, …) application.

1 CGRS, *Figures,* available in English, Dutch and French at: https://bit.ly/3uk6M9L.
2 Myria, Contact group international protection, available in French and Dutch at: https://bit.ly/3sE592s.
3 Immigration Office, *Activity reports,* available in French and Dutch at: https://dofi.ibz.be/en/figures/activity-reports; Council of Alien Law Litigation, *Year reports,* available in French and Dutch at: https://www.rvv-cce.be/fr/cce/rapports-annuels.
4 See CGRS, Asylum statistics – Survey 2023, available in English, Dutch and French at: https://www.cgrs.be/en/news/asylum-statistics-survey-2023. The statistics provided concern the number of persons, not files (that may include several persons).

(2) Decisions are pending in 26,525 files, concerning 31,998 persons.
(3) Decisions were taken in 25,355 files, concerning 29,885 persons.
(4) This number excludes: the number of persons for whom a further assessment at the border was decided or whose subsequent application was declared admissible (1,525), the number of persons whose application was declared inadmissible (4,090), the number of persons whose status was ended or revoked (81), the number of persons whose application was stopped (1,456)
(5) Humanitarian protection is not used as a form of international protection in Belgium.
(6) This includes both the number of decisions refusing refugee status and subsidiary protection status (8,635) the number of decisions for manifestly unfounded applications (772) and the number of exclusion decisions (22).
(7) This number includes in-merit rejections, decisions of inadmissibility and decisions by which a protection status was ended or revoked.

**Applications and granting of protection status at first instance: in merit rates for year 2023**

According to the CGRS, the overall protection rate was 43.5%, with 42% of decisions granting refugee status and 1% of decisions granting subsidiary protection. That would make for a 56.5% overall rejection rate. These include for instance inadmissibility decisions as negative decisions, despite the fact that such persons may have (recognised) protection needs. Thus, the table below presents in merit rates for 2023 based on the detailed data presented in the previous table.

| | In merit protection rate | Refugee rate | Subsidiary protection rate | Rejection rate |
|---|---|---|---|---|
| **Total** | 57.5% | 55.6% | 1.9% | 42.5% |
| Breakdown by countries of origin of the total numbers | | | | |
| **Syria** | 97.5% | 95.4% | 2.0% | 2.5% |
| **Afghanistan** | 41.4% | 41.4% | 0% | 58.6% |
| **Palestine** | 89.5% | 88.2% | 1.3% | 10.5% |
| **Türkiye** | 56.2% | 56.2% | 0% | 43.8% |
| **Eritrea** | 97.8% | 97.8% | 0% | 2.2% |
| **Guinea** | 33.5% | 33.2% | 0.3% | 66.5% |
| **DRC** | 28.9% | 28.8% | 0.2% | 71.1% |
| **Cameroon** | 43.2% | 40.4% | 2.8% | 56.8% |
| **Moldavia** | 0% | 0% | 0% | 100% |
| **Russia** | 83.3% | 83.3% | 0% | 16.7% |

Source of data (percentages calculated by the author of the report): CGRS, 'Statistiques Décembre : Bilan 2023', 12 January 2024, available in French at: https://bit.ly/3xdASza.

**Gender/age breakdown of the total number of applicants: 2023**

| | Men | Women |
|---|---|---|
| **Number** | N/A | N/A |
| **Percentage** | 67.7% | 32.4% |

Source: CGRS, 'Statistiques Décembre : Bilan 2023', 12 January 2024, available in French at: https://bit.ly/3xdASza.

**First instance and appeal decision rates: 2023[5]**

| | First instance (1) | | Appeal | |
|---|---|---|---|---|
| | **Number** | **Percentage** | **Number** | **Percentage** |
| **Total number of decisions** | 20,002 | 100% | 6,141 | 100% |
| Positive decisions | 10,452 | 52% | 1,390 | 23% |
| • *Refugee status* | 10,094 | 50% | 512 | 8% |
| • *Subsidiary protection* | 358 | 2% | 61 | 1% |
| • *Other*[6] | N/A | N/A | 817 | 13% |
| Negative decisions | 9,550 | 48% | 4,751 | 77% |

Source: Statistics CGRS (https://bit.ly/3xdASza) and annual report CALL (available in Dutch and French: https://tinyurl.com/ycy5ak53)

(1) Contrary to the first statistical table, for coherence with the presentation for appeals, these numbers concern decisions (which may include several people), rather than people.

5 The rates are calculated based on in merit decisions only, excluding non-in merit rejections. Contrary to the first table of this report, the current table provides the number of files in which a decision was taken, not the number of persons. One file may include several persons.

6 The CALL can cancel decisions and send the file back to the CGRS, if it believes that it does not have sufficient information to make an informed decision on an appeal. In this case, the CGRS is required to provide addition information and arguments after which it can give a new decision to the applicant.

# Overview of the legal framework

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

| Title (EN) | Original Title (FR/NL) | Abbreviation | Web Link |
|---|---|---|---|
| Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens | Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers \| Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen | Aliens Act | https://bit.ly/4cBHIyv (FR)<br>https://bit.ly/43DV0Xs (NL) |
| *Amended by:* Law of 21 November 2017 | Loi du 21 novembre 2017 \| Wet van 21 november 2017 | | http://bit.ly/2FEqrZU (FR) |
| *Amended by:* Law of 17 December 2017 | Loi du 17 décembre 2017 \| Wet van 17 december 2017 | | https://bit.ly/3vB6gXJ (FR) |
| Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens | Loi de 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers \| Wet van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen | Reception Act | http://bit.ly/1MA7uD0 (FR)<br>http://bit.ly/1MKlTbo (NL) |
| *Amended by:* Law of 21 November 2017 | Loi du 21 novembre 2017 \| Wet van 21 november 2017 | | http://bit.ly/2FEqrZU (FR)<br>https://bit.ly/49fsJrl (NL) |
| Law of 30 April 1999 concerning employment of foreign workers | Loi de 30 avril 1999 relative à l'occupation des travailleurs étrangers \| Wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers | Law on Foreign Workers | http://bit.ly/1MHzmTK (FR)<br>http://bit.ly/1FQUuRV (NL) |

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

| Title (EN) | Original Title (FR/NL) | Abbreviation | Web Link |
|---|---|---|---|
| Royal Decree of 8 October 1981 regarding the entry on the territory, residence, settlement and removal of aliens | Arrêté royal du 8 octobre 1981 concernant l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers<br>Koninklijk Besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en verwijdering van vreemdelingen | Aliens Decree | https://bit.ly/3PDrlrj (FR)<br>https://bit.ly/3TQs8rA (NL) |
| Royal Decree of 11 July 2003 determining certain elements of the procedure to be followed by the | Arrêté royal du 11 juillet 2003 fixant certains éléments de la procédure à suivre par le service de l'Office des étrangers chargé | Royal Decree on Immigration | |

| | | | |
|---|---|---|---|
| Immigration Office charged with the examination of asylum applications on the basis of the Law of 15 December 1980 | de l'examen des demandes d'asile sur la base de la loi du 15 décembre 1980<br>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 | Office Asylum Procedure | https://bit.ly/49f071o (FR) |
| Royal Decree of 11 July 2003 determining the procedure and functioning of the Office of the Commissioner General for Refugees and Stateless persons<br><br>*Amended by:* Royal Decree of 27 June 2018 | Arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux Réfugiés et aux Apatrides ainsi que son fonctionnement<br>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<br>Arrêté royal de 27 juin 2018<br>Koninklijk besluit van 27 juni 2018 | Royal Decree on CGRS Procedure | https://bit.ly/3xnc7jS (FR)<br>http://bit.ly/1Jo26lJ (NL)<br>https://bit.ly/2WhfNwS (FR)<br>https://bit.ly/2Ten2U4 (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<br>Koninklijk besluit van 21 december 2006 houdende de rechtspleging voor de Raad voor Vreemdelingenbetwistingen | Royal Decree on CALL Procedure | http://bit.ly/1VtXdcg (FR)<br>http://bit.ly/1VtXhJ3 (NL) |
| Royal Decree of 9 June 1999 implementing the law of 30 April 1999 regarding the employment of foreign workers<br><br>*Amended by:* Royal Decree of 29 October 2015 modifying Article 17 of the Royal Decree on Foreign Workers | Arrêté royal du 9 juin 1999 portant exécution de la loi du 30 avril 1999 relative à l'occupation des travailleurs étrangers<br>Koninklijk besluit van 9 juni 1999 houdende de uitvoering van de wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers<br>Arrêté royal du 29 octobre 2015 modifiant l'article 17 de l'arrêté royal du 9 juin 1999 | Royal Decree on Foreign Workers | https://bit.ly/4acTbDa (NL)<br>http://bit.ly/1MYS23l (FR) |
| Royal Decree of 12 January 2011 on the granting of material assistance to asylum seekers receiving income from employment related activity | Arrêté royal de 12 janvier 2011 relatif à l'octroi de l'aide matérielle aux demandeurs d'asile bénéficiant de revenus professionnels liés à une activité de travailleur salarié | Royal Decree on Material Assistance to Asylum Seekers | http://bit.ly/1IAukcQ (FR) |

| | | | |
|---|---|---|---|
| | Koninklijk besluit van 12 januari 2011 betreffende de toekenning van materiële hulp aan asielzoekers die beroepsinkomsten hebben uit een activiteit als werknemer | | http://bit.ly/1JB9PwY (NL) |
| Royal Decree of 9 April 2007 determining the medical aid and care that is not assured to the beneficiary of the reception because it is manifestly not indispensable and determining the medical aid and care that are part of daily life and shall be guaranteed to the beneficiary of the reception conditions | Arrêté royal du 9 avril 2007 déterminant l'aide et les soins médicaux manifestement non nécessaires qui ne sont pas assurés au bénéficiaire de l'accueil et l'aide et les soins médicaux relevant de la vie quotidienne qui sont assurés au bénéficiaire de l'accueil<br><br>Koninklijk besluit van 9 april 2007 tot bepaling van de medische hulp en de medische zorgen die niet verzekerd worden aan de begunstigde van de opvang omdat zij manifest niet noodzakelijk blijken te zijn en tot bepaling van de medische hulp en de medische zorgen die tot het dagelijks leven behoren en verzekerd worden aan de begunstigde van de opvang | Royal Decree on Medical Assistance | http://bit.ly/1KoGIMv (FR)<br><br>http://bit.ly/1Tarbni (NL) |
| Law of 26 May 2002 on the right to social integration | Loi de 26 mai 2002 concernant le droit à l'intégration sociale<br>Wet van 26 mei 2002 betreffende het recht op maatschappelijke integratie | Law on Social Integration | http://bit.ly/1GwdpYC (FR)<br>http://bit.ly/1GnKfsF (NL) |
| Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary | Arrêté royal du 25 avril 2007 déterminant les modalités de l'évaluation de la situation individuelle du bénéficiaire de l'accueil<br>Koninklijk besluit van 25 april 2007 tot bepaling van de nadere regels van de evaluatie van de individuele situatie van de begunstigde van de opvang | Royal Decree on the Assessment of Reception Needs | http://bit.ly/1MHwUMS (FR)<br>http://bit.ly/1TatQ0r (NL) |
| Royal Decree of 2 August 2002 determining the regime and regulations to be applied in the places on the Belgian territory managed by the Immigration Office where an alien is detained, placed at the disposal of the government or withheld, in application of article 74/8 §1 of the Aliens Act | 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<br><br>Koninklijk besluit van 2 augustus 2002 houdende vaststelling van het regime en de werkingsmaatregelen, toepasbaar op de plaatsen gelegen op het Belgisch grondgebied, beheerd door de DVZ, waar een vreemdeling wordt opgesloten, ter beschikking gesteld van de regering of vastgehouden, overeenkomstig de bepalingen vermeld in artikel 74/8, § 1 van de Vreemdlingenwet | Royal Decree on Closed Centres | http://bit.ly/1Fx8sZ0 (FR)<br><br>https://bit.ly/3xzDGqv (NL) |

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| *Amended by:* Royal Decree of 7 October 2014<br><br>*Amended by:* Royal Decree of 22 July 2018 | Arrêté royal du 7 octobre 2014 \| Koninklijk besluit van 7 oktober 2014<br><br>Arrêté royal du 22 juillet 2018 \| Koninklijk besluit van 22 juli 2018 | | http://bit.ly/1QSveUL (FR)<br>http://bit.ly/1YkhRPe (NL)<br><br>https://bit.ly/2DrHA6e (FR)<br>https://bit.ly/2R5VvCH(NL) |
| Royal Decree of 9 April 2007 determining the regime and functioning rules of the Centres for Observation and Orientation of Unaccompanied Minors | Arrêté royal du 9 avril 2007 déterminant le régime et les règles de fonctionnement applicables aux centres d'observation et d'orientation pour les mineurs étrangers non accompagnés<br>Koninklijk besluit van 9 april 2007 tot vastlegging van het stelsel en de werkingsregels voor de centra voor observatie en oriëntatie voor niet-begeleide minderjarige vreemdelingen | Royal Decree on OOC | https://bit.ly/4at2Pln (FR)<br><br>https://bit.ly/4cOtGtv (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<br>Koninklijk besluit tot bepaling van de regels voor de opleiding in het kader van het gebruik van dwang, genomen in uitvoering van artikel 74/8, § 6, derde lid, van de wet van 15 december 1980 | Royal Decree on the Use of Coercion for Security Personnel | http://bit.ly/1IuWwLu (FR)<br><br>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<br>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)<br><br>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<br>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)<br><br>http://bit.ly/1T0jAYm (NL) |
| Royal Decree of 7 April 2023 establishing the list of safe countries of origin | Arrêté royal portant exécution de l'article 57/6/1, alinéa 4, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, établissant la liste des pays d'origine sûrs<br>Koninklijk besluit tot uitvoering van het artikel 57/6/1, vierde lid, van de wet van 15 december 1980 betreffende de toegang tot het | Royal Decree on Safe Countries of Origin | https://bit.ly/3Hl3poc (FR)<br><br>https://bit.ly/2XFXPob (NL) |

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| | grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, houdende de vastlegging van de lijst van veilige landen van herkomst | | |
| Royal Decree of 2 September 2018 establishing the rules and regime for reception centres and the modalities for control of the rooms | Arrêté royal déterminant le régime et les règles de fonctionnement applicables aux structures d'accueil et les modalités de contrôle des chambres<br>Koninklijk Besluit tot vastlegging van het stelsel en de werkingsregels van toepassing op de opvangstructuren en de modaliteiten betreffende de kamercontroles | Royal Decree | https://bit.ly/2BZbL3F (FR)<br>https://bit.ly/2ENzJAz (NL) |

# Overview of the main changes since the previous report update

The report was previously updated in **April 2023**.

*Asylum procedure*

- **Key asylum statistics:** In 2023, a total of 35,507 persons applied for international protection in Belgium with an average of 2,959 applications per month – a decrease of 3.2% compared to 2022. 34,525 applications were registered on the Belgian territory (at the registration centre Pacheco in Brussels), 332 at the border and 650 in detention facilities. Out of the total number, 5,918 were subsequent applications. 2,596 applications were done by unaccompanied minors.

  Throughout 2023, the Commissary-General for Refugees and Stateless persons (CGRS) granted refugee status to 12,355 persons and subsidiary protection status to 424 persons, bringing the recognition rate to 43.5%. Refugee status was mostly granted to Syrians (2,689), Afghans (2,595), Eritreans (1,770) and Palestinians (929). Subsidiary protection status was mostly granted to Somalians (276), Syrians (57) and Palestinians (14). A total of 15,510 persons were refused international protection. This includes the number of persons who received an in-merit decision refusing refugee status and refusing subsidiary protection status (9,429) and those whose applications were declared inadmissible after subsequent applications and towards beneficiaries of international protection in another member state (4,625) or were declared manifestly unfounded (772). The CGRS decided on the cessation or withdrawal of the protection status in 69 cases.

  In the context of the Dublin procedure, a total of 14,055 take charge and take back-requests were sent to other states, 9,320 of which were accepted. A total of 1,239 persons were effectively transferred from Belgium to other Member States in 2023. There were 3,537 incoming take charge and take back requests, of which the Belgian authorities accepted 2,301. 556 persons were transferred to Belgium in the Dublin procedure (for more statistics about the Dublin procedure, see: Dublin).

- **Limited capacity for registration of asylum applications:** In the context of the reception crisis that started in mid-October 2021 and continues up to the present, access to the asylum procedure has been severely impacted throughout 2022. Single men were regularly not allowed to register their application and were in this case not always given an appointment to make their application on a later specific date making it impossible to ensure the registration of their request within three days after their presentation at the Immigration Office. After the location for registration of applications for international protection moved from 'Petit Château' to the headquarters of the Immigration Office ('Pacheco') on 29 August 2022, access to the registration process remained difficult on certain days due to the limited registration capacity at Pacheco. For a certain period in the second half of 2022, the delay for registering the applications was officially prolonged from 3 to 10 working days, in application of article 50 §2 Aliens Act. The registration capacity depends each day on the available personnel, the number of applicants and their profiles and can thus not be predicted. Priority is always given to minors, families and vulnerable people. Single men who cannot be registered on the day they present themselves, are now given a paper with an invitation to present themselves at another specific moment within 3 working days. In 2023, there were at least 8 days on which not all applicants were able to register on the day of presentation at the registration centre. (see Registration of the asylum application).

- **Increasing backlog of cases with asylum instances:** Overall, the caseload for asylum authorities has increased over the last year. The number of pending applications in front of the Immigration Office

decreased, with 12,531 pending applications in February 2023 compared to 6,991 in February 2024.[7] The CGRS, however, reported 18,390 pending applications in February 2023 and 27,702 pending applications in February 2024 – representing a 50% increase.[8] Overall, the combined number of pending applications increased from 30,921 in February 2023 to 34,693 in February 2024. To reduce this backlog, the government decided to hire additional caseworkers for both services. At the level of the CGRS this resulted in 23.6% more decisions in 2023 compared to 2022.[9] Despite these efforts, the caseload keeps increasing at the time of writing (see Regular procedure – General).

On the level of the Council for Alien Law Litigation (CALL), the number of appeals increased significantly in 2023, leading to a backlog of pending cases for the first time in years. In 2023, the average processing time of appeals concerning decisions on applications for international protection (where the CALL has "full judicial review" competence) was 153,7 calendar days or around 5 months for those appeals introduced in 2023 and for which a decision was taken in 2023. When adding appeals introduced before 1 January 2023 for which a decision was taken in 2023, the average processing time was 230,9 days; this number is significantly higher because it includes the treatment of the backlog of the cases pending before the CALL[10] (see Regular procedure – Appeal).

- **"Migration deal" of Federal government to tackle the reception crisis**: In March 2023, the Federal Government agreed on a 'migration deal' to tackle the reception crisis. This deal consisted out of four legislative proposals and three measures focussed on the reception crisis.[11] In May 2024 all four legislative proposals were adopted by the Federal Parliament:
  - A proposal introducing a specific procedure for stateless persons.[12] Comments on the law were put forward by two civil society organisations, Nansen and the European Network on Statelessness.[13]
  - A proposal limiting the right to reception for applicants who have received a final negative decision.[14] Currently, applicants who receive a final negative decision on their application have a right to reception until they receive an order to leave the territory. In practice, it often takes several weeks before this order to leave the territory is given to the applicant; other ongoing procedures might also cause a delay in the issuing of an order to leave the territory. The proposal aims to reduce the right to reception, by letting it end 30 days after receiving a final negative decision (see End of the right to reception).
  - A proposal changing several family reunification procedures.[15] It provides a new right to stay on the Belgian territory for parents of a minor child who receives international protection, a more precise definition of the rules for family reunification between a Belgian citizen and EU-citizens, the introduction of the concept of 'genuine care' as a prerequisite for family reunification as a parent of a Belgian child, the expansion of cessation grounds for some

7 Immigration Office, 'Applications for international protection: monthly statistics February 2023', available in French at: https://tinyurl.com/msxz4ban, 12 and 'Applications for International protection: monthly statistics February 2024', available in French at: https://tinyurl.com/482fphcw, 12.

8 CGRS, 'Asylum Statistics February 2023', available at: https://tinyurl.com/5b6n6dfk and 'Asylum statistics February 2024', available at: https://tinyurl.com/3ky9yb2m.

9 CGRS, 'Asylum statistics: survey 2023', 12 January 2024, available at: https://tinyurl.com/2p8778s6.

10 CALL Activity report 2023, available in Dutch and French at: https://tinyurl.com/3rec62sr.

11 Nicole de Moor, 'First package deal of reforms for a controlled and righteous migration model', 9 March 2023, available in Dutch at: https://tinyurl.com/2neap2k5.

12 Federal Chamber of Representatives, Legislative Proposal amending the law of December 15, 1980 concerning the request for admission to residence for statelessness, 29 September 2023 available in French at: https://tinyurl.com/23bs28j6.

13 European Network on Statelessness and Nansen, 'AVIS CONJOINT DU RESEAU EUROPEEN SUR L'APATRIDIE ET DE NANSEN SUR le projet de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, en vue de régler le droit de séjour des apatrides', 6 december 2023, available in French at : https://tinyurl.com/ycycetv9.

14 Federal Chamber of Representatives, 'Legislative proposal amending the law of January 12, 2007 and the organic law of July 8, 1976', 29 September 2023, available in French at: https://tinyurl.com/ms54rwkc.

15 Federal Chamber of Representatives, 'Legislative proposal amending the law of December 15, 1980 with regard to the right to family reunification', 29 September 2023, available in French at: https://tinyurl.com/yv5ms4n4.

categories of family reunification and lastly a more precise and transparent right to family reunification for beneficiaries of temporary protection.

- A law for a "proactive return policy", aiming to enshrine in the Aliens Act, *inter alia:* 1) the duty to cooperate in the organisation of transfer, expulsion, return or removal (this comprises forced medical examination in case of refusal); 2) the case management by civil servants of the Aliens office in the context of a return or transfer procedure (ICAM procedure); 3) a listing of the preventive measures and the less coercive measures that can be taken by the authorities and 4) banning the detention of families with minor children in closed centres, except in return houses.[16]

To reach consensus on these legislative proposals, the secretary of state for asylum and migration announced several measures to try and solve the reception crisis:

- The creation of 750 additional reception places by opening two sites using EUAA containers.[17] The search for suitable locations for these containers took several months, and in January 2024 Fedasil communicated that the containers would be used in Ypres and Charleroi.[18] The containers in Ypres are expected to open in July 2024, providing 375 additional places. The containers in Charleroi are expected to open in December 2024, providing 375 additional reception places.[19]
- The creation of 2,000 additional individual reception places by changing the legal framework for local governments who are responsible for these places. In January 2024, Fedasil communicated that 153 new individual reception places were opened since the Migration Deal.[20]
- Increasing the number of exits out of the reception network, by fast-tracking the files of 'long term residents' of the reception network. In January 2024, Fedasil communicated that of the 4,000 identified 'long term residents', 2,025 left the reception network.[21] 20% of those who left received a residence permit, while the rest received a negative decision to their asylum application.[22]

❖ **Proposal of a new Migration Code:** Since its establishment, the current government expressed the ambition to draft a new Migration Code. The previous Secretary of State for asylum and migration, Sammy Mahdi, started this project by identifying several guiding concepts when drafting this new code. Overall, the Code would be a codification of the current legal framework, domestic and European case law. This ambition was highly anticipated since the current legal framework dates back to 1980 and has been updated several times since. The goal was to create a more readable, comprehensible, and transparent Migration Code. The Secretary of State requested input to a wide range of stakeholders within the migration sector, after which a commission of legal experts would co-draft the new legislation together with the government and relevant administrations. In January 2024, Secretary of State for asylum and migration Nicole de Moor, announced the new Migration Code to the press.[23] However, the Code was not yet agreed upon by the government. At the time of writing, it remains unclear if the government will be able to draft and agree on the final texts before the closure of Parliament in April 2024, before national elections.

16 Chamber of representatives, Law proposal on proactive return policy, 29 September 2023, available in Dutch and French at: https://tinyurl.com/352cu2n5.
17 Federal Chamber of representatives, Commission of Internal Affairs, Security, Migration and Administrative matters, CRIV 55 COM 1044, 29 March 2023, https://tinyurl.com/3ab2zvzc, 23.
18 Myria, 'Contact Meeting International Protection', 24 January 2024, available in French and Dutch at: https://tinyurl.com/yp3zbd4w, 34.
19 Myria, 'Contact Meeting International Protection', 20 March 2024.
20 Ibidem, 35.
21 Ibidem.
22 Ibidem.
23 VRT NWS, 'Secretary of State de Moor announces long awaited migration code, opposition not impressed', 10 January 2024, available in Dutch at: https://tinyurl.com/4mx2cmdh.

- **Legal framework for remote interviews:** Since 19 September 2022, two Royal Decrees allow the Immigration Office and the CGRS to organise 'remote' interviews. The migration officers (Immigration Office) and protection officers (CGRS) can be physically present in another room than the applicant and can conduct the interview through communication tools that would enable a conversation on distance in 'real time', such as audio-visual connections or videoconference technology. Audio(visual) recordings of the interviews are not allowed. Physical interviews remain the standard procedure. The Immigration Office and the CGRS investigate on a case-by-case basis whether a remote interview should be preferred. Applicants can object to this measure on the level of the Immigration Office or the CGRS, but no appeal is possible against a decision to conduct the interview remotely. Guardians (and lawyers and trustees as for CGRS interviews) can attend the remote interview. However, both Royal Decrees allow the agent conducting the interview to decide that they can no longer be present in case they do not respect the measures that aim to ensure the confidentiality of the interview. The interview can continue in their absence. In two judgments of 3 October 2022, the Council of State has suspended the execution of these exceptions as far as the guardians of unaccompanied minors are concerned. Article 9 of the 'Guardianship Law' requires the presence of guardians during interviews of their pupils. The Council of State did not suspend the exception concerning lawyers and trustees. Following the entry into force of these Royal Decrees, the CGRS resumed interviews by videoconference in the closed centres. The project for conducting remote interviews from open reception centres has been put 'on hold'. Lawyers or trustees need to be present in the same room as the applicant because the current software does not allow a third party to participate in the videoconference while also ensuring its confidentiality. The new Migration Code includes new legal provisions that would allow the Immigration Office and the CGRS to conduct remote interviews (see Personal interview).

- **Pilot project Tabula Rasa – Written questionnaire in preparation of oral interview:** Between September 2023 and January 2024, the CGRS tested a pilot project named 'Tabula Rasa', aiming at experimenting several new working methods to maximise the number of decisions and alleviate the backlog of cases. One of the measures includes sending preliminary questionnaires to applicants to obtain more information before the personal interview. Recipients of the questionnaire must outline the significant facts and events that motivated their application for international protection. Completing this questionnaire does not substitute for the personal interview; rather, its purpose is to streamline it. The portion of the interview typically reserved for the applicant's spontaneous narrative is now replaced with specific questions derived from the written responses to the questionnaires. There are no sanctions for not responding, nor are there any substantive or formal requirements as to what must be included in the written declaration. The test phase of this project only included files on French-language roles and applicants from specific countries of origin (DRC, Guinea, Mauritania, Senegal, Türkiye, Afghanistan, Syria, Palestine, Albania, Iran, Latin American countries, a few Asian countries) staying in a reception centre. The project will be evaluated in February and March 2024. Several NGOs and lawyer associations have voiced their concerns about the current functioning of this new measure. The new system entails a significant increase in the amount of work and responsibilities required from the applicant's lawyers, to help their client fill out the questionnaire. In case a lawyer is not capable or willing to take up this extra work, NGOs first line legal services have taken up this task. Concerns have been raised regarding their ability and resources for handling such responsibility (see Personal interview).

- **Fast-track procedure for certain nationalities:** As of 1 February 2024, a 'fast track procedure' is applied for applicants from safe countries of origin and countries with a low recognition rate. These cases are treated with priority by the Immigration Office and the CGRS. The aim is to take a decision within 50 working days. After a first pilot phase, the project will be evaluated by the Secretary of State and adapted if needed. The nationalities on which the fast-track procedure will be applied can vary. In the first phase, the procedure will be applied to applicants from safe countries of origin (currently: Albania, Bosnia-Herzegovina, Northern-Macedonia, Kosovo, Serbia, Montenegro, and India) and the

following countries with low recognition rates: Georgia, Moldavia and DRC)[24] (see Prioritised examination and fast-track processing).

- **Procedure for submitting documents in support of an application**: Applicants are expected to provide any documents, especially those concerning the identity, the grounds for the application for protection and the travel route, as quickly as possible. In March 2023, the CGRS changed the procedure for submitting documents in support of an application for international protection, only allowing the submission of documents by registered mail or by delivery to the CGRS against receipt. This procedure was revised from of 15 May 2023. Documents can since then be submitted to the CGRS (1) by sending them to the CGRS via registered or ordinary mail; (2) by handing them at the reception desk of the CGRS against receipt; (3) by sending them to the CGRS by e-mail. When sent by e-mail, documents can be included in JPEG, PNG, PDF, Word or other Microsoft Office file formats. It is impossible to submit documents through Internet links (YouTube, WeTransfer or anything that can lead to an insecure website). CD-ROMs or USB sticks containing video or audio clips can be submitted by regular or registered mail or handed in at the reception desk. The CGRS has drafted an explanatory document about the submission of documents, including an inventory that it recommends using for this purpose (see Personal interview).

- **CALL – Similar rates of recognition of international protection between Dutch and French language roles:** The discrepancy between the jurisprudence of the Francophone and Dutch chambers in appeals concerning decisions on applications for international protection (where the CALL has "full judicial review" competence) has been subject to criticism for several years. In 2023, for the first time since the establishment of the CALL, the recognition rates were similar in the Dutch and French chambers of the CALL. In 2022, Francophone chambers recognised international protection in 9.54% of the appeals (7.93% refugee status, 1.61% subsidiary protection), compared to a recognition rate of only 1.5% (1.03% refugee status, 0.47% subsidiary protection) in Dutch chambers.[25] In 2023, the discrepancy between recognition rates is much smaller for the first time in years: Francophone chambers recognised international protection in 11.73% of the appeals (9.67% refugee status, 2.06% subsidiary protection), compared to a recognition rate of 7.36% in Dutch chambers (7.24% refugee status, 0.12% subsidiary protection). However, the discrepancy between rejection rates remains high: 67.86% of the appeals were rejected by French chambers, compared to 85.19% in Dutch chambers. This is explained by a discrepancy in the number of annulment decisions: French chambers annulled 20.42% of the appeals compared to only 7.45% in Dutch chambers (see Regular procedure – Appeals).[26]

- **Dublin case law:**
  - **Individualised guarantees for Croatia:**[27] In November 2022, the Croatian Ministry of Internal Affairs sent out a communication regarding its willingness to correctly apply the provisions of the Dublin III Regulation. However, the CALL ruled that this communication from the Croatian Ministry of Internal Affairs does not provide the same guarantee as individualised guarantees, which means that this communication is not sufficient to exclude any risk of a violation of Article 3 ECHR. After these judgements, the Immigration Office started to systematically request individual guarantees for Dublin returnees to Croatia.[28] The CALL has confirmed this policy in several judgements (see Dublin – Procedure).[29]

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24 Secretary of State Nicole De Moor, 'Fast-track procedure for faster treatment of asylum applications from DR Congo, Moldavia and Georgia', 1 February 2024, available in Dutch at https://tinyurl.com/47k7y5my; Chamber of Representatives, Commission of internal affairs, security, migration and administrative matters, Wednesday 7 February 2024, available in Dutch and French at https://tinyurl.com/2mhwru8p, p. 16-17.

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

26 CALL Activity report 2023, available in Dutch and French at: https://tinyurl.com/3rec62sr.

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

28 Myria, 'Contact Meeting International Protection', 26 April 2023, available in French and Dutch at: https://tinyurl.com/wkdaffnj.

29 CALL, Decision No 297.920, 29 November 2023

- **Dublin transfers to Bulgaria:** In April 2023, transfers to Bulgaria were resumed by the Belgian authorities. This was confirmed by the Immigration Office in June 2023.[30] This change is based on the latest AIDA report, the EUAA factsheet 'Information on procedural elements and rights of applicants subject to a Dublin transfer to Bulgaria' and a working visit to Bulgaria by the Immigration Office. These sources show "that Bulgaria acts in accordance with the provisions provided for in the Dublin Regulation and that transfers can take place in accordance with national and international regulations" according to the Immigration Office.[31] This policy has been confirmed by the CALL in several cases (see Dublin – Suspension of transfers).[32]

❖ **Shortage of guardians:** Although the shortage of guardians for unaccompanied minors decreased significantly (with a peak of 1,830 minors waiting for the appointment of a guardian) the shortage continued throughout 2023, with still 522 minors waiting for the appointment of a guardian by the end of February 2024. The average waiting time differed for each region, with an estimated average of 6 months in 2023 and 3 to 4 months in February 2024 (depending on the region and the profile of the minor). This is problematic since the appointment of a guardian is required before the minor can undertake certain essential things, such as getting access to legal representation and financial aid ("Groeipakket") and subscribing to a school. Recruitment of new guardians by the Guardianship Service are ongoing (see Legal representation of unaccompanied minors).

*Reception conditions*

❖ **Reception crisis:** The reception crisis that started in mid-October 2021 (see AIDA report Belgium 2021) endured for the whole of 2022-2023 and persists at the time of writing (April 2024). Because of the shortage of places, available places are given to 'the most vulnerable' applicants for international protection. In practice, these are families with children, single women, and unaccompanied minors.[33] At the end of 2022, there were days on which not all families with children and unaccompanied minors received access to the reception network. In 2023, 8,816 persons could not be accommodated by Fedasil on the day of their application.[34] This were almost exclusively single men.

Adult single male applicants for international protection are systematically denied access to the reception network and can register on a waiting list.[35] In some cases Fedasil provides accommodation to single men on the day of their application. This is mostly the case for applicants with visible vulnerabilities and applicants whose claim can be fast-tracked in the Dublin centre in Zaventem. Between October 2023 and December 2023, only 524 single men received accommodation on the day of their application.[36]

Single men who do not receive accommodation on the day of their application, are invited from the waiting list based on the day when they lodged their application. This system based on the chronological order of registration on the waiting list replaces the previous way of working that prioritised single men who obtained a positive court injunction. Since the summer of 2023, Fedasil no longer respects court injunctions hereby rendering the right to an effective legal remedy ineffective.[37] On 30 August 2023, the Secretary of State communicated that Fedasil would no longer provide reception to single men.[38] This instruction was in violation of the reception law according to the Council

30 Myria, *Contact Meeting,* 21 June 2023, 9, available in French and Dutch at: https://bit.ly/3U1D9GU.
31 Ibidem, 10.
32 E.g.: CALL, No 296780, 9 November 2023; No 296571, 6 November 2023 and No 296884, 10 October 2023.
33 Fedasil, 'Register for reception' available at: https://tinyurl.com/ym6rvxa4.
34 Fedasil, 'A reception network under pressure', 15 February 2024, available at: https://tinyurl.com/2ubavru7.
35 Fedasil, 'Waiting list', available at: https://tinyurl.com/5x34xk69.
36 Myria, 'Contact Meeting International Protection', 24 January 2024, available at: https://tinyurl.com/3hn9wrd2, 31.
37 Myria, 'Myria, 'Contact Meeting International Protection', 20 September 2023, available at: https://tinyurl.com/2dwfke25 and see European Court of Human Rights, Camara v. Belgium, 18 July 2023, available at: https://tinyurl.com/2c26x6t5.
38 Fedasil, 'No reception for single men', 30 August 2023, available in French at: https://tinyurl.com/3xsd8e35.

of State.[39] However, before the pronunciation of this judgement the Secretary of State declared that she was fully aware of the illegality of this instruction, stating that the judgement would not be respected if it turned out to be negative. She confirmed this position after the judgement.[40] A group of constitutional law professors denounced this stance in an open letter.[41] They stated that: "for the executive to ignore the decision of a court constitutes a clear and serious violation of the rule of law and the principle of legal certainty. This has significant implications for confidence in political institutions".

In practice, the current policy means that the invitations from the waiting list are limited to an absolute minimum. Fedasil only invites those applicants with a vulnerable profile and those who have been on the waiting list the longest.[42] At the time of writing, Fedasil was inviting applicants who lodged their application in August of 2023. 3,200 applicants were registered on the waiting list on 23 February 2024.[43] During their time on the waiting list, applicants are forced to sleep rough (on the street, in tents or squats) or seek shelter with friends or family. Medical civil society organisations such as Doctors of the World and Doctors Without Borders have denounced the dire medical situation of destitute applicants on numerous occasions. They have warned of the risk of hypothermia in winter and the spread of highly infectious diseases such as scabies and diphtheria. Legal practitioners, judges and courts have denounced the impact of the reception crisis on the legal apparatus. The crisis significantly increased the courts' workload, negatively impacting other legal proceedings. Amnesty International launched an urgent action on the reception crisis and urged the government to solve the issue in an international statement.[44]

Over the course of the whole reception crisis, legal proceedings have led to 8,812 convictions of the federal reception agency (Fedasil) on the national level and 2,086 interim measures against the Belgian state granted by the European Court of Human Rights (Rule 39). At the time of writing, 175 interim measures were still active.[45] Even after receiving a positive court injunction, applicants must wait for several months before receiving an invitation to access the reception network (see Right to shelter and assignment to a centre).

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

- **Tribunal of first instance Brussels, 19 January 2022 (summary proceedings):**[46] Condemnation of the Belgian State and Fedasil for not ensuring access to the asylum procedure and to reception conditions and ordered both parties to ensure the respect of these fundamental rights, imposing a €5000 penalty payment for the respective parties for each day during the following 6 months on which at least one person would not receive access to the asylum procedure (penalty for the Belgian State) or to the reception system (penalty for Fedasil), with a maximum amount of €100.000 that can be claimed per party.
- **Tribunal of first instance Brussels, 25 March 2022:**[47] Heightening of the penalties imposed on Fedasil by the judgement of 19 January 2022 to €10.000 for each day during the following 3 months on which Fedasil does not give someone access to the reception system.

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39 Council of State, 'Suspension of the decision to stop the reception of single men', 13 September 2023, available in French at: https://tinyurl.com/3j3ap7mz.

40 The Brussels Times, 'Decision to stop providing shelter for single men reversed by Council of Sate', 13 September 2023, available at: https://tinyurl.com/4y9abm63.

41 The Brussels Times, 'Asylum reception crisis: academic denounce 'flagrant disregard' for rule of law', 20 September 2023, available at: https://tinyurl.com/bdh5wd5h.

42 Myria, 'Contact Meeting International Protection', 20 September 2023, available at: https://tinyurl.com/2dwfke25, 52.

43 Fedasil, 'End of reception in Bredene', 23 February 2023, available in French and Dutch at: https://tinyurl.com/37hcptcj.

44 Amnesty International, 'Belgium: urgent action needed to end human rights violations against asylum seekers', 31 October 2023, available at: https://tinyurl.com/4r9canrv.

45 Myria, 'Contact Meeting International Protection', 24 Januari 2024, available in French and Dutch at: https://tinyurl.com/yp3zbd4w, 33.

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

47 Tribunal of first instance of Brussels, 25 March 2022, 2022/13/C, available in French via https://bit.ly/3FcOKe1.

- **Court of Appeal Brussels, 31 October 2022:**[48] Fedasil appealed the judgement of 25 March 2022, arguing that the increase of the penalty payments was incorrect, stressing that the reception authorities do everything possible to respect the previous judgements, but cannot do so due to reasons of force majeure. The Court of Appeal discarded Fedasil's arguments and upheld the judgement of 25 March 2022. It also lifted the period of 6 months during which the penalty fees could be claimed. It argued that Fedasil did not provide a concrete action plan to solve the reception crisis. The court went further and stated that Fedasil 'deliberately and manifestly disregards the judgement of the 19 January 2022'. Therefore, the penalty fees can be claimed for every working day that Fedasil does not respect the judgment of 24 January 2022, until the Court of First instance has delivered a judgement on the merits of the case.
- **Tribunal of first instance Brussels (distraint chamber), 30 January 2023:** Based on the judgements of 19 January 2022 and 25 March 2022, Fedasil was ordered to pay €490.000 of fines by the claiming parties for the period between 24 January and 10 June 2022. Fedasil did not pay these fines, so the claiming parties brought the case before the seizure court. The seizure court drafted a list of goods owned by Fedasil that can be claimed. Fedasil contested the list, arguing that it was not established that the right to reception was violated between the 24th of January and the 10th of June. The Court found that "Fedasil is clearly failing to provide unconditional and timely material assistance to any person applying for international protection". It further states that Fedasil did not execute the convictions of the orders of 19 January and 25 March 2022. The existence of the waiting list for persons without reception provides ample evidence. As long as at least one person is on this waiting list, Fedasil does not respect the right to reception, according to the Court. As a result, the Seizure court confirmed the list of goods that can be claimed.
- **Court of First Instance Brussels (judgment on the merits), 29 June 2023, Belgian state violates right to asylum and Fedasil violates right to reception:**[49] On 29 June 2023, the Court of First Instance of Brussels (French-speaking) condemned the Belgian State and Fedasil on the merits for their persistent misconduct in violating the right to asylum and the right to reception, as well as for not respecting judicial decisions. The Belgian state violates the right to asylum by restricting access to asylum procedure. The court holds that the right to make an application may not be unlawfully prevented or delayed. The fact that the Belgian state is doing its best to organise the situation and does not intend to prevent the exercise of this right is irrelevant in this regard. The court finds fault on the part of the Belgian state towards the above obligations.
  With regards to Fedasil, the Court finds that the Federal Agency violates the right to reception. According to the court, it is not in doubt that the right to reception has been violated since the summer of 2021. The fact that there is a waiting list for reception sufficiently demonstrates this violation, according to the court. The Belgian state and Fedasil argue that there is force majeure that makes guaranteeing the right to shelter impossible. The state cites several elements in support. The court examines these elements and concludes that there is no force majeure. Therefore, saturation of the shelter network does not relieve the state of its obligations. If necessary, applicants should be referred to bodies of general public assistance (OCMW). According to the court, it is demonstrated beyond doubt that the defending parties do not respect judicial decisions. This attitude endangers the foundations of the rule of law. Consequently, the Belgian state and Fedasil violate Article 1382 of the Civil Code.

- **Council of State, 13 September 2023, Belgian state violates article 3 of Reception Law:**[50] On 30 August 2023, Fedasil communicated it would no longer provide reception places to single men.[51] This was challenged by a group of NGOs, contending that the decision infringed upon the fundamental right to reception. The Council of State found the arguments presented by the organisations to be substantial. The decision to exclude single male asylum seekers from reception facilities was considered a violation of the Belgian reception law and the corresponding EU directive. The court ruled that the decision was contrary to the fundamental right to reception and the dignity of asylum seekers, especially considering their vulnerable status. As a result, the

48 Brussels Court of Appeal, '2022/KR/14', 31 October 2022.
49 Brussels Court of First Instance, '2022/4618/A', 29 June 2023, available in French at: https://bit.ly/3QxbV98
50 Council of State, 13 September 2023, 257.300, available in French at: https://tinyurl.com/2adj3ekn.
51 Fedasil, 'No reception for single men', 30 August 2023, available in French at: https://tinyurl.com/3xsd8e35.

court ordered the immediate suspension of the decision. Already before and right after the judgement, the Secretary of State announced that she would not reverse the decision to exclude single men from reception, since she is unable to respect this judgement for as long as there are only available places for vulnerable applicants.[52]

- **Court of Appeal Brussels 23 January 2024:** The Court of Appeal of Brussels authorised the NGOs to proceed to the seizure of certain specific bank accounts of Fedasil, under certain conditions specified by the Court.[53] The NGOs announced that the amounts that would be seized following this authorisation – which could amount up to 2,9 million euros of penalties due by Fedasil – would be entirely used for the direct support of victims of the reception crisis.[54] Fedasil appealed both this decision and the subsequent seizure of one of their bank accounts. These appeals are currently pending. Until a decision has been taken in the procedures, the amounts on the seized bank account remain frozen.
- **ECtHR, Interim measures:**[55]
    - Interim measure of 31 October 2022, Camara v. Belgium, application no. 49255/22;[56]
    - Interim measure of 15 November 2022, Msallem and 147 Others v. Belgium, applications nos. 48987/22 and 147 others;[57]
    - Interim measure of 21 November 2022, Reazei Shayan and 189 Others v. Belgium, applications nos. 49464/22 and 189 others;
    - Interim measure of 1 December 2022, Almassri and 121 Others v. Belgium, applications nos. 49424/22 and 121 others.
- **ECtHR, Camara v. Belgium:**[58] the ECtHR found that Belgium violates article 6 of the European Convention on Human Rights and observed "a systemic failure on the part of the Belgian authorities to enforce final court decisions relating to the reception of applicants for international protection".
- **Labour court Antwerpen (Mechelen), 23/629/A and 23/630/A, 7 February 2024**:[59] Some Labour courts have recently ruled not to have competence on the suspension of code 207, but that in a situation where Fedasil does not assume its responsibility of providing material aid (which is systematically the case in the context of the reception crisis), the PCSW cannot refuse to grant financial aid.
- **Court of Cassation 12 February 2024:** In a ruling of 28 March 2023, the Brussels Labour Court fined Fedasil for €2.500 to be paid as a 'civil penalty', because of "clear procedural abuse".[60] The court ruled that Fedasil showcased a deliberate and manifest violation of the Reception Law, hereby not executing its legal mission. In this case, Fedasil fails to provide adequate legal justification for the violation of the Reception Law. Continuing, the Court states that an aggravating circumstance is disruption of the public service of justice: "this disruption is very

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52 The Brussels Times, 'Decision to stop providing shelter for single men reversed by Council of Sate', 13 September 2023, available at: https://tinyurl.com/4y9abm63.

53 Court of Appeal Brussels, Judgment n° 2024/QR/3 of 23 January 2024, available in French at https://tinyurl.com/26xap9mk.

54 Vluchtelingenwerk Vlaanderen, 'Government omission forces NGO's to seize bank accounts of Fedasil', 2 February 2024, available in Dutch at https://tinyurl.com/5fr4jd6t; Ciré, 'Court authorizes NGO's to seize Fedasil's bank accounts', 2 February 2024, available in French at https://tinyurl.com/mr45apnk; Le Soir, 'Three million seized on bank account of Fedasil on behalf of several NGO's', 2 February 2024, available in French at https://tinyurl.com/59y72rnx.

55 Until 24 January 2024, the European Court of Human Rights issued 2086 interim measures in total. At the time of writing, 175 interim measures were still active. See: Myria, 'Contact meeting International Protection', 24 January 2024, available at: https://tinyurl.com/yp3zbd4w.

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

57 The Brussels Times, 'Court urges Belgium to provide immediate shelter for 148 asylum seekers', 17 November 2022, http://bit.ly/3Jr6gO8.

58 ECHR, 'Camara v. Belgium', 18 July 2023, available at: https://tinyurl.com/4kvr9dyh.

59 Labour court Antwerpen (Mechelen), 23/218/A, 21 June 2023, available in Dutch at https://tinyurl.com/przyp9vh; Labour court Brussels, 23/1547/A, 18 September 2023, available in Dutch at https://tinyurl.com/2cenmxjy; resume of these decision available in Dutch at: https://tinyurl.com/6dctrks6; Labour court Antwerpen (Mechelen), 23/629/A and 23/630/A, 7 February 2024, available in Dutch at: https://tinyurl.com/29sfvnaf and https://tinyurl.com/p8k9kpbs.

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

significant in view of the number of cases and the urgency with which they have to be dealt with, profoundly affecting the functioning of the French-speaking labour court of Brussels, to the detriment of this court and, ultimately, of all its litigants". Both the Court of Appeal and the Court of Cassation upheld this conviction, imposing the maximum civil fine of €2,500 on Fedasil. [61]

*Detention of asylum seekers*

- **Statistics 2022:** In 2022, a total of 4,285 migrants were detained in closed centres. 3,300 persons were forcibly returned. It concerned 1,174 repatriations, 795 Dublin transfers, 1,329 refoulements at the border and 2 voluntary returns facilitated by the International Organisation for Migration (IOM). A total of 111 families, which amounts to 347 persons (195 children, 105 women and 47 men) resided in the housing units, with an average duration of stay of 41 days (see Detention – General).

- **Continued practice of systematic detention of asylum seekers at the border:** In its fourth periodic report on Belgium, the UN Committee against Torture formulated its concerns about the continued practice of systematic detention of asylum seekers at the border. In practice, standard motivations for the detention of asylum seekers at the border are being used without adequately considering their individual situations. This confirms the concerns about arbitrary detention previously formulated by UNHCR (see Border detention).

- **"Article 3 cell" verifies the compatibility of detention and expulsion with articles 3 and 8 ECHR:** Mid 2021, a specific cell with 3 legal experts was created within the Immigration Office to verify whether the detention and/or expulsion would violate article 3 and 8 ECHR. Figures provided by the Immigration Office show that in 2022, the cell analysed 2,250 files and gave its advice in 68 cases, of which 3 concerned general questions and 65 were individual cases.[62] Move Coalition finds that the unit is not easily reachable, and the decision-making process generally lacks transparency (see Detention on the territory).

- **ICAM-coaching as an alternative to detention:** In 2021, 60 new civil servants were recruited for the Immigration Office to start working for the newly founded department of 'Alternatives to Detention' as "ICAM-coaches" (Individual Case Management Support). These return-coaches provide intensive guidance for return. After receiving an order to leave the territory, a migrant will be invited to a series of interviews, where their file will be explained to them and a trajectory towards a return or other existing procedures will be organised (depending on the individual). Attendance is mandatory, and failure to cooperate with return procedures or to show up may result in detention. Since 2022, Dublin cases are, among other target groups, the priorities of the ICAM coaches (see Alternatives to detention).

- **Alternatives to detention – "Proactive return policy":** On 2 May 2024, a law for a "proactive return policy" has been adopted by the Belgian Parliament.[63] The bill aims at enshrining in the Aliens Act, *inter alia:* 1) the duty to cooperate in the organisation of transfer, expulsion, return or removal (this comprises forced medical examination in case of refusal); 2) the case management by civil servants of the Aliens office in the context of a return or transfer procedure (ICAM procedure); 3) a listing of the preventive measures and the less coercive measures that can be taken by the authorities and 4) banning the detention of families with minor children in closed centres, except in return houses (see Alternatives to detention).

- **Relevant case law on detention**

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61 Court of Cassation, Decision n° S.23.0046.F of 12 February 2024, available in French at https://tinyurl.com/5dceufs9.

62 Immigration Office, Annual Rapport 2022, available in Dutch at: https://tinyurl.com/mr4xaj3y.

63 Chamber of representatives, Law proposal on proactive return policy, 29 September 2023, available in Dutch and French at: https://tinyurl.com/352cu2n5.

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

*Content of international protection*

❖ **Beneficiaries of international protection without shelter:** In the context of the reception crisis, some applicants received international protection without access to the reception network and thus were homeless. In the absence of an address, obtaining a residence permit (A-card) at the local municipality is very difficult when receiving a positive decision on the international protection application. Without this permit, the status holder can encounter difficulties obtaining financial aid, opening a bank account, and renting a place to live.

❖ **Belgian Nationality:** In 2022, 48,482 third country nationals have acquired Belgian citizenship, an increase of 24% compared to 2021. Provisional data on 2023 indicate that this trend continues, with Belgian citizenship being granted to 46,414 persons between January and October 2023.
Legal discussions exist on the application of article 10 on Palestinian children born in Belgium. According to one vision, children from Palestinian parents born in Belgium have the Palestinian nationality, whereas others claim it is impossible for them to receive Palestinian nationality because Palestinian legislation on this matter is non-existent.[64] Legal case-law on this matter is inconsistent, and a ruling of the Court of Cassation is expected. On the basis of the second point of view, article 10 has indeed been applied to children from Palestinians born in Belgium. In 2023, the Immigration Office has sent 55 letters to local administrations who had granted the Belgian nationality in such cases, stating that these children have the Palestinian nationality and asking to change the nationality granted to these children. The federal Ombudsman has intervened, stating that the Immigration Office is not legally competent to instruct local administrations on the matter of nationality, this competence being reserved to the Central Authority for nationality or the public prosecutor.[65] In a reaction, the Secretary of State has stated that the letters do not instruct local administrations in these cases, but only provides information and advice, local administrations remaining exclusively competent to take the final decision.[66] However, the federal Ombudsman finds that the Immigration Office has composed these advisory letters in the same way as its (binding) instructions to local administrations in other matters concerning asylum and migration, and thus created confusion and chaos among local administrations, some communes having decided to ignore the letter whereas others have withdrawn the Belgian nationality of the persons involved. The Ombudsman advises the Immigration Office to stop sending these letters and to contact local administrations having received such a letter, to inform them that it does not dispose of any advisory competence in this matter and the received letter should not be considered[67] (see Naturalisation).

64 For an extensive overview of this legal discussion, see: 'Zijn in België geboren kinderen van Palestijnse origine Belg? Gemeenten en rechtbanken zijn bevoegd, niet DVZ', 21 november 2023 (modified 1 February 2024), available in Dutch at: https://bit.ly/3PFhVvu.

65 Federal Ombudsman, 'Advice 2023/06 to the Immigration Office: respect the legal competences regarding nationality', available in French at: https://bit.ly/3xlASwU.

66 Chamber of representatives, Commission of Internal Affairs, Security, Migration and Administrative matters, 10 January 2024, https://bit.ly/3TU3pm1, 14.

67 Federal Ombudsman, 'Advice 2023/06 to the Immigration Office: respect the legal competences regarding nationality', available in French at: https://bit.ly/3xlASwU.

- **Ongoing difficulties with the procedure of family reunification with beneficiaries of international protection:** Given the preparations of a new legislative proposal on this topic, the Federal Migration Centre (Myria) published a report establishing obstacles and formulating recommendations on the procedure of family reunification for beneficiaries of international protection. It establishes that the family reunification procedure for refugee families is very complex and challenging due to both the living circumstances of the applicants and the Belgian procedure. It concludes that if neither the delays are prolonged nor the application procedure is facilitated, international protection beneficiaries cannot exercise their right to family reunification in practice. A separate report explicitly highlights the issues that Afghan family members encounter in applying for a visa in view of family reunification since the takeover of power by the Taliban. As part of the Migration Deal of March 2023, the government changed some legal provisions for family reunification. It provides a new right to stay on the Belgian territory for parents of a minor child who receives international protection, a more precise definition of the rules for family reunification between a Belgian citizen and EU-citizens, the introduction of the concept of 'genuine care' as a prerequisite for family reunification as a parent of a Belgian child, the expansion of cessation grounds for some categories of family reunification and lastly a more precise and transparent right to family reunification for beneficiaries of temporary protection (see Family reunification).

- **Waiting lists for schools for non-Dutch speaking children:** Local schools' capacity is not always sufficient to absorb all non-Dutch speaking children entitled to education. During the school year of 2022-2023, hundreds of non-Dutch-speaking children were on a waiting list to get access to the Flemish OKAN-classes. During the current school year (2023-2024), there are sufficient places in Flemish OKAN classes for now, as far as is known. However, an efficient monitoring system of places in reception education is lacking. As a result, there is insufficient insight into the capacity of OKAN education in Flanders (see Access to education).

**Temporary protection**

The information given hereafter constitute a short summary of the main changes to the Belgian Report on Temporary Protection. For further information, see Annex on Temporary Protection.

*Temporary protection procedure*

- **Key statistics:** Between 10 March 2022 and December 2023, 77,636 persons received a temporary protection certificate in Belgium.[68] Ukrainians account for 97.8% of temporary protection holders.[69] In 2023, 1,520 attestations of registration were given, as opposed to 15,626 Temporary Protection certificates and 1,097 refusal decisions.[70] 60,000 people were effectively registered in the Aliens Register by the municipalities as of 15 February 2024.[71] From 10 March 2022 to December 2023, 58,803 persons stated upon registration not to be in need of reception, while 17,906 indicated needing it.[72] This means that 23% of the people fleeing from Ukraine indicated being in need of support concerning accommodation upon registration.

- **Scope of temporary protection**: Following the Russian invasion, the Belgian senate agreed on 25 February 2022 that the necessary steps should be taken to accommodate Ukrainian war refugees temporarily.[73] A registration centre was set up in Brussels for people with a potential right to temporary

68 Statbel, *Displaced persons from Ukraine,* available in English at: https://bit.ly/3ZmG5O4.
69 IBZ, *Temporary protection monthly statistics*, available in Dutch and French at: https://rb.gy/7er9ta (see table 2.7, year 2022) and; https://rb.gy/pzwj7v (see table 2.7, year 2023). The number of the 2022 period of March – December are added up with the 2023 period of January- December.
70 IBZ, numbers provided by e-mail on 5 April 2024.
71 Vlot (Flemish Taskforce), numbers provided by email on 13 March 2024.
72 Statbel, *Displaced persons from Ukraine,* available in English at: https://bit.ly/3ZmG5O4.
73 The Senate, *The senate passes a resolution on the Russian invasion in Ukraine,* 25 February 2022, available in Dutch and French at: http://bit.ly/3KPummS.

protection.[74] Between 10 March 2022 and 29 December 2023, 77,636 persons received a temporary protection certificate in Belgium.[75] Under the implementation decision, the Belgian Aliens Act provides that temporary protection is applied to the same categories of people who are eligible for temporary protection under the EU decision.[76] While this is the case overall, there are slight differences in interpretation and application. Belgium does not offer temporary protection to those who do not have a permanent residence permit in Ukraine. For those who fall outside the scope of Temporary protection, there is the possibility to apply for international protection. However, since the Council Implementation Decision, the asylum applications of Ukrainian nationals have been frozen, meaning that their request is not processed, and this will most likely remain so for as long as temporary protection is not suspended on a European level. On the other hand, the requirements for family reunification (or a "derived status") with a beneficiary have been significantly reduced.

- **Extension of temporary protection directive:** As a result of the extension of TPD, Ukrainian nationals now have a temporary residence permit that is valid until 4 March 2025.

- **Limited registration capacity:** Applicants for temporary protection are expected to present themselves at the registration centre from Monday to Friday between 8h30 and 13h. While in the beginning, all applicants could apply on the day they presented themselves, a shortage of personnel at the Immigration Office has led to limited registration capacity as of December 2023.[77] It has been observed on several occasions in the period January-March 2024 that a quota of 75 registrations per day is applied.[78] People who are not able to register receive an invitation to apply with priority the next day.[79] Persons who were not able to register due to the registration quota are not provided with reception solutions as Fedasil does not automatically take responsibility for this group.[80]

- **Prolonged waiting times for decisions on temporary protection:** Persons who do not receive a decision on their temporary protection application on the same day receive an attestation of registration which mentions they will be notified of the decision at a later stage. While at first, these persons received a decision within 3 days, there has been an increasing number of cases in which the waiting period lasted weeks or even months.[81] This problem returned intermittently and has been quite consistent during the period from December 2023 up until the time of writing (April 2024). The issue is due to both a shortage in personnel of IBZ and the increasing complexity of cases.[82] While waiting for a decision, applicants are not able to register at a municipality and there is generally no accommodation provided, except in exceptional cases such as pregnant women.[83]

- **Shortage of housing facilities for applicants and beneficiaries of temporary protection:** 23.3% of applicants for temporary protection indicate upon arrival to have a reception need.[84] This group faced serious issues in 2023. In the first period after the start of the war, Fedasil referred people expressing a housing need to the local municipalities on the basis of a list of the available places in each municipality. Up until a place at the local level was found, persons could stay in an emergency

74 Fedasil, *Reception of the Ukrainian nationals,* 4 March, 2022, available in English at: http://bit.ly/3KImDXF.
75 Statbel, *Displaced persons from Ukraine,* available in English at: https://bit.ly/3ZmG5O4.
76 Law of 15 December 1980 regarding the entry, residence, settlement and removal of aliens (Aliens Act), Article 59/27, available in Dutch and French at: https://bit.ly/3YaTMyC.
77 The infoline of Vluchtelingenwerk received numerous calls of people who were not able to register in the January-February 2024 period.
78 Observation by NGO on 22 January 2024; Observation by Vluchtelingenwerk on 4 March 2024.
79 Response from the Cabinet following enquiry Vluchtelingenwerk, 2 February 2024. On March 4th 2024, approximately 50 persons were not able to enter the registration centre on the same day; observation by Vluchtelingenwerk at the registration centre.
80 Vlot (Flemish Task Force), e-mail after enquiry Vluchtelingenwerk about reception rights for people with registration certificate, 29 February 2024.
81 In a case communicated to the Infoline of Vluchtelingenwerk Vlaanderen, a person who had applied for temporary protection at the beginning of July 2023 had not yet received a decision in September 2023.
82 Confirmation IBZ by e-mail, 11 March 2024.
83 *Ibid*
84 Statbel, Statbel, *Displaced persons from Ukraine,* available in English at: https://bit.ly/3ZmG5O4, numbers mentioned up until the end of 2023.

reception centre (Ariane). However, the willingness to provide housing solutions to this population is steadily decreasing on the local level and many reception centres at the local level are closing. This causes increasingly difficult progression from the emergency reception centre Ariane to the local level, which has led to Ariane equally becoming saturated and persons staying in this centre – where reception conditions are criticised and based on the idea of a short stay rather than prolonged stay – for longer periods, often up to several months.[85] Ariane being full, new applicants for temporary protection are no longer guaranteed to be given a place upon arrival.[86] Possible and used alternatives include homeless shelters provided by Samu social as well as an emergency reception centre (Hotel Plasky – provided by the Brussels based organisation Ukrainian voices).[87] Persons accommodated here can stay for one night and have to again present themselves at the registration centre the next day, indicating a continuing reception need and to enquire about the availability of places.[88] If persons do no longer present themselves, it is assumed there is no longer a need for reception.[89] Apart from the issues with accommodation, this instable living situation leads to serious administrative difficulties. For example, as long as they do not register in a commune on the basis of their address of residency, they cannot obtain a residence permit, which limits access to several fundamental rights such as the right to work, social aid, health insurance...[90]

*Content of temporary protection*

- **Residence permit**: Beneficiaries of temporary protection receive a temporary protection certificate necessary to apply for a residence permit (the A-card) at the local municipality.

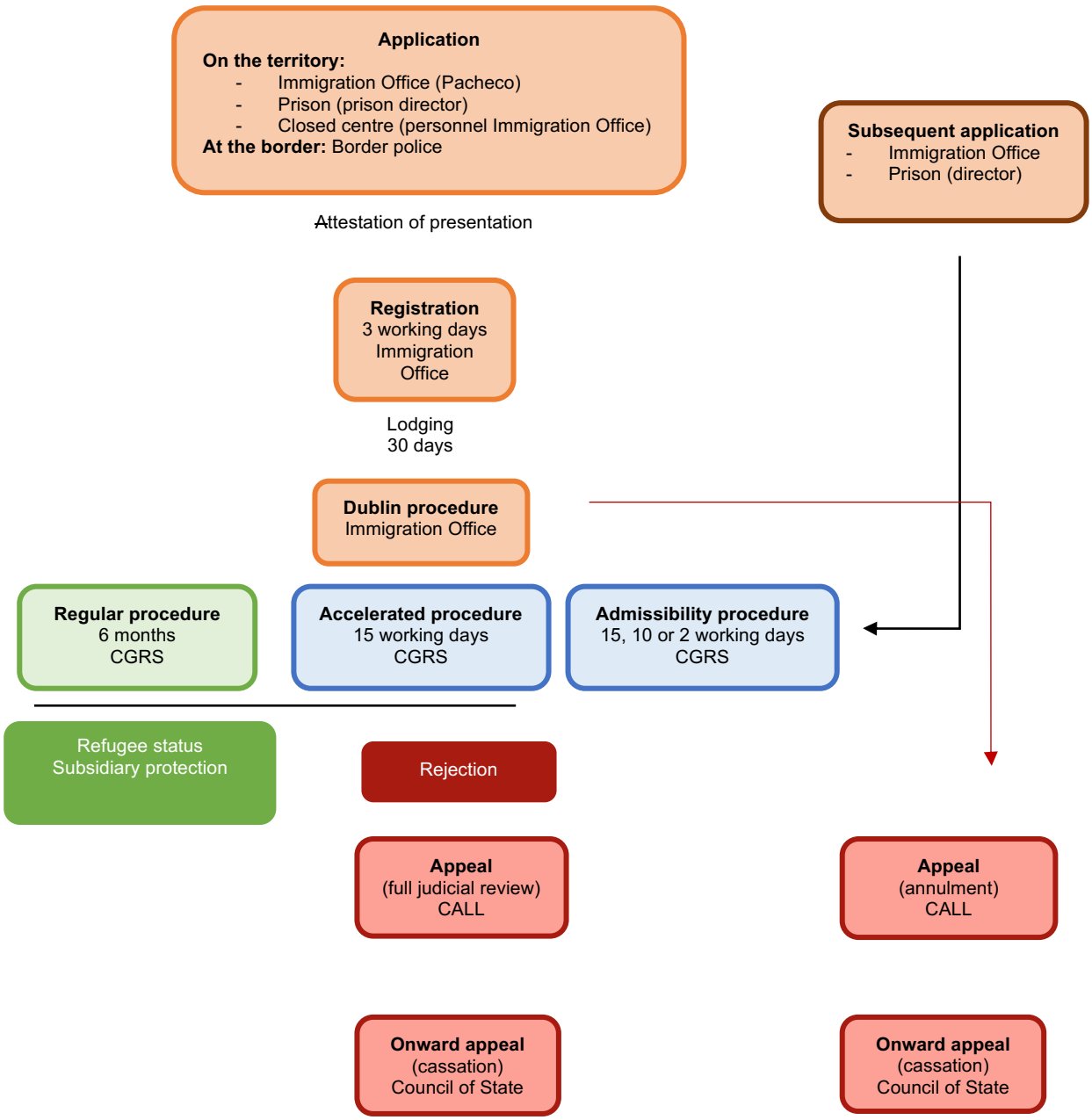
- **Rights of temporary protection holders**: Beneficiaries with a residence permit have the right to health insurance and medical care, legal assistance, and access to the labour market and the education system. They receive social benefits if they need financial aid and have the option to follow integration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

85 Myria, *Contact meeting,* 5 October 2022, p.45-46, available in Dutch at: https://bit.ly/3SDmKpq.
86 IBZ, e-mail following enquiry from Vluchtelingenwerk if there is always a reception place for vulnerable persons who indicate a reception need, 14 September 2023; confirmed by cases Infoline Vluchtelingenwerk.
87 Observation by Vluchtelingenwerk at the registration centre, 4 March 2024.
88 Observation partner organisation, 3 October 2023.
89 *Ibid.*
90 See for example: The Brussels Times, *Belgium's reception crisis: Ukrainian refugees now also sleeping rough,* 18 November 2022, available at: http://bit.ly/3KMcyZJ. The infoline of Vluchtelingenwerk Flanders has in recent months (end of 2023 – beginning 2024) received numerous reports of people who did not find a reception place upon arrival and did not know where to go.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

**Indicators: Types of Procedures**

Which types of procedures exist in your country?

- ❖ Regular procedure: ☒ Yes ☐ No
  - ▪ Prioritised examination:[91] ☒ Yes ☐ No
  - ▪ Fast-track processing:[92] ☒ Yes ☐ No
- ❖ Dublin procedure: ☒ Yes ☐ No
- ❖ Admissibility procedure: ☒ Yes ☐ No
- ❖ Border procedure: ☒ Yes ☐ No
- ❖ Accelerated procedure: ☒ Yes ☐ No
- ❖ Other: Regularisation procedure[93]
- ❖ Other: Residence permit for unaccompanied children

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

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

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

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

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

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

## 4. Number of staff and nature of the determining authority

| Name in English | Number of staff in 2023 | Ministry responsible | Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority? |
|---|---|---|---|
| Office of the Commissioner General for Refugees and Stateless Persons (CGRS) | 520 FTE | Independent | ☐ Yes ☒ In specific cases ☐ No |

The CGRS is responsible for examining applications for international protection and is competent to take decisions at first instance. The institutional independence of the CGRS is explicitly laid down in law.[94] It thus takes individual decisions on asylum applications and does not take any instruction from the competent Minister – or State Secretary – for Asylum and Migration. However, under certain circumstances defined by the Aliens Act, the latter can be involved in asylum procedures. For example, the Ministry can ask the CGRS to re-examine a previously obtained protection status. It can also request from the determining authority to prioritise a specific case.[95]

In 2022, the CGRS had a total of 520 FTE staff, with a total of 643 collaborators. During 2022 and in the first two months of 2023, around 170 new caseworkers were hired. An increase of around 50 to 70 new caseworkers is planned in March and April 2023, bringing the total to about 600 FTE staff. This number is higher than ever before and aims to eliminate the backlog of cases on the level of the CGRS (see also: Audit of the Belgian asylum authorities).[96]

Regarding its internal structure, the CGRS is divided into geographical departments and units responsible for certain asylum procedures and/or certain asylum applicants. It has two vulnerability-oriented units that provide support to caseworkers dealing with specific cases, as will be discussed further below. The Dublin procedure, however, is conducted by the Immigration Office before transmitting the application to the CGRS.

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

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

94 Article 57/2 Aliens Act.
95 Article 57/6 §2(3) Aliens Act.
96 Myria, Contact meeting 25 January 2023, available in French and Dutch at: https://bit.ly/3KATnSl, 16.

## 5. Short overview of the asylum procedure

### Registration

The Immigration Office is the mandated administration of the Minister responsible for the entry to the territory, residence, settlement and removal of foreign nationals in Belgium. It registers applications for international protection, including subsequent applications. It also decides on the application of the Dublin Regulation. If the Immigration Office decides that Belgium is the country responsible for treating the asylum application, it transfers the case to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS).

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

(a) on the territory with the Immigration Office, within 8 working days after arrival;[97]
(b) at the border with the border police, in case the asylum seeker does not dispose of valid travel documents to enter the territory; or
(c) in a prison with the prison director, or in a closed detention centre with the personnel of the Immigration Office, in case the person is being detained.

The applicant receives an "attestation of presentation" ("*bewijs van aanmelding" or 'attestation de presentation"*). The Immigration Office **registers** the application within 3 working days of the declaration, which can be prolonged up to 10 working days in case of large numbers of asylum seekers applying simultaneously. The applicant then has to **lodge** the application. This can take place either immediately when the person makes the application or afterwards but no later than 30 days after the presentation of the application; exceptional prolongations may be defined by Royal Decree. Following that stage, the applicant receives a "proof of asylum application" stating that they are a first-time applicant ("Annex 26") or a subsequent applicant ("Annex 26quinquies"). In practice, since several years, the **registration and lodging** of the applications take place on the same moment. In most cases, this happens on the same day on which the person presents themselves and makes the application. However, on some days with a high number of applicants and due to capacity issues of the Immigration Office, persons who present themselves (and thus make the application) receive a document to come back on a specific day and time within 3 days (and for a certain period in 2022, within 10 working days) to register and lodge their application[98] (see Limitations to the right to apply for asylum).

### First instance procedure

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

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

**Prioritised procedure:** The CGRS prioritises cases where:

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

There is no time limit for taking a decision in these cases.[99]

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97 Article 50(1) Aliens Act, Persons who already have a legal stay of more than three months in Belgium must apply for international protection within 8 working days after the termination of stay. Those in Belgium with a legal stay of less than three months must apply for international protection within this legal stay.

98 Myria, Contact meeting 29 November 2023, available in Dutch and French at: https://tinyurl.com/5hxbermr, 6; Myria, Contact meeting 21 September 2022, available in Dutch and French at: https://tinyurl.com/k98e7dkn, 8 and 9.

99 Article 57/6(2) Aliens Act.

**Accelerated procedure:** The CGRS takes a decision within 15 working days - although there are no consequences if the time limit is not respected - where the applicant *inter alia*: raises issues unrelated to international protection; comes from a safe country of origin; makes an application for the sole purpose of delaying or frustrating return; makes an admissible subsequent application; or poses a threat to national security or public order.[100]

**Admissibility procedure:** The CGRS decides on the admissibility of the application within 15 working days, 10 working days (subsequent applications) or two working days (subsequent application from detention). It may reject it as inadmissible where the applicant:

(a) comes from a first country of asylum;
(b) comes from a safe third country;
(c) enjoys protection in another EU Member State;
(d) is a national of an EU Member State;
(e) makes a subsequent application with no new elements; or
(f) is a minor dependant who, after a final decision has been taken on the application in their name, lodges a separate application without justification.[101]

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

**Appeal**

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

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

The CGRS mentions in its negative decisions the delays for appeals and whether they have suspensive effect or not. To this purpose, an additional paragraph was added in the conclusion of the following decisions:

- Decisions taken under an accelerated procedure when the time limit for an appeal is reduced to 10 days. The 10-day period for an appeal in the accelerated procedure is only applicable if the CGRS has taken the decision within 15 working days of receipt of the file. As this information is difficult to access, and the solution adopted so far is not sufficiently clear, it has been decided to include explicit information on appeals in this kind of decisions;
- Decisions declaring the application inadmissible, especially subsequent applications. These decisions include a paragraph on the suspensive nature or not of the appeal, as well as a paragraph mentioning the two periods of appeal that are applicable (10 or 5 days, depending on whether or not the applicant is being detained at the time of their application).[102]

100 Article 57/6/1 Aliens Act.
101 Article 57/6(3) Aliens Act.
102 CGRS, 'Addition of clause in some refusal decisions', 21 February 2019, available at: https://bit.ly/30uGPDd.

The CALL has no investigative competence and must decide based on all elements in the file presented by the applicant and the CGRS. In accordance with its "full judicial review" competence (*jurisdiction en plein contentieux*), it may:

(a) overturn the CGRS decision by granting a protection status;
(b) confirm the negative decision of the CGRS; or
(c) annul the decision if it considers essential information is lacking to decide on the appeal and further investigation by the CGRS is needed.

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

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

**Linking asylum and return**

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

Before issuing a return decision, the Immigration Office needs to check whether a return of the rejected applicant would not violate fundamental rights such as article 3 ECHR and article 8 ECHR. In this regard, the CGRS can include in a refusal decision a "clause of no-removal": a non-binding advice for the Immigration Office to not return a person to their country of origin because of a potential risk of inhuman treatment in case of return. For example, the CGRS can do this if it excludes a person from international protection or withdraws or revokes a previous decision granting someone international protection.
Mid 2021, a specific cell with 3 legal experts was created within the Immigration Office to verify whether the detention and/or expulsion would violate articles 3 and 8 ECHR (for more information on the 'article 3 cell': see Detention on the territory). Figures provided by the Immigration Office show that in 2022, the cell has analysed 2,250 files and has given its advice in 68 cases, of which 3 concerned general questions and 65 were individual cases.[103]

In two decisions in 2022, the Council of State judged that the Immigration Office, when issuing a return decision, needs to explicitly motivate in what way it took into account certain fundamental rights of the person such as the higher interest of the child, the family life and the health situation of the person.[104]

European and Belgian national case law are not yet aligned on the question whether the risk of violation of fundamental rights needs to be determined on the moment the return decision is taken or only on the moment of its execution. The CALL[105] and the Council of State[106] have previously judged that this risk must already be determined when the Immigration Office takes a return decision. The 'Commission Bossuyt' (a commission instituted by the secretary of state for asylum and migration with the mission of evaluating the policies on voluntary and forced return of migrants in Belgium) believes that it follows from

103 Immigration Office, Annual Rapport 2022, available in Dutch at: https://tinyurl.com/mr4xaj3y.
104 Council of State 9 June 2022, nr. 253.942, available in French at https://bit.ly/3GIIEsz and Council of State 28 March 2022, nr. 253.374, available in Dutch at https://bit.ly/3mcj1Ua.
105 E.g. CALL 8 March 2018, nr. 200.933; CALL 9 March 2018, nr. 200.976 and 200.977; CALL 5 September 2018, nr. 208.785; CALL 12 October 2018, nr. 210.906; to be consulted on the website of the CALL: https://www.rvv-cce.be/nl/arr
106 E.g. Council of State (11th Chamber), 28 September 2017, nr. 239.259, p. 5; Council of State (11th Chamber), 8 February 2018, nr. 240.691, p. 9; Council of State (14th Chamber), 29 May 2018, nr. 241.623, points 7 and 8; Council of State (14th Chamber), 29 May 2018, nr. 241.625, points 8 and 9;

case law from European courts, the Belgian constitutional court and the will of the Belgian legislator that this risk only needs to be determined on the moment of the execution of a return decision and not on the moment it is issued.[107]

Since June 2021, a newly founded department of 'Alternatives to Detention' is responsible for developing alternative measures for detention of persons without residence permit. The most important measure in this regard is the use of "ICAM-coaches" (Individual Case Management Support). These return-coaches provide intensive guidance for return. After receiving an order to leave the territory, a migrant will be invited to a series of interviews, during which their situation will be explained to them and depending on the situation, a trajectory towards a return or other existing procedures will be organised. Attendance is mandatory and failure to cooperate with return procedures or to show up may result in detention. However, there are ongoing discussions about the efficiency of this system, as many people are going to the first interview, but do not continue the trajectory afterwards.[108] Data provided by the Immigration Office show that in 2022, 1,396 adult persons were invited for an ICAM interview, out of which 502 persons were present at the appointment. Six trajectories were started for unaccompanied minors. Between 6 October 2022 and 31 December 2022, 489 persons in irregular stay who were intercepted on the territory by the police received an invitation for an ICAM-interview; 32 were present at the appointment.[109] Applicants for international protection residing in the reception network whose procedure results in a final negative decision (in the context of a Dublin-procedure or after a procedure at the CGRS) and who are designated open return- or Dublin-place will receive ICAM-coaching sessions. If they do not attend the interviews, the Immigration office informs Fedasil, which can then end the reception.[110] In 2022, 834 persons in such open return- and Dublin-places were invited to ICAM coaching, and 81 returned voluntarily. The Immigration Office has reported 52 persons who refused participation to Fedasil. [111] Figures on 2023 are not available yet.

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

**Indicators: Access to the Territory**

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☐ Yes ☒ No
2. Is there a border monitoring system in place? ☐ Yes ☒ No

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

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

#### 1.1. Border monitoring

In Belgium, no border monitoring system corresponding to the definition set by UNHCR is in place. However, several organisations have formed a coalition active in the field of administrative detention of

107 Final report of the Commission for the evaluation of the policy concerning voluntary and forced return of migrants, 15 September 2020, available in Dutch at https://bit.ly/3YEUTGR, p. 25 etc.
108 Chamber of representatives, Written question and response n° 55-824, Bulletin n°: B104 Tomas Roggeman 28 February 2023, available at: https://bit.ly/4azCK3L.
109 Immigration Office, Activity report 2022, available in French at https://tinyurl.com/mr2f8pvz, 62.
110 Article 4 Reception Act of 12 January 2007, available in French at: https://bit.ly/43CpLvz.
111 Office des étrangers, Rapport d'activités 2022, available at: https://bit.ly/3TCCTMU, 66.

migrants. Since January 2021, this coalition has been officially in place and known as Move (www.movecoalition.be). Move Coalition is accredited to visit detention centres. The visitors of Move visit all detention centres in Belgium on a weekly basis (see Conditions of detention).

### 1.2. Legal access to the territory

*Humanitarian visa*

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

Third country nationals can apply for a humanitarian visa. No exact criteria, definitions or requirements specified in law indicate who can obtain a humanitarian visa.[112] The Immigration Office has a broad margin of discretion and assesses each application on an individual basis. A humanitarian visa is not a right, but a favour granted by the government. Apart from humanitarian visa granted in the context of resettlement operations (see *Resettlement),* the Immigration Office distinguishes two types of situations in which humanitarian visa are granted:[113]

- "Enlarged family reunification": humanitarian visa can be granted to third country nationals who fall just outside of the scope of the right to family reunification. Examples of this category could be (non-exhaustive list):
  - siblings of an unaccompanied minor who has received international protection in Belgium and who accompany their parents who are reunited with the unaccompanied minor through family reunification;
  - people who have lost their right to family reunification because the age requirement is not fulfilled anymore or because the deadline for application of the visa has expired
- Humanitarian and/or urgent situations: humanitarian visa can be granted to third country nationals who do not feel safe in their country of origin, or for urgent economical or medical reasons. However, one cannot obtain a humanitarian visa with the explicit intention to apply for international protection upon arrival in Belgium.

In 2021, the Immigration Office received a record of 3,393 applications for a humanitarian visa: 490 for a short stay and 2,903 for a long stay. 2,102 applications received a positive answer: 245 for a short stay (55% approval rate) and 1,857 for a long stay (75% approval rate). The approval rate for short stay humanitarian visa has continuously declined since 2017, from 90% in 2017 to 55% in 2021. For long stay humanitarian visa, approval rates have also been declining as of 2017 (from 91% in 2017 to 65% in 2020) but have again increased in 2021 (75%). The majority of long stay humanitarian visa was accorded to Afghan nationals.[114]

In 2022, the Immigration Office received a total of 2,671 applications for a humanitarian visa: 520 applications for a short stay visa, and 2,151 for a long stay visa.[115] It granted 1,095 visa. 78% concerned long term visa, with a positive decision rate of 56%. For the short stay visa, the positive decision rate further declined to 51% in 2022.[116]

112 Articles 9 & 13 in the Aliens Act provide the only legal basis for humanitarian visa.
113 Immigration Office, *Activity report 2022*, available in French: https://bit.ly/3TCCTMU, 18-19.
114 Myria, *Migration in numbers and in rights: Year report Migration 2023 – Access to the territory*, available in French: https://tinyurl.com/5n7f8k94, p. 8.
115 Ibidem.
116 Ibidem.

| Positive decisions on humanitarian visas in 2022, per nationality[117] | |
|---|---|
| Country | Number |
| Afghanistan | 389 |
| Syria | 166 |
| Palestine | 93 |
| Turkey | 29 |
| Burundi-Eritrea | 26 |
| Other nationalities | 141 |
| **Total** | **870** |

Although the Immigration Office has a broad margin of discretion, its decision making cannot be arbitrary, and a thorough examination of each request is required. In a judgment of 24 January 2024, the CALL has annulled a decision of the Immigration Office refusing a humanitarian visa to the adult sister of an Afghan unaccompanied minor with international protection in Belgium. According to the CALL, the Immigration Office did not sufficiently consider the country-of-origin information regarding the situation of unmarried single Afghan women and their strongly deteriorated situation after the takeover of power by the Taliban. The CALL considers this information important to assess whether there is a situation of dependency in the sense of article 8 ECHR between the sister and her family staying in Belgium. By not considering this information, the CALL finds that Immigration Office has violated the duty of care and article 8 ECHR.[118]

A humanitarian visa needs to be requested by the third country national at the competent Belgian embassy in the country of origin and/or in the country of residence.[119] In the context of the war in Gaza that started in October 2023, several academics and lawyers have urged the Belgian government to allow Palestinians with Belgian family members to apply for humanitarian visa from distance, via e-mail, as has exceptionally been permitted for applications for family reunification.[120] The Belgian government only allows for the request of a humanitarian visa via e-mail in the very specific situation of so-called "hybrid cases", where other family members can apply for visa for family reunification but a certain family member does not qualify for family reunification and thus needs to apply for a humanitarian visa instead. In other situations, requesting humanitarian visa from distance remains impossible. In a recent ruling of 2 February 2024, the Brussels Court of first instance established the Belgian state had to allow a Palestinian family in Gaza to apply for humanitarian visa using all possible telecommunication means, exempting them in the first phase of introducing the application of a personal appearance in the embassy, and exempting them from providing documents that they cannot obtain in the current context in Gaza.[121] Up to the time of writing (April 2024), the Belgian government has not made an exception for the applications for humanitarian visa.[122]

The applicant needs to pay an administrative fee of €229 per adult person.[123] The law does not determine a deadline before which the Immigration Office needs to take a decision. If the humanitarian visa is granted, applicants receive a long-term visa. Upon arrival in Belgium, they are given a temporary

117 Immigration Office, *Activity report 2022*, available in French: https://bit.ly/3TCCTMU, 18-19. For data on humanitarian visa requests and recognitions in 2023, see report Immigration Office 'Visa request – Monthly statistics, January 2024', available in French at https://tinyurl.com/3pa62mw5.

118 CALL, Decision N° 292036, 17 July 2023.

119 Article 9, Aliens Act.

120 Pascal Debruyne and others, "Maak van humanitaire praat een daad: zorg dat Palestijnen humanitaire visa per e-mail kunnen aanvragen", opinion piece in De Morgen, 23 January 2024, available at: https://bit.ly/3xf8vRe.

121 Brussels Court of First Instance, Decision 2023/323/C of 2 February 2024, available in French via https://bit.ly/4angpq4.

122 Myria, *Gaza strip: assistance and evacuation of Belgians and visa applications,* 14 February 2024, https://tinyurl.com/mwmbc2ct.

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

residence permit valid for 1 year. This residence permit can be extended annually. The extension can be subject to certain criteria such as proof of cohabitation with the family member in Belgium and the proof of work. Third country nationals who arrived in Belgium with a humanitarian visa, have the possibility to apply for international protection.

*Resettlement*

1. Are there resettlement operations in place? ☒ Yes ☐ No

2. If so, how many resettlement places have been pledged and how many applicants for international protection were effectively resettled by the end of the year 2023?
1,250 places were pledged, 71 applicants were resettled in practice

Since 2013, Belgium has a structural resettlement programme base on annual quotas.[124] Fedasil manages the Belgian resettlement programme with several partners. UNHCR identifies vulnerable refugees in third countries. Afterwards, CGRS officials engage in conversations with the selected persons – online or live after travelling to their country of residence – in order to screen the person's vulnerability and to carry out the required security checks. If a person is eligible to be resettled to Belgium, Fedasil carries out pre-departure medical and social screenings and the third country national receives a humanitarian visa and a pre-departure cultural orientation by Fedasil, 'BELCO'.[125] IOM is involved for the reservation of flights, some last medical checks and the accompaniment of the person from departure until arrival in Belgium.[126] Upon arrival in Belgium, the person can introduce an application for international protection.

Over the period 2013-2022, Belgium resettled 4,501 refugees. The programme involved mainly Syrians from the neighbouring Turkey, Jordan and Lebanon, and Congolese from the Great Lakes region.[127] Belgium initially pledged to resettle 1,250 persons in 2022, 1,400 in 2023 and 1,500 in 2024. The pledges for 2023 and 2024 were afterwards lowered to 500 in both years, due to the reception crisis. For 2025, Belgium pledged to resettle 1,000 persons.

Due to the ongoing reception crisis (see Constraints to the right to shelter) the resettlement programme is severely impacted. During 2022, only 71 out of 1,250 resettlements (6%) were effectively executed. [128] These 71 were mainly Syrian refugees being transferred from Jordan, Egypt or Lebanon. In 2023, 287 persons were resettled to Belgium.[129] The majority of resettled individuals are Congolese refugees transferred from Rwanda, followed by the Syrian refugees, mainly relocated from Jordan and Egypt.

| Number of third country nationals resettled to Belgium[130] | |
|---|---|
| Year | Number |
| 2015 | 276 |
| 2016 | 452 |
| 2017 | 1309 |
| 2018 | 880 |

124 www.resettlement.be
125 Fedasil, BELCO – Belgian cultural orientation, available in French at: https://bit.ly/3xdmC9y.
126 Fedasil, '10 years of resettlement in Belgium', 5 October 2023, available in French at: https://bit.ly/43D2mKs.
127 CGRS, 'Resettlement', available at: https://bit.ly/43yP6H0.
128 Fedasil, 'Resettlement 71 refugees in 2022', 5 January 2023, available in Dutch via http://bit.ly/3ZPGBop. Statistics available via https://bit.ly/3Js9jpq; Standaard, 'For refugees who want to come to Europe via legal pathways, there is no place in Belgium', 24 January 2023, available in Dutch at: http://bit.ly/3ZALJfS.
129 Fedasil, 'Resettlement of 287 refugees in 2023', 2 February 2024, available in English at https://tinyurl.com/ysm34ek9.
130 Fedasil, Resettlement of refugees (2013-2023), available in English at: https://tinyurl.com/3z5z3yc9.

| | |
|---|---|
| 2019 | 239 |
| 2020 | 176 |
| 2021 | 964 |
| 2022 | 71 |
| 2023 | 287 |

In 2023, Fedasil opened a reception centre dedicated to the reception and support of resettled refugees.[131] It also started to invest in a Community Sponsorship programme in collaboration with Caritas International,[132] as an alternative reception model to secure the effective implementation of resettlement programmes in the future.

*Relocation*

1. Are there relocation operations in place? ☐ Yes[133] ☒ No

2. If so, how many relocation places have been pledged and how many applicants for international protection were effectively relocated by the end of the year? 0

Up until 2021, Belgium had an annual relocation policy in place. The highest number of relocated asylum seekers were registered in 2016 and 2017 (200 and 895, respectively) but significantly decreased in the following years, reaching only 18 in 2020 and 43 in 2021. After the fire in the Moria camp in Greece on 9 September 2021, the Belgian government pledged to relocate 117 persons in 2021. Due to administrative issues in Greece and the reception crisis in Belgium, only 43 persons were effectively relocated. The remaining 74 persons would be relocated in 2022.[134] Of this remaining group, 6 persons (1 family) was relocated in 2022. The remaining 68 persons were taken of the Belgian relocation list, so they could be relocated by other member states. In 2023, 32 persons were relocated from Cyprus and in 2024 another 18 persons from Cyprus. These relocations from Cyprus took place in the context of a voluntary pledge linked to the negotiations on the EU Migration Pact.[135]

No pledge was made for 2023, as the Belgian government indicated it does not consider relocation as an effective solution to structural issues of the European asylum system.[136] After European Commission president Ursula von der Leyen called on other EU member states for solidarity with Italy during her visit to Lampedusa, Secretary of State Nicole de Moor announced Belgium would not reply positively to a request of relocation from migrants having arrived on Lampedusa, stating that the reception crisis Belgium is facing makes it impossible to agree to ad-hoc relocation requests. Unofficially, this position was also prompted by Italy's refusal to take back applicants for international protection for which it is responsible under the Dublin regulation.[137]

131 Fedasil, 'Resettlement of 287 refugees in 2023', 2 February 2024, available in English at https://tinyurl.com/ysm34ek9.
132 Information available at: http://bit.ly/3ZBB0Sr.
133 This was valid until 2021, while no pledge for relocation was made in 2022 and since 2022 relocation programme stopped.
134 Myria, *Contact Meeting,* 19 January 2021, available in French: https://bit.ly/3HQ18z7.
135 Information provided by cabinet of the Secretary of State for Asylum and Migration, 25 March 2024.
136 Chambre des représentants de Belgique, Policy note on asylum and migration, 3 November 2021, available in French: https://bit.ly/3rKjJH4.
137 De Standaard, 'Despite Von der Leyen's call, Belgium is not helping Italy', 19 September 2023, available in Dutch at: https://bit.ly/3PBFp4A.

## 2. Registration of the asylum application

**Indicators: Registration**

1. Are specific time limits laid down in law for asylum seekers to lodge their application? ☒ Yes ☐ No
2. If so, what is the time limit for lodging an application? 8 days[138]
3. Are registration and lodging distinct stages in the law or in practice? ☒ Yes[139] ☐ No
4. Is the authority with which the application is lodged also the authority responsible for its examination? ☐ Yes ☒ No
5. Can an application be lodged at embassies, consulates or other external representations? ☐ Yes ☒ No

The Immigration Office is the authority responsible for the registration of asylum applications and for establishing the country responsible for examining the application for international protection. The Commissary-General for Refugees and Stateless persons (CGRS) is responsible for the examination of the well-foundedness of the applications for international protection.

**The registration process**

The law foresees a three-stage registration process:

1. The asylum seeker "makes" (*présente*) their application to the Immigration Office within 8 working days after arrival on the territory.[140] An application at the border is made with the Border Police Section of the Federal Police immediately when the person is apprehended at the border and asked about their motives for entering Belgium.[141] The application can also be made in prison with the prison director or in a closed centre with personnel of the Immigration Office. These authorities refer the application immediately to the Immigration Office. Other applicants (the large majority) make their application directly at the Immigration Office (previously at the arrival centre 'Petit Château/Klein Kasteeltje', since August 2022 at the building of the Immigration Office, Pachecolaan 44, 1000 Brussel - Cube). The asylum seeker receives a "certificate of presentation" (*attestation de présentation/bewijs van aanmelding*) as soon as the application is made.[142]
   Under the law, failure to apply for a residence permit after irregularly entering the country or to apply for international protection within the 8-day deadline constitutes a criterion for determining a "risk of absconding".[143] It is not clear if or to what extent these provisions are currently being applied. The CGRS can also consider non-compliance with this deadline as one of the elements in assessing the credibility of the asylum claim.
2. The Immigration Office registers the application within 3 working days of "notification".[144] This can be prolonged up to 10 working days when a large number of asylum seekers arrive at the same time, rendering it difficult in practice to register applications within the 3 working days deadline.[145]

138 The applicant must make/present the application within 8 working days of arrival in Belgium. The Immigration Office must register the application within 3 working days after the application is made. The applicant then must lodge the application within 30 days after the presentation of the application. In practice, registration and lodging are done on the same moment since several years. Although in the context of the asylum procedure, no sanction is applied if the applicant does not make the application within 8 working days of arrival in Belgium, a long delay may raise questions about the reality of their fear, and they might have to explain in the course of their asylum procedure why they have waited so long to ask for protection.
139 In practice, registration and lodging are done on the same moment since several years.
140 Article 50(1) Aliens Act.
141 *Ibid*.
142 Article 50(2) Aliens Act.
143 Articles 1(11) and 1(2)(1) Aliens Act.
144 Article 50(2) Aliens Act.
145 *Ibid*.

3. The asylum seeker "lodges" (*introduit*) their application either immediately when it is made, or as soon as possible after the "notification" but no later than 30 days after the application has been made.[146] This period may exceptionally be prolonged by way of Royal Decree, which has not occurred so far. When the application is lodged, the asylum seeker receives a "proof of asylum application" certifying their status as a first-time applicant ("Annex 26") or a subsequent applicant ("Annex 26 quinquies"). The Immigration Office informs the CGRS of the lodging of the application.[147]

In the context of the COVID-19 sanitary measures, the three-phase system was changed and applicants now immediately lodge their application at the registration centre when they make the application. They instantly receive the Annex 26. The aim is to avoid unnecessary movements of applicants between the different services and to respect the 3-day time limit of article 50(2) of the Aliens Act even if confinement is necessary. This system is currently still being applied. Consequently, asylum applications are now being registered and lodged on the same day.[148]

**Limitations to the right to apply for asylum**

On 22 November 2018 a maximum quota per day on the number of people who could make their asylum application was introduced. This measure was suspended by the Council of State on 20 December 2018.[149] In the course of 2019 and the beginning of 2020, some isolated incidents concerning access to the asylum procedure were reported.[150]

Due to the outbreak of the **COVID-19 pandemic**, the Immigration Office closed its doors to the public on 17 March 2020. On 3 April 2020 the Immigration Office re-opened its doors and, due to the sanitary measures imposed by the government, launched a new online registration system for persons who wanted to apply for international protection. Asylum seekers faced various obstacles in accessing the asylum procedure due to this online registration system.[151] The Brussels court of first instance, seized by several NGOs, condemned the Belgian state, stating that completing the online registration was equal to 'the formal making of a request for international protection' and should therefore give the immediate right to reception conditions. As a result, the Immigration Office suspended the online registration system and resumed the previous system of physical, spontaneous registrations on 3 November 2020.

In the context of the **reception crisis** that started mid-October 2021, access to the asylum procedure was significantly impacted throughout 2022. Single men were regularly not allowed to register their application and were in this case not always given an appointment to make their application on a later specific date[152]

146 Article 50(3) Aliens Act.
147 *Ibid*.
148 Myria, *Contact meeting*, 16 September 2020, available in French at: https://bit.ly/3sE592s.
149 Council of State, Decision No 243.306, 20 December 2018, available in Dutch at: https://bit.ly/2WquTQK. For further information, see the previous AIDA report Belgium 2018 update, p. 15 and 22, https://bit.ly/3SAFd64.
150 For further information, see previous AIDA reports, such as AIDA Belgium 2018 update, p. 15 and 22, https://bit.ly/3SAFd64.
151 See Vrt Nws, Vrt Nws, *Asylum seekers wait on the streets for weeks before being able to register: "Barely 1 in 3 gets the chance",* 8 May 2020, available in Dutch at: http://bit.ly/3t38o3D.
152 Myria, Contact meeting September 2022: Information provided by the Immigration Office in French (p. 9): « *Comme expliqué précédemment, la capacité d'enregistrement ne peut être représentée par un chiffre concret. La capacité d'enregistrement de l'OE dépend d'une part du nombre de personnes qui se présentent, mais aussi du profil des personnes qui se présentent. Par exemple, l'enregistrement d'un MENA prendra beaucoup plus de temps que, par exemple, l'enregistrement d'un homme isolé. Il est donc impossible de représenter cette capacité d'enregistrement par un chiffre précis. En fait, la capacité est évaluée directement sur place et ajustée en fonction de la capacité dans la salle d'attente à ce moment-là.*", full report available at https://bit.ly/3T1jvZ0; Myria, Contact meeting october 2022: Information provided by the Immigration Office in French (p. 7) : « *Non, il n'y a pas eu de changement depuis la réunion de contact de septembre. Il est vrai qu'en cas d'afflux très important, tout le monde ne peut pas avoir accès au bâtiment le même jour, et tout le monde ne peut pas non plus recevoir une invitation à se représenter à une date ultérieure. En effet, le OE n'a aucune idée du nombre de familles/personnes vulnérables qui se présenteront le lendemain, ce qui rend difficile l'estimation du nombre d'hommes isolés qui pourront être enregistrés le ou les jours ouvrables*

making it impossible to ensure the registration of their request within three days after their presentation at the Immigration Office. After the location for registration of applications for international protection moved from 'Petit Château' to the headquarters of the Immigration Office ('Pacheco') on 29 August 2022, access to the registration process improved but remained difficult on certain days due to the limited registration capacity at Pacheco. For a certain period in the second half of 2022, the delay for registering the applications was officially prolonged from 3 to 10 working days, in application of article 50 §2 Aliens Act. The registration capacity depends each day on the available personnel, the number of applicants and their profiles and can thus not be predicted. Priority is always given to minors, families and vulnerable people. Single men who cannot be registered on the day they present themselves, are now given a paper with an invitation to present themselves at another specific moment within 3 working days. This paper is not individualised and is thus not considered a proof of making an asylum application by any other Belgian government institution, such as Fedasil (the federal agency responsible for the reception of asylum seekers). Since Fedasil requires an annexe 26 or other proof of registering an asylum application before allowing access to the reception network, persons who receive an appointment to come back on a later moment, do not have access to reception during that waiting time. This practice is not in conformity with the case law of the Court of Justice of the European Union, which states that a person needs to be considered an applicant for international protection as soon as they present this request to the relevant authorities; as of this moment, the person needs to be granted the rights to which an asylum seeker is entitled, such as the right to reception.[153] This has been confirmed by the Brussels Court of first instance in a judgment of 29 June 2023, in which the Belgian State was condemned for not respecting the right to access the asylum procedure:µ

> (translation from French) "While the Court can understand that it is not possible to register every application for international protection on the same day as it is made, which is not required by the applicable provisions nor claimed by the applicants, it is inadmissible that some people were obliged to sleep outside the building for several days in a row in the hope that the next day they would be able to enter the building so that a certificate of presentation could be issued to them in accordance with Article 50 §2 of the Law of 15 December 1980. (...) Indeed, as long as the person concerned has not been issued with a document certifying that he has presented himself, not only will he not be able to claim material aid, but the following delays, set by the Directive and the Law of 15 December 1980, will not begin to run: * the 3 (or 10) day time limit within which the responsible authority must register the application; * the time limit for submitting the application, which then determines the start of the time limit within which the responsible authority must rule on the application. (…) The Belgian State's assertion that the applications were always registered within 3 (or 10) days of their submission, assuming it to be correct, is, in this respect, irrelevant, since it is established, on the basis of the foregoing, that, it has, unjustifiably, delayed the moment

*suivants. De cette façon, l'OE essaie de pouvoir donner la priorité aux familles et aux personnes vulnérables à tout moment. Toutefois, l'objectif reste toujours d'enregistrer toutes les personnes qui se sont proposées dans un délai d'une semaine au plus tard le vendredi de cette même semaine ; ce qui réussit généralement. La priorité absolue est toujours accordée aux MENA, aux familles et aux personnes vulnérables.* », full report available via https://bit.ly/3ZBF6d7.

153 EU Court of Justice, *Commission vs. Hungary,* 17 December 2020, §97, available in English at https://tinyurl.com/ycbmu28d; EU Court of Justice, C-36/20 PPU, 25 June 2020, available in English at https://tinyurl.com/3fcrj4sw, §91-94: "Lastly, it is important to note again that recital 27 of that directive states that third-country nationals and stateless persons who have expressed a wish to apply for international protection are applicants for international protection, and that they should therefore comply with the obligations, and benefit from the rights, under Directives 2013/32 and 2013/33. The second sentence of that recital further states that, to that end, Member States should register the fact that those persons are applicants for international protection as soon as possible. It follows from all of the foregoing that a third-country national acquires the status of an applicant for international protection, within the meaning of Article 2(c) of Directive 2013/32, from the point when he or she 'makes' such an application. Whilst it is for the Member State concerned to register the application for international protection, pursuant to the first and second subparagraphs of Article 6(1) of that directive, and the lodging of that application requires, in principle, that the applicant for international protection complete a form provided for that purpose, in accordance with Article 6(3) and (4) of that directive, the act of 'making' an application for international protection does not entail any administrative formalities, as the Advocate General observes in point 82 of his Opinion, since those formalities must be observed when the application is 'lodged'."

at which the person is finally offered the opportunity to submit his application for international protection (even though this stage does not require the completion of any particular administrative formality) and, consequently, the running of all subsequent legal deadlines."[154]

Even after the judgement of 29 June 2023, access to the asylum procedure remained problematic on certain days. In 2023, there were at least 8 days on which not all applicants were able to register on the day of presentation at the registration centre. In 2024, up to the time of writing, there were also several days on which single men were not able to register on the day they came to make their application. On 6 May 2024, around 70 persons who came in family context were not able to enter the registration centre; they received an appointment to come back for registration 2 days later. The personnel of the Immigration Office inquired whether the families had a place to stay to cover these two days; persons without a place were allowed to enter, persons indicating to have a solution, were invited to come back later.[155]

**Procedure after registration**

The international protection department of the Immigration Office is responsible for:

- Receiving the asylum application;
- Registering the asylum seeker in the so-called "waiting register" *(wachtregister/registre d'attente),* a provisional population register for foreign nationals (this occurs at the stage of the lodging phase);
- Taking fingerprints and a photograph;
- Conducting the Dublin procedure.

After having applied for asylum, the applicant is invited at the Immigration Office on a later date for a short interview to establish their identity, nationality and travel route. If there are indications that another country is responsible under the Dublin Regulation, the applicant is interviewed about the reasons for leaving, and what motivated them to move to Belgium. Since the law does not provide for the presence of a lawyer during interviews at the Immigration Office, lawyers cannot be present during this 'Dublin interview'.

If Belgium is the responsible country under the Dublin Regulation, the Immigration Office and the asylum seeker, with the help of an interpreter, fill in a questionnaire for the CGRS about the reasons why they fled their country of origin, or, in case of a subsequent asylum application, which new elements are being submitted. Afterwards, the file, including this questionnaire, is sent to the CGRS for further examination and a decision. [156] The asylum section of the Immigration Office is furthermore responsible for the follow-up of the asylum seeker's administrative residence status throughout the procedure as well as the follow-up of the final decision on the asylum application. In case of a negative decision, the Immigration Office will generally issue an order to leave the territory.[157] In case the applicant received a positive decision (granting of refugee status or subsidiary protection status), they need to present an attestation issued by the CGRS to their local commune which will register them in the register for aliens and issue a temporary residence card ('A-card', valid 5 years for persons with refugee status and 1 year, prolongable with 2 times 2 years for beneficiaries of temporary protection). For the transposition of this temporary residence permit to a 'stay for an unlimited period' after 5 years, the commune needs to ask a prior instruction from the Immigration Office.[158]

In 2022, there have been significant delays in the asylum procedure at the stage of the Immigration Office, due to a high influx of cases and understaffing issues at the Immigration Office. Even though the lodging

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154 Tribunal of first Instance Brussels, 29 June 2023, nr. 2022/4618/A, available in French at https://tinyurl.com/3xmwjkxx.

155 Based on on-site findings done by the NGO Vluchtelingenwerk Vlaanderen, that is present at the registration centre on a daily basis.

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

157 Unless the applicant has a residence permit on another basis, other parallel residence procedures are ongoing or other reasons related to art. 3 ECHR stand in the way of issuing an order to leave the territory.

158 See Immigration Office, 'Protection Status', available in Dutch, French and English at https://tinyurl.com/ujhuau65.

takes place no later than 30 days after the application has been made following legal standards, the first interview was sometimes conducted more than several months later in certain cases.[159] Currently, waiting times significantly decreased, as did the backlog of cases pending at the international protection department of the Immigration Office (12,531 pending applications in February 2023 compared to 6,991 in February 2024).[160]

# C. Procedures

## 1. Regular procedure

### 1.1. General (scope, time limits)

**Indicators: Regular Procedure: General**

| | | |
|---|---|---|
| 1. | Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | 6 months |
| 2. | Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | ☒ Yes ☐ No |
| 3. | Pending cases at first instance as of 31 December 2023:[161] | |
| | ❖ Immigration Office | 6,991[162] |
| | ❖ CGRS | 27,702[163] |
| 4. | Average length of the first instance procedure in 2023: | 434[164] |

The asylum applications for which Belgium is responsible according to the Dublin Regulation are transferred to the office of the CGRS to be examined on their merits. The CGRS, the competent determining authority, exclusively specialises in asylum decision-making. In a single procedure, the CGRS first examines whether the applicant fulfils the eligibility criteria for refugee status. If the applicant does not meet these criteria, the CGRS will automatically examine whether the applicant is eligible for subsidiary protection.[165]

The CGRS has the competence to:[166]

- ❖ Grant or refuse refugee status or subsidiary protection status;
- ❖ Reject an asylum application as manifestly unfounded;[167]
- ❖ Reject an asylum application as inadmissible;[168]
- ❖ Apply cessation and exclusion clauses or revoke refugee or subsidiary protection status (including on instance of the Minister);

159 Myria, Contact meeting 19 January 2022, available in French and Dutch at https://bit.ly/3sy9SFN, 14.
160 Immigration Office, 'Applications for international protection: monthly statistics February 2023', available in French at: https://tinyurl.com/msxz4ban, 12 and 'Applications for International protection: monthly statistics February 2024', available in French at: https://tinyurl.com/482fphcw, 12.
161 Statistics provided by the Immigration Office, January 2021. See also an overview of statistics of the CGRS available in Dutch at: https://bit.ly/3iI2dhs.
162 Immigration Office, 'Applicants for international protection – monthly statistics: February 2024, available in French at: https://tinyurl.com/482fphcw, 12.
163 Concerning a total of 33,624 persons: CGRS, Asylum statistics: February 2024, available in English at https://tinyurl.com/ky9t63be; this compared to 18,390 pending cases in February2023, concerning a total of 21,618 persons; CGRS, Asylum statistics: February 2023, available at: https://tinyurl.com/5b6n6dfk.
164 In 2021, the average length of the first instance procedure was of 266 days. No similar average was provided for 2022. In the Contact meeting of Myria of 20 September 2023, the CGRS discussed the average length of the asylum procedure extensively: Myria, Contact Meeting International Protection, 20 September 2023, available in French and Dutch at: https://tinyurl.com/2dwfke25, 27-30.
165 Article 49/3 Aliens Act.
166 Article 57/6(1) Aliens Act.
167 Article 57/6(1)(2) Aliens Act.
168 Article 57/6(3) Aliens Act.

- ❖ Terminate the procedure in case the person does not attend the interview, among other reasons, and reject the application in some cases;[169] and
- ❖ Issue civil status certificates for recognised refugees.

The CGRS has to decide within 6 months after receiving the asylum application from the Immigration Office.[170] This may be prolonged by another 9 months where: (a) complex issues of fact and/or law are involved; a large number of persons simultaneously apply for asylum, rendering it very difficult in practice to comply with the 6-month deadline; or (c) the delay is clearly attributed to the failure of the applicant to comply with their obligations.[171]

Where needed, the deadline can be prolonged by 3 more months.[172] If the deadline is extended, the CGRS should inform the applicant of the reasons and give a timeframe within which the decision should be expected.[173]

In cases where there is uncertainty about the situation in the country of origin, which is expected to be temporary, the deadline for a decision can reach a maximum of 21 months. In such a case, the CGRS should evaluate the situation in the country of origin every 6 months.[174]

As in the previous years, the CGRS was unable to reduce the backlog of pending cases in 2023. The total work stock - i.e. the number of files for which the CGRS has not yet taken a decision - has steadily increased from 12,633 pending cases in 2020 to 16,415 at the end of 2022, and further up to 27,702 by the end of 2023. Since 6,500 of these files can be considered normal caseload, the actual backlog amounted to 21,202 cases in February 2024.[175] The CGRS gives two reasons for this considerable increase in 2023: the fact that despite increased productivity, there were more applications than decisions on average every month in 2023 and secondly, the fact that the Immigration Office submitted considerably more cases to the CGRS (more than 3,000 applicants per month in 2023).[176]

Aiming to clear the backlog in all stages of the asylum procedure by optimising the functioning of the Belgian asylum authorities, an audit of these authorities (Immigration Office, CGRS, CALL and Fedasil) was conducted in 2022. The main results indicated a lack of personnel at the Immigration Office and the CGRS, outdated IT systems hindering the efficient exchange of information between the different authorities and significant backlogs of cases at the different authorities.[177] In a policy note published on 27 October 2022, the Secretary of State praised the increase in the amount of decisions taken by the CGRS, noting that it was not only due to an increase in the number of caseworkers. She believes that the influx of applicants has to be reduced as well, which can only be achieved with a European solution.[178] The director of the CGRS stressed the importance of reducing the backlog at the level of the CGRS.[179] Among others it launched a pilot project 'Tabula Rasa' that introduces a written questionnaire that can be filled in by the applicant before the CGRS interview. As a result of these initiatives, the CGRS took 23.6%

169 Article 57/6(5) Aliens Act sets out the reasons for terminating the procedure.
170 Article 57/6(1) Aliens Act.
171 *Ibid*.
172 *Ibid*.
173 Article 57/6(1) Aliens Act.
174 *Ibid*.
175 CGRS, Asylum statistics: February 2024, available in English at https://tinyurl.com/ky9t63be.
176 CGRS, "Asylum statistics: survey 2023", available at: https://bit.ly/4atYCxe.
177 De Standaard, 'Audit asylum authorities revealed weaknesses: too little personnel and outdated IT-systems', 4 October 2022, available in Dutch at https://bit.ly/3J5UM18.
178 Nicole de Moor, 'Policy Note Asylum and Migration', 3649/008, 27 October 2023, available in French and Dutch at: https://tinyurl.com/5e6t9j89, 3.
179 Commissary-General for Refugees and Stateless persons Dirk Van den Bulck: "All of us at the CGRS will continue to do everything possible to reduce the backlog in order to return to the situation where all applicants receive a decision within a short period of time. This is as important as taking the right decision, which means granting international protection status to all those who need protection." website CGRS: https://bit.ly/3ZCVPgi.

more decisions than in 2022. Despite these efforts, the backlog of the CGRS kept increasing over the course of 2023. (see Number of staff and nature of the determining authority).[180]

### 1.2. Prioritised examination and fast-track processing

The CGRS may prioritise the examination of an asylum application where:[181]

a. The applicant is detained or is subject to a security measure;
b. The applicant is serving a sentence in a penitentiary facility;
c. The Immigration Office or the Secretary of State for Asylum and Migration so requests; or
d. The asylum application is manifestly well-founded.

In practice, the examination is prioritised for applicants in detention, applicants who have filed a subsequent application for international protection, unaccompanied minors, applicants who obtained a protection status in another EU member state, and applicants from safe countries of origin. In 2023, the CGRS also prioritised the examination of specific profiles with a relatively high protection rate from certain countries of origin (mainly Eritrea, Syria and Burundi). For these countries, a positive decision without a CGRS interview can be taken when there are already sufficient elements in the application. These profiles are determined after an internal screening procedure. Not all applicants from these countries are subject to this prioritised treatment.[182]

As of 1 February 2024, a 'fast track procedure' is applied for applicants from safe countries of origin and countries with a low recognition rate. These cases are treated with priority by the Immigration Office and the CGRS. The aim is to take a decision within 50 working days. After a first pilot phase, the project will be evaluated by the Secretary of State and adapted if needed. The nationalities on which the fast-track procedure will be applied can vary. In the first phase, the procedure will be applied to applicants from safe countries of origin (currently: Albania, Bosnia-Herzegovina, Northern-Macedonia, Kosovo, Serbia, Montenegro, and India) and the following countries with low recognition rates: Georgia, Moldavia and DRC).[183]

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

181 Article 57/6(2) Aliens Act.

182 Myria, Contact meeting 20 March 2024.

183 Secretary of State Nicole De Moor, 'Fast-track procedure for faster treatment of asylum applications from DR Congo, Moldavia and Georgia', 1 February 2024, available in Dutch at https://tinyurl.com/47k7y5my; Chamber of Representatives, Commission of internal affairs, security, migration and administrative matters, Wednesday 7 February 2024, available in Dutch and French at https://tinyurl.com/2mhwru8p, 16-17.

### 1.3. Personal interview

**Indicators: Regular Procedure: Personal Interview**

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

At least one personal interview by a protection officer at the CGRS is imposed by law.[184] The interview may be omitted where:
(a) the CGRS can grant refugee status based on the elements in the file;
(b) the CGRS deems that the applicant is not able to be interviewed due to permanent circumstances beyond their control;
or (c) where the CGRS deems it can decide on a subsequent application based on the elements in the file.[185]

Generally, for every asylum application, the CGRS conducts an interview with the asylum seeker. However, the questions' length and substance can vary substantially, depending e.g. on the manifestly well-founded or unfounded nature of the claim or the presence or absence of new elements presented in case of a subsequent application. The interview serves the CGRS to examine whether the asylum application is credible and qualifies for refugee status or subsidiary protection status. The lawyer and/or another person of confidence chosen by the asylum seeker can attend the interview.[186] The CGRS has elaborated an interview charter as a Code of Conduct for the protection officers, available on its website.[187]

If the CGRS is considering Cessation or Revocation of international protection after receiving new facts or elements, it can choose not to interview the person and to request written submissions on why the status should not be ceased or withdrawn instead.[188] In practice, however, these persons will be invited for a personal interview.[189]

Since 2020, the CGRS sometimes grants refugee status without conducting a personal interview. This procedure is only applied in cases in which a positive decision is taken. This procedure is not limited to certain nationalities and is not a standardised approach for specific nationalities; whether this procedure is applied depends on the elements in each individual case and is selected through an internal screening procedure of the CGRS. In 2021, refugee status was granted without a personal interview in around 1,000 cases, mostly concerning applicants from Burundi, Syria and Eritrea.[190]

Between September 2023 and January 2024, the CGRS tested a pilot project named 'Tabula Rasa', that aims to try out several new working methods to maximise the number of decisions and alleviate the backlog of cases.[191] One of the measures includes sending preliminary questionnaires to applicants in order to obtain more information before the personal interview. Applicants receiving the questionnaire are

184 Article 57/5-ter(1) Aliens Act.
185 Article 57/5-ter(2) Aliens Act.
186 Article 13/1 Royal Decree on CGRS Procedure.
187 CGRS, *Interview Charter*, available at: http://bit.ly/1FAxkyQ.
188 Article 57/6/7(2) Aliens Act.
189 Myria, *Contact meeting*, 22 January 2020, available in French at: https://bit.ly/2VhsVE6.
190 Myria, Contact meeting 19 January 2022, available in French and Dutch at: https://bit.ly/3sy9SFN, 33.
191 CGRS, Tabula Rasa, 18 July 2023, available in English at: https://bit.ly/3IV90CA.

required to describe the important facts and the problems having led them to apply for international protection. The filling out of this questionnaire does not replace the personal interview but aims to shorten it: the part of the interview that usually contains a 'free narrative' by the applicant, is now replaced by targeted questions based on the written declarations in the questionnaires. There are no sanctions for not responding, nor are there any substantive or formal requirements as to what must be included in the written declaration.[192] The test phase of this project only included files on French-language roles and applicants from specific countries of origin (DRC, Guinea, Mauritania, Senegal, Turkey, Afghanistan, Syria, Palestine, Albania, Iran, Latin American countries, a few Asian countries) staying in a reception centre.[193] The project will be evaluated in February and March 2024.[194] For this evaluation process, the CGRS is in close contact with Fedasil and other relevant stakeholders, such as NGO's, UNHCR, lawyer associations… Indeed, several NGO's and lawyer associations have already voiced their concerns about the current functioning of this new measure. The new system puts a lot of extra work and responsibilities in the hands of the applicant's lawyers, who are considered to help their client fill out the questionnaire. In case a lawyer isn't capable or willing to take up this extra work, first line legal services of NGO's have taken up this task. Concerns have been raised regarding their competence in and resources for handling such responsibility.[195]

**Documents**

Before, during or after the personal interview at the CGRS, applicants can submit documents supporting their statements. Applicants are expected to provide any documents, especially those concerning the identity, the grounds for the application for protection and the travel route, as quickly as possible. Although in March 2023, the CGRS briefly changed the procedure for submitting documents in support of an application for international protection, only allowing the submission of documents by registered mail or by delivery to the CGRS against receipt[196], this procedure was again adjusted as of 15 May 2023. Documents can since then be submitted to the CGRS (1) by sending them to the CGRS via registered or ordinary mail; (2) by handing them at the reception desk of the CGRS against receipt; (3) by sending them to the CGRS by e-mail. When sent by e-mail, documents can be included in JPEG, PNG, PDF, Word or other Microsoft Office file formats. It is impossible to submit documents through Internet links (YouTube, WeTransfer or anything that can lead to an insecure website). CD-ROMs or USB sticks containing video or audio clips can be submitted by regular or registered mail or handed in at the reception desk.[197] The CGRS has drafted an explanatory document about the submission of documents, including an inventory that it recommends using for this purpose.[198]

**Interpretation**

When lodging their application at the Immigration Office, asylum seekers must indicate irrevocably and in writing whether they request the assistance of an interpreter in case their knowledge of Dutch or French is insufficient.[199] In that case, the examination of the application is assigned to one of the two "language roles" (Dutch or French) on the basis of the needs of the asylum instances, the wishes of the applicant having no impact on this decision. In the case of a subsequent application, the same language as in the first asylum procedure is selected.[200] This then determines the language in which the interviews are

192 Myria, Contact meeting 20 September 2023, available in French and Dutch at: https://bit.ly/3TyUvZW, 24-25.
193 Myria, Contact meeting 20 September 2023, available in French and Dutch at: https://bit.ly/3TyUvZW, 21.
194 Information provided during the Myria Contact meeting of January 2024.
195 Newsletter ADDE n° 199, September 2023, Accessible in French at: https://bit.ly/49eWGri, 2-6.
196 CGRS, 'New way of submitting documents in support of an application', available in English at: https://bit.ly/3ZTNOTz.
197 CGRS, 'Adjustment of the procedure for submitting documents in support of an application for international protection', available in English at: https://bit.ly/4auXwkP.
198 CGRS, 'Information for applicants, their lawyers and trusted persons', available in English at: https://bit.ly/4aqg8mF.
199 Article 51/4(2) Aliens Act.
200 *Ibid*.

conducted (with the presence of an interpreter if requested), the language of all documents and decisions by the asylum services and, if applicable, the language of the appeal procedure at the CALL.

In general, an interpreter who speaks the mother tongue of the asylum seeker is always present during interviews before the asylum services. Issues arise only in cases of applicants that speak a rare language or idiom; for such situations, an interpreter speaking another language can be proposed. During and after the interview, the interpreter has to respect professional secrecy and act according to specific rules of deontology. A brochure on this Code of Conduct is also available on the CGRS website.[201] Due to the varying quality of interpretation, the correct translation of the declarations transcribed in the interview report are sometimes raised by lawyers as a point of contention in the appeal procedures before the CALL. However, the CALL generally does not consider this element since proving that the interpreter mistranslated is complex.

**Recording and transcript**

There is no video or audio recordings of the interview, but the transcript must faithfully include the questions asked to and declarations of the asylum seeker; the law demands a "faithful reflection" thereof,[202] which is understood to be different from a verbatim transcript. The CGRS protection officer must 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.[203]

The asylum seeker or their lawyer may request a copy of the interview report and the complete asylum file. This should be done within 2 working days following the interview.[204] In practice, the copy can also be requested after this delay, but the applicant is not ensured to receive it before a decision has been taken.[205] The asylum seeker or their lawyer may provide comments within 8 working days after the reception of the file.[206] In such a case scenario, the CGRS will take them into consideration before issuing a decision. When the conditions are not met, the comments will only be taken into consideration if they are sent on the last working day before the CGRS makes its decision. If no comments reach the CGRS on that last working day, the asylum seeker is presumed to agree with the report of the interview.[207]

Since 2019 the CGRS conducts interviews through videoconference to all 6 detention centres. This interview is organised the same way as a regular interview, meaning that there is an interpreter present at the office of the CGRS and that the lawyer can be present to attend the interview. The CGRS evaluated this practice as positive. Several lawyers were less positive about this approach and argued that it impedes the creation of a safe space. The videos themselves were not kept on file, and the CGRS used the transcript following the interview as the basis.[208] In 2020, the Flemish Bar Association expressed similar sentiments in a letter addressed to the CGRS: "The OVB firmly believes that the technique of video interviewing in the context of an asylum case, of people who are then often unfamiliar with IT applications, does not work. Telling about trauma, feelings, beliefs and emotion-laden details of an asylum story is certainly not only done in a verbal way. Non-verbal communication is all the more important, even crucial, in these circumstances. And this falls away almost-completely in video interviews so that a correct assessment of a case becomes impossible".[209]

201 CGRS, *Deontology for translations and interpretations*, available at: http://bit.ly/1ROmcHs.
202 Article 57/5-quater(1) Aliens Act.
203 Articles 16-17 and 20 Royal Decree on CGRS Procedure.
204 Article 57/5-quater(2) Aliens Act.
205 Myria, *Contact meeting*, 20 June 2018, available in Dutch at: https://bit.ly/2WiFPjf, para.35.
206 Article 57/5-quater(3) Aliens Act.
207 *Ibid*.
208 Myria, *Contact meeting*, 21 September 2016, available at: https://bit.ly/3vqhUot, para 25.
209 OVB, 'Position concerning the use by the CGRS of video recording techniques for interviews in asylum cases', 18 November 2020, available in Dutch at: https://tinyurl.com/mry778p8.

The asylum seeker and their lawyer can request for an interview in person when they can provide elements of vulnerability that would justify such a request. In exceptional cases this is granted. However, the call for the interview did not mention the possibility of requesting an in-person interview.[210] The mere fact of not being familiar with this type of technology is not sufficient to be granted an in-person interview.

Since 19 September 2022, two Royal Decrees allow the Immigration Office and the CGRS to organise 'remote' interviews.[211] This means that it is now allowed for the interviewer to be physically present in another room than the applicant and conduct the interview through communication means that allow a conversation at a distance in 'real time', such as audio-visual connections or videoconference technology. The interpreter should always be situated in another room than the applicant to ensure their impartiality. Audio(visual) recordings of the interviews are not allowed. Physical interviews remain the standard procedure. The Immigration Office and the CGRS investigate on a case-by-case basis whether a remote interview should be preferred. They have discretionary power in this regard and consider the application's or the person's operational context and specificities. The applicant needs to be informed about the possibility that their interview takes place remotely, the modalities and measures taken to guarantee confidentiality, and the possibility of objecting to this measure. If such an objection is made, the Immigration Office or the CGRS investigate the arguments formulated by the applicant. However, no appeal is possible against a decision to conduct the interview remotely. In case of a negative decision, applicants can formulate their objections as an element in their appeal before the CALL.

Guardians (and at the CGRS, also lawyers and trustees), can attend the remote interview. However, both Royal Decrees stipulate an exception on this principle for reasons of confidentiality: if the guardian, lawyer or trust person do not respect the measures that aim to ascertain the confidentiality of the interview, the interviewer can decide that they can no longer attend the interview. In such a case, the interview can continue in their absence. Appeals to suspend these exceptions were lodged before the Council of State. In two judgments of 3 October 2022, the Council of State has suspended the execution of these exceptions as far as the guardians of unaccompanied minors are concerned, stating that this exception is contrary to article 9 of the 'Guardianship Law'[212] which requires the presence of guardians during interviews of their pupils.[213] The Council of State did not suspend the exception concerning lawyers and trustees. For all three categories, action for annulment of the articles stipulating the exceptions is currently pending.

Following the entry into force of these Royal Decrees, the CGRS has indicated to resume the interviews by videoconference in the closed centres. The project for conducting remote interviews from open reception centres has been put 'on hold'.[214] The CGRS uses MS Teams to conduct remote interviews. Lawyers or trustees need to be present in the same room as the applicant because the current software does not allow a third party to participate in the videoconference while also ensuring its confidentiality.[215]

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

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

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

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

214 Myria, 'Contact Meeting International Protection', 23 November 2022, available in French and Dutch at: https://tinyurl.com/2w2ubuhx, 21.

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

### 1.4. Appeal

**Indicators: Regular Procedure: Appeal**

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ No
2. Average processing time for the appeal body to make a decision in asylum cases (full judicial review competence) in 2023: 5 months

#### 1.4.1. Appeal before the CALL

**Introduction of the appeal**

A judicial appeal can be introduced with a petition before the CALL against all negative decisions of the CGRS within 30 days.[216] When the applicant is being detained in a specific place in view of their removal from the territory (a place as described in art. 74/8 and 74/9 of the Aliens act), the time limit to appeal is reduced to 10 days, and to 5 days if a detained person appeals against an inadmissibility decision after a subsequent application for international protection.[217] The time limit is also reduced to 10 days for appeals against inadmissibility decisions after subsequent applications for international protection of other applicants (see Admissibility procedure: Appeal), and for appeals in cases in which the CGRS has applied the accelerated procedure (see Accelerated procedure: Appeal).

Since March 2022, the appeal petition can be introduced both by registered letter and digitally through the application 'J-BOX'.[218] The Royal Decree of 21 November 2021, introducing this digital communication system in the procedures before the CALL, makes it possible for parties to send all procedural documents (petition, note with remarks, synthesis memoir, additional notes…) both digitally and by registered letter. In accelerated and suspension procedures in cases of 'extremely urgent necessity', procedural documents can, as of 1 March, only be directed to the CALL through either the digital system or by deposing the documents physically at the clerk service of the CALL against receipt, excluding the previously habitual possibility of sending these documents by fax.[219] For detention applicants, the petition's introduction remains possible in the hands of the director of the detention facility.[220] Finally, the Royal Decree allows the CALL to send procedural documents (such as invitations for hearings, judgements, …) to the parties through J-BOX.[221] The CALL has communicated on its website that when the applicant is assisted by a lawyer who has a J-BOX account, it will preferably send all procedural documents digitally through J-BOX.[222]

Although the digitalisation of the procedure before the CALL is a long-awaited measure, questions are raised as to the total abandonment of fax or any other easily accessible digital communication means. The current system risks negatively affecting applicants not assisted by a lawyer who cannot access the J-BOX system. In its advisory opinion, the Council of State raised the question if the abandonment of fax notifications would not deprive certain categories of applicants of a fundamental communication method, thus disproportionately restricting access to justice as a general principle of the rule of law. The Council of State indicated that, unless the legislator would allow for the system not to be applied in cases of extremely urgent necessity, the abandonment of fax communications would violate the right to access to

216 Article 39/57(1) Aliens Act.
217 *Ibid*.
218 Article 39/57-1 Aliens Act; Royal Decree of 21 November 2021 modifying the Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation. See also on the website of the CALL: Numérisation du Conseil: J-Box, 7 December 2021, https://bit.ly/3hKHqud and EU via J-BOX, https://bit.ly/3w4AOPN.
219 Article 3, § 1, 2nd al. Royal Decree 21 December 2006.
220 Article 39/69, § 2 Aliens Act and article 3, §1, al. 4 Royal Decree 21 December 2006.
221 Article 3bis Royal Decree 21 December 2006.
222 CALL, Frequently Asked Questions, https://bit.ly/3tIiGbF.

justice in a discriminatory way.[223] Notwithstanding this advisory opinion, the legislator has decided to abandon the use of fax as a communication method altogether, without providing other electronic communication means for people who do not have access to J-BOX, arguing that in the current state of jurisprudence, the introduction of a suspension appeal in extremely urgent necessity is only possible for people faced with the imminent risk of being removed from the territory. These people can either introduce the appeal in the hands of the director of the detention facility, if they are being detained, or physically at the clerk service of the CALL against receipt. However, the limitation of the suspension procedures in extremely urgent necessity to this category of applicants is not based on legislative texts but on the latest jurisprudence of the CALL. Since the Belgian legal system is not based on precedents, this situation might evolve in time, making it possible for other people – for example persons applying for student visa and residing abroad – to introduce suspension procedures in extremely urgent necessity. The new appeal system may make it very difficult for them to access the appeal procedure without seeking help from a Belgian lawyer.

**Effects of the appeal**

The appeal has an automatic suspensive effect on the regular procedure.[224]

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

- Confirm the unfavourable decision of the CGRS;
- Overturn it by granting refugee or subsidiary protection status; or
- Annul the decision and refer the case back to the CGRS for further investigation.[225]

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

All procedures before the CALL are formalistic and essentially written, thereby making the intervention of a lawyer *de facto* necessary. All relevant elements have to be mentioned in the petition to the CALL.[226] Parties and their lawyers are then invited to an oral hearing, during which they can explain their arguments to the extent they were mentioned in the petition.[227] The CALL is also obliged to consider every new element brought forward by any of the parties with an additional written note before the end of the hearing.[228] Depending on how the CALL assesses the prospects of such new elements leading to the recognition or granting of international protection status, it can annul the decision and send it back to the CGRS for additional examination – unless the CGRS can submit a report about its additional examination to the CALL within 8 days – or leave the asylum seeker the opportunity to reply on the new element brought forward by the CGRS with a written note within 8 days. Failure to respond within that 8-day time is a presumption of agreeing with the CGRS on this point.

In some cases, the CALL can choose to apply a 'written procedure' if it does not consider an oral hearing necessary to render a judgement. The parties then receive a provisional decision containing the reasons why the written procedure is being applied as well as the judgement the CALL makes based on the

223 Council of State, Advisory opinion nr. 66.857/4 of 20 January 2020, https://bit.ly/35zJEdt, 9-10; referred to in Council of State, Advisory opinion nr. 68.601/4 of 20 January 2021, https://bit.ly/3tEcjpJ, 27-28.
224 Article 39/70 Aliens Act.
225 Article 39/2 Aliens Act.
226 Article 39/69 Aliens Act.
227 Article 39/60 Aliens Act.
228 Article 39/76(1) Aliens Act. Still, in its *Singh v. Belgium* judgment of October 2012, the ECtHR also found a violation of the right to an effective remedy under Article 13 ECHR because the CALL did not respect the part of the shared burden of proof that lies with the asylum authorities, by refusing to reconsider some new documents concerning the applicants' nationality and protection status in a third country, which were questioned in the preceding full jurisdiction procedure: ECtHR, *Singh and Others v. Belgium*, Application No 33210/11, Judgment of 2 October 2012.

elements in the administrative file. If one of the parties disagrees with the judgment, it has 15 days to ask the CALL to be heard, in which case an oral hearing will be organised. If none of the parties asks to be heard, they are supposed to consent to the judgment, which is subsequently confirmed by a final judgment.[229]

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

(1) Both parties can always ask to apply a purely written procedure.[230] Both the counterpart and the judge have to agree. In that case, the judge decides when the debates will be closed. Until that day, both parties can introduce pleading notes with written arguments.
(2) in exceptional circumstances (e.g. a sanitary crisis, a natural disaster, fire in the buildings of the CALL), the Aliens Act allows for the adoption of a Royal Decree to activate an 'emergency scenario' in which the possibilities of applying a purely written procedure are enlarged during a (prolongable) period of six months.[231] During this period, the parties' right to demand to be heard in case of application of the purely written procedure in the application of article 39/73, §2 Aliens Act, is replaced by the possibility of introducing a pleading note. After receiving the provisional decision containing the reasons why the written procedure is being applied and the judgement the CALL makes based on the elements in the administrative file, both parties have 15 days to introduce a pleading note arguing why they disagree with the content of the decision. If none of the parties asks to be heard, they are supposed to consent to the judgment, which is subsequently confirmed by a final judgment. In case one of the parties introduced a pleading note, the judge can either take a decision, considering the arguments developed in the pleading note, or decide to reopen the debates. In the last case, the other party has 15 days to introduce its own pleading note.[232] The judge can apply a purely written procedure in accelerated procedures with full judicial review and suspension procedures in extremely urgent necessity.[233]

In the preparatory works of this new legislation, it is explained that the expansion of the possibilities of applying the written procedure aims to clear the backlog of pending cases at the second instance and render the procedure more efficient. It is argued that the organisation of oral hearings significantly increases the length of the procedure, especially given the sanitary measures and necessity of 'social distancing'.[234]

The CALL must decide on the appeal within 3 months in the regular procedure.[235] There are no sanctions for not respecting the time limit. In practice, the appeal procedure often takes longer. In 2023, the average processing time (the total of the delays divided by the total number of files) of appeals concerning decisions on applications for international protection (where the CALL has "full judicial review" competence) was 153.7 calendar days or around 5 months for those appeals introduced in 2023 and for which a decision was taken in 2023. When adding appeals introduced before 1 January 2023, for which a decision was taken in 2023, the average processing time was 230.9 days; this number is significantly higher because it includes the treatment of the backlog of the cases pending before the CALL. The number of appeals increased significantly in 2023, leading to a backlog of pending cases for the first time in years.[236]

Decisions of the CALL are publicly available.[237]

229 Article 39/73 Aliens Act.
230 Art. 39/73-2 Aliens Act.
231 Art. 39/73-3 Aliens Act.
232 Art. 39/73-3, §§1-3 Aliens Act.
233 Art. 39/73-3, §4 Aliens Act.
234 Chamber of representatives, Proposition of law changing the law of 15 December 1980, Doc. Nr. 55 2034/001, 1 June 2021, available in Dutch and French at: https://bit.ly/3tEcjpJ, 6.
235 Article 39/76(3) Aliens Act.
236 CALL Activity report 2023, available in Dutch and French at: https://tinyurl.com/3rec62sr.
237 Judgments are available on the website of the CALL at: http://bit.ly/2waz6tu.

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.[238] The previous years, there was a big difference in jurisprudence between the more liberal Francophone and the stricter Dutch chambers of the CALL.[239] According to the President of the CALL, the discrepancy in the case law is not necessarily related to language but stems from the different judges as each of them is independent. It is up to the CALL to ensure that the case law is consistent, either through a judgment taken in the general assembly or in the united chamber (where 6 judges sit, namely 3 French judges and 3 Dutch judges).[240] On the other hand, the quality of appeals is not always guaranteed, especially if they are not introduced by specialised lawyers. The discrepancy between the jurisprudence of the Francophone and Dutch chambers in appeals concerning decisions on applications for international protection (where the CALL has "full judicial review" competence) has been met with criticism for several years. In 2022, Francophone chambers recognised international protection in 9,54% of the appeals (7,93% refugee status, 1,61% subsidiary protection), compared to a recognition rate of only 1,5% (1,03% refugee status, 0,47% subsidiary protection) in Dutch chambers.[241] In 2023, the discrepancy between recognition rates is much smaller for the first time in years: Francophone chambers recognised international protection in 11,73% of the appeals (9,67% refugee status, 2,06% subsidiary protection), compared to a recognition rate of 7,36% in Dutch chambers (7,24% refugee status, 0,12% subsidiary protection). However, the discrepancy between rejection rates remains high: 67,86% of the appeals were rejected by French chambers, compared to 85,19% in Dutch chambers. This is explained by a discrepancy in the number of annulment decisions: French chambers annulled 20,42% of the appeals compared to only 7,45% in Dutch chambers. [242]

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

- The CALL made its final rejection decision;
- There is no option left for a suspensive appeal with the CALL;
- The deadline for lodging the appeal has expired;
- The person does not have a residence permit on another legal basis.

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

Unlike suspensive appeals against in-merit decisions, an appeal against an order to leave the territory or a Dublin decision has no automatic suspensive effect. A request to suspend the decision can be introduced simultaneously with the appeal. In case no request to suspend has been introduced and once the execution of the removal decision becomes imminent, an appeal in an extremely urgent necessity procedure can be lodged before the CALL within 10 or 5 calendar days in case of a subsequent return decision, invoking a potential breach of an absolute fundamental right (e.g. Article 3 ECHR).[243] This appeal is suspended until a judgment is issued.[244] It requires a swift decision of the CALL within 48 hours; the time limit is extended to 5 days, where the person's expulsion is not foreseen to occur until 8 days after the decision.[245]

It remains questionable if the legislative changes introduced in 2014 regarding time limits, suspensive effect and "full judicial review" are sufficient to guarantee that annulment appeal procedures are effective remedies, as the ECtHR calls this system too complex to meet the requirement of an effective legal

238 CALL Activity report 2023, available in Dutch and French at: https://tinyurl.com/3rec62sr.
239 CALL, *Report of activities of the year 2019*, available in Dutch at: https://bit.ly/2YjQlsQ, p. 17 etc.; A recent article confirmed this statement based on a (limited) study that they had conducted. See: Alter Echos, 'Conseil du contentieux des étrangers: deux poids, deux mesures' , 4 March 2019, available in French at: https://bit.ly/2JeVzRK.
240 Myria, *Contact meeting*, 20 March 2019, available in French: https://bit.ly/306X4GF, 319-329.
241 CALL Activity report 2022, available in Dutch and French at: http://bit.ly/3nQHrmA, 29.
242 CALL Activity report 2023, available in Dutch and French at: https://tinyurl.com/3rec62sr.
243 Article 39/82(4) Aliens Act; Article 39/57(1) Aliens Act.
244 Articles 39/82 and 39/83 Aliens Act.
245 Article 39/82(4) Aliens Act.

remedy under article 3 ECHR.[246] A study by UNHCR in 2019 stated that several actors regret the rigidity and complexity of the asylum procedure in Belgium, which inevitably requires greater specialisation by lawyers.[247]

### 1.4.2. Onward appeal to the Council of State

A possibility of onward appeal against decisions of the CALL exists before the Council of State, the Belgian supreme administrative court.[248] Appeals, before the Council of State must be filed within 30 calendar days after the decision of the CALL has been notified and have no suspensive effect. They are so called "cassation appeals" that allow the Council of State only to verify whether the CALL respected the applicable legal provisions and substantial formal requirements, failing which the decision should be annulled.[249] It cannot make its own assessment and decision on the facts of the case. Appeals before the Council of State are first channelled through an admissibility filter, whereby the Council of State filters out, usually within a month, those cassation appeals that have no chance of success or are only intended to prolong the procedure.[250] 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). However, during the Immigration Office interview the lawyer cannot be present. The Reception Act also guarantees asylum seekers efficient access to legal aid during the first and the second instance procedure, as envisaged by the Judicial Code.[251]

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

246 ECtHR, *Josef v. Belgium*, Application No 70055/10, Judgment of 27 February 2014, para 103 – the case concerns an expulsion following a so-called regularisation procedure for medical reasons (article 9ter Aliens Act), but the Court's considerations are valid for all annulment procedures concerning risks of Article 3 ECHR violations.

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

248 Article 39/67 Aliens Act.

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

250 The law determines cassation appeals to be admissible only (1) if they invoke a violation of the law or a substantial formal requirement or such a requirement under penalty of nullity, in as far as the invoked argument is not clearly unfounded and the violation is such that it could lead to the cassation of the decision and might have influenced the decision; or (2) if it falls under the competence and jurisdiction of the Council of State, in as far as the invoked argument is not clearly unfounded or without subject and the examination of the appeal is considered to be indispensable to guarantee the unity of the jurisprudence (Article 20 Acts on the Council of State).

251 Article 33 Reception Act.

There are two types of legal assistance: first-line and second-line.[252] The competence of the organisation of first-line assistance lies at the regional level.

### 1.5.1. First-line legal assistance

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

### 1.5.2. Second-line legal assistance

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

The criteria for lawyers to register on the lists of second-line assistance in migration law varies widely. The criteria are often not demanding enough and the lawyers appointed are not always sufficiently competent or specialised in the field. Nevertheless, some larger bar associations have set up a specialised section on migration law and have tightened up the criteria to be able to subscribe to it. However, other bars with few lawyers simply lack specialised lawyers and some even oblige their trainees, who are not specialised, to register on the list.[253]

The 2003 Royal Decree on Legal Aid determines the conditions under which one can benefit from this second-line legal assistance free of charge. Different categories are generally defined depending on the income or financial resources level and, concerning specific procedures, on the social group they belong to. There is a rebuttable presumption of being without sufficient financial resources for asylum seekers and persons in detention. Concerning children, unaccompanied or not, this presumption is conclusive. Adults should prove their lack of financial resources to support said presumption. The local bureau for legal assistance assesses the proof provided. Applicants residing in a reception centre during their asylum procedure are considered to meet the conditions for free legal assistance, given that the condition of having insufficient resources also applies to get access to the reception system. Applicants staying at a private address during their asylum procedure, however, need in principle to provide information on the identity of the people staying at the same address and their respective income. Because of the presumption of being without sufficient financial resources, the elements of proof provided are assessed less strictly than is the case for other categories of people applying for free legal assistance. Practice varies between the different bureaus for legal assistance, however.

The law permits the Bureau for legal assistance to apply a preliminary merits test before appointing a "pro-Deo" lawyer to refuse those manifestly unfounded requests, which have no chance of success.[254] However, this provision is only very rarely applied in practice. Therefore, if a person entitled to legal aid asks for a lawyer free of charge to be appointed, the bureaus for legal assistance grant this quasi-automatically. However, there are reports of a more stringent appointment practice in some districts when

252 Article 508/1-508/25 Judicial Code.
253 UNHCR, *Accompagnement juridique des demandeurs de protection internationale en Belgique*, September 2019, available in French at : https://bit.ly/35G2h9s, 44.
254 Article 508/14 Judicial Code.

the lawyers request to be appointed themselves after being consulted by an asylum seeker, especially in case of subsequent asylum applications.[255]

The starting point for the remuneration of each pro bono intervention by a lawyer is a nomenclature, in which a list of points granted per intervention is determined.[256] This nomenclature has been modified by a Ministerial Decree of 19 July 2016.[257] The amount of points equals the estimated work time for each intervention, with one point equalling one hour of work. For example:

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

Lawyers do not have to prove the time spent executing each intervention. It suffices to provide proof of the intervention itself. If the lawyer believes their actual work time exceeded the estimation put forward in the nomenclature by more than 100%, they can introduce a motivated request for an augmentation of the points. On the other hand, the Bureau of legal assistance can also reduce the points attributed to a lawyer if it considers that the lawyer has not executed the intervention with due diligence and efficiency.[258] To that end, the different bureaus of legal assistance have established an audit mechanism in which a group of volunteer lawyers checks the quality of the work of pro deo lawyers. There is also a "cross-control" system in which the bureaus of legal assistance audit each other's work. The results are sent to the Minister of Justice, who can affect additional audits.

Pro-Deo lawyers receive a fixed remuneration from the bureau for legal assistance, which is financed by the bar associations that receive a fixed annual subsidy "envelope" from the Ministry of Justice. Since 2018, the value per point was finally determined at €75, subjected to indexation based on the health index of 2016.[259] In 2023, this fixed amount of €75 per point was enshrined in a proposal of Royal Decree that is currently submitted to the Council of State for advice.[260] With application of the indexation, the value of a point for legal actions accomplished in 2020-2021 was determined at €90,36.

In theory, costs can be reclaimed by the state if the asylum seeker appears to have sufficient income, but this does not happen in practice. However, the 2016 reform made the "pro-Deo" remuneration system less attractive to lawyers. Another obstacle for lawyers to engage in this area of legal work is the fact that they are only paid once a year for all the cases they have closed and reported to their bar association in

255 E.g. the Dutch speaking Brussels Bar Association is much more stringent in appointing a lawyer upon their 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.

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

257 Example: before the entry into force of the Ministerial Decree of 19 July 2016, a lawyer would receive 15 points for a procedure before the CGRS (which represented 25 euros per point). Currently, the lawyer receives a basis of 3 points plus 1 point per started hour of the interview he or she attended. A lawyer can receive a maximum of 11 points for a first appeal in asylum cases. For a second or subsequent asylum application, the lawyer will no longer receive the basis points unless the CGRS takes an admissibility decision on the new application or unless the lawyer can prove the examination of the new elements (as required in subsequent asylum applications) had taken up a considerable amount of time.

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

259 Orde van de Vlaamse Balie, 'Begroting justitie: OVB waakzaam positief', 24 March 2018, available in Dutch at: https://bit.ly/2HxAeCm.

260 Order of Flemish Bar Associations, 'Value of a point in second line legal aid is finally legally enshrined', 24 April 2023, available in Dutch at https://tinyurl.com/mwpn92bd.

the previous year. The case can only be closed once all procedures are finished, which is long after the lawyer undertook the actual interventions. This legal aid funding appears to impact the quality of service delivery and the effectiveness of the legal aid system. Many lawyers confirm that legal aid is problematic as it is currently based on low, unpredictable, and deferred compensation.[261]

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

## 2. Dublin

### 2.1. General

**Dublin statistics: 1 January – 31 December of year 2023[262]**

| Outgoing procedure | | | | Incoming procedure | | | |
|---|---|---|---|---|---|---|---|
| | **Take Back Requests** | **Take Charge Requests** | **Transfers** | | **Take Back Requests** | **Take Charge Request** | **Transfers** |
| **Total** | 9,037 | 5,018 | 1.239 | **Total** | 2,956 | 581 | 556 |
| Italy | 612 | 2,876 | 0 | France | 1,375 | 277 | 234 |
| Germany | 2,112 | 187 | 388 | Germany | 863 | 128 | 135 |
| France | 1,184 | 548 | 193 | The Netherlands | 382 | 24 | 49 |
| Croatia | 1,423 | 255 | 94 | Switzerland | 120 | 24 | 49 |
| Austria | 854 | 10 | 171 | Austria | 47 | 8 | 12 |

| Nationalities of persons subject to Dublin requests and transfers in 2023 | | | | | | | |
|---|---|---|---|---|---|---|---|
| Outgoing procedure | | | | Incoming procedure | | | |
| | **Take Back Requests** | **Take Charge Requests** | **Transfers** | | **Take Back Requests** | **Take Charge Request** | **Transfers** |
| **Total** | 9,037 | 5,018 | 1,239 | **Total** | 2,956 | 581 | 556 |
| Afghanistan | 1,544 | 220 | 255 | Afghanistan | 1,147 | 33 | 172 |
| Eritrea | 314 | 929 | 26 | Moldavia | 236 | 0 | 25 |
| Syria | 648 | 291 | 37 | Congo | 31 | 122 | 20 |
| Guinea | 295 | 524 | 35 | Georgia | 136 | 4 | 19 |
| Palestine | 451 | 322 | 32 | Somalia | 109 | 18 | 19 |

In 2023, the total number of outgoing take-charge and take back-requests was 14,079 (4,991 take-charge and 8,618 take-back requests). 11,658 of these requests were based on a hit from the Eurodac database. None were for dependency reasons and three for humanitarian reasons to Germany, Ireland and

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

262 Immigration Office, 'Procedure Dublin, Application du règlement (UE) n° 604/2013', available at : https://bit.ly/3SQvv1k.

Sweden.[263] 9,607 requests were accepted out of the total number of requests, out which two were for humanitarian reasons. The difference between the number of requests and the number of agreements is partly because the Immigration Office often sends requests to several countries simultaneously for a single person.

A total of 1,241 persons were transferred from Belgium to other Member States in 2023. The top 3 most transferred nationalities are Afghanistan (255 persons), Eritrea (26) and Syria (37). 1,174 of these transfers were carried out within six months, 56 within 12 months, and 11 within 18 months after the acceptance by the other Member State. The average duration of the Dublin procedure in 2023 (calculated from the day of the outgoing request until the moment of the effective transfer) was 74 calendar days.[264]

In 2023, there was a total of 3,539 incoming take charge and take back requests (581 take charge requests, and 2,958 take back requests), of which four for dependency reasons[265] and 27 for humanitarian reasons.[266] Out of the total of incoming requests, 2,338 were accepted, one for dependency reasons and four for humanitarian reasons. 556 persons were effectively transferred to Belgium.

According to available statistics,[267] the Immigration Office accepted 4,275 persons under the sovereignty clause.[268] In 2023, Belgium further became responsible "by default" for 4,759 persons out of which 4,735 persons were not transferred in time;[269] and 24 (16 for Greece, 1 for Croatia, 5 for Italy and 2 for Hungary) were not transferred due to deficiencies in the asylum or reception system which could lead to inhumane and degrading treatment in another Member State.[270]

**Application of the Dublin criteria[271]**

| | Outgoing procedure | | | Incoming Procedure | | |
|---|---|---|---|---|---|---|
| | Number of requests | Agreements | Transfers | Number of requests | Agreements | Transfers |
| **Total** | 14,079 | 9,607 | 1,241 | 3,539 | 2,338 | 556 |
| Family Reasons[272] | 53 | 17 | 0 | 90 | 18 | 33 |
| Documentation and legal entry reasons[273] | 1,949 | 1,391 | 63 | 426 | 317 | 84 |
| Art. 15 | 0 | 0 | 0 | 0 | 0 | 0 |
| Art. 13.1 | 3,011 | 2,349 | 14 | 5 | 1 | 0 |
| Art. 13.2 | 14 | 7 | 1 | 29 | 7 | 1 |
| Art. 16 | 0 | 0 | 0 | 4 | 1 | 0 |
| Art. 17 | 3 | 2 | 2 | 27 | 4 | 2 |
| Art. 20.5 | 1,095 | 1,099 | 92 | 1 | 0 | 0 |
| Art. 18.1.b | 5,316 | 2,547 | 511 | 1,772 | 872 | 193 |

263 Immigration Office, 'Procédure Dublin, Application du règlement (UE) n° 604/2013', available at: https://bit.ly/3SQvv1k and information provided by the Immigration Office, April 2023.
264 Ibidem
265 Art. 16 Dublin III Regulation.
266 Art. 17 Dublin III Regulation.
267 Immigration Office, 'Procédure Dublin, Application du règlement (UE) n° 604/2013', available at: https://bit.ly/3SQvv1k and information provided by the Immigration Office, April 2023.
268 Art. 17(1) Dublin III Regulation.
269 Art. 29(2) Dublin III Regulation.
270 Art. 3(2) Dublin III Regulation.
271 Information provided by the Immigration Office, April 2023.
272 Articles 8, 9, 10 & 11 Dublin-III Regulation
273 Articles 12.1, 12.2, 12.3, 12.4 & 14 Dublin-III Regulation

| | | | | | | |
|---|---|---|---|---|---|---|
| Art. 18.1.c | 370 | 365 | 99 | 250 | 243 | 53 |
| Art. 18.1.d | 2,268 | 1,830 | 459 | 935 | 875 | 190 |

Since 2021, the Immigration Office has provided statistics about the application of the Dublin criteria.[274] This overview does not give a breakdown of the Dublin criteria per article. It instead provides a more general breakdown of the outgoing and incoming take charge and take back requests. Information about a more detailed breakdown of the Dublin criteria per article, can be obtained through Parliamentary questions and questions during the monthly contact meetings, of which the reports are published online.[275] The Aliens Act uses the term "European regulation" to refer to the Dublin III Regulation criteria for determining the responsible Member State.[276]

In 2023 the Immigration Office sent 53 take charge requests for family reasons, 50 based on article 11, and three based on article 8. 17 of these requests were accepted based on article 11. There were no outgoing transfers based on family reasons in 2023.[277]

In 2023 the Immigration Office received 90 take charge requests for family reasons, out of which 46 were based on article 8, five were based on article 9, 13 were based on article 10 and 26 were based on article 11 of the Dublin Regulation. The Immigration Office accepted 18 of these requests. 14 based on article 8, one on article 10 and three on article 11. There were 32 incoming transfers based on family reasons, with 28 based on article 8, three based on article 9 and one based on article 10. The majority of these incoming transfers came from Cyprus (13) and Greece (14).[278] Since the number of implemented transfers based on family reasons is higher than the number of agreements based on family reasons in 2023, some transfers were based on agreements given before 2023.

**The dependent persons and discretionary clauses**

Settled case law indicates that the Immigration Office, as confirmed by the CALL, strictly applies the dependency clause of Article 16 of the Dublin Regulation.[279] However, this observation does not consider the decisions in which the Immigration Office declared itself responsible for applications. Exchanges with lawyers and practitioners indicate that information exchange on dependency and the situation in the other Member State between the Immigration Office and the lawyer prior to the decision in a specific case may lead to Belgium declaring itself responsible. However, it is impossible for the lawyers to know which element is decisive in each case. They will often invoke other elements, such as detention and reception conditions, guarantees in the asylum procedure and access to an effective remedy in the responsible state, and aspects of dependency.

The threshold to prove dependency as defined under article 16 is rather high. For example, a medical attestation concerning depression is not enough to prove dependency if it does not mention that the presence of a particular family member is necessary for recovery.[280] Likewise, mere cash payments to someone who still works in the home country are not enough to prove dependency, nor is proof of the

274 Immigration Office, 'Application of the Dublin Regulation 2023, available in French: https://bit.ly/3SQvv1k and Dutch at: https://bit.ly/3uoYNuj.

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

276 See e.g. Article 4-bis(1) and Article 51/5(3) Aliens Act. Note, however, that Article 3 Law of 21 November 2017 refers to the implementation of the Dublin III Regulation.

277 Information provided by the Immigration Office, April 2023.

278 Information provided by the Immigration Office, April 2023.

279 Vluchtelingenwerk Vlaanderen, Contribution externe dans le rapport annuel de Myria 2018 : 'Le droit à la vie privée et familiale dans le cadre du règlement de Dublin. Comment faire correspondre la pratique à la réalité des relations familiales?', available in French at: https://bit.ly/2RSPlv3; Petra Baeyens and Eva Declerck, 'Welk recht op een gezins- en familieleven binnen het Dublin-systeem', Tijdschrift Vreemdelingenrecht, 2017/4, 389-400 ; CALL, Decision 297920, 2 November 2023 ; CALL, Decision No 297849, 28 November 2023.

280 CALL, Decision No 198726, 25 January 2018.

intention to care for a family member during the asylum procedure or living with said family member.[281] According to the CALL, there have to be indications of a 'more than usual relationship of dependency', which has to be proven by substantial evidence.[282] Lastly, the fact that a family member, in light of whom dependency should be established, applied for a living wage, proves *a fortiori* that there is no dependency vis-à-vis the applicant.[283]

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

The criteria for applying the clauses are unclear, and no specific statistics are publicly available on their use. Since the *M.S.S. v. Belgium and Greece* judgment of the ECtHR, detention and reception conditions, guarantees in the asylum procedure, and access to an effective remedy in the responsible state seem to be considered in some cases when deciding whether or not to apply the "protection clause". Since the *C.K. and others v. Slovenia* judgment of the CJEU,[284] the CALL pays particular attention to the risk of inhuman and/or degrading treatment that a transfer in itself might entail for people with severe mental or physical illnesses, even if the responsible Member State does not demonstrate systematic flaws.[285] The determining element is whether the transfer would deteriorate the person's state of health in a significant and permanent manner. Case law analysis shows that CALL uses a very strict standard concerning the nature of the illness and the evidence thereof.[286] Heavy reliance is placed on medical attestations for both the state of health and the impact of a transfer thereon.[287]

### 2.2. Procedure

**Indicators: Dublin: Procedure**

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications? ☐ Yes ☒ No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 74 days until moment of effective transfer

The Dublin procedure is laid down in the Aliens Law under articles 51/5 and 51/5/1. The Aliens Law refers to 'the European Regulation' for further details.

All asylum seekers are fingerprinted and checked in the Eurodac and Visa Information System databases after making their asylum application with the Immigration Office.[288] In case they refuse to be fingerprinted, their claim may be processed under the Accelerated Procedure.[289] In 2019, the CGRS stated that it did not use this legal possibility in practice and it did not keep statistics of these cases.[290] Nevertheless, refusal to get fingerprinted could be interpreted as a refusal to cooperate with the authorities, which could result in detention.

Based on the fingerprints and any other relevant information, the Immigration Office then determines which EU state is responsible for examining the asylum application based on the criteria of the Dublin III Regulation. This is a preliminary procedure to decide whether the file must be transferred to the CGRS.

281 CALL, Decision No 180718, 13 January 2017; CALL, Decision No 198815, 29 January 2018; CALL, Decision No 204600, 29 May 2018.
282 CALL, Decision No 234423, 25 March 2020; CALL, Decision No 230767, 22 December 2019
283 CALL, Decision No 199262, 6 February 2018.
284 CJEU, Case C-578/16, *C. K. and Others*, Judgment of 16 February 2017.
285 See for example CALL, Decision No 215 169, 15 January 2019; CALL, Decision No. 223 809, 9 July 2019.
286 CALL, Decision no 245144, 30 November 2020
287 CALL, Decision No 206588, 5 July 2018.
288 Article 51/3 Aliens Act.
289 Article 57/6/1(i) Aliens Act.
290 Myria, *Contact meeting*, 16 January 2019, available in French at: https://bit.ly/2Hj4pLJ, para 290.

In case Belgium is deemed the responsible state, the asylum seekers' file is transferred to the CGRS, and it is further mentioned on the registration proof of the asylum application.

If another member state might be responsible, the Immigration Office will send a take back or take-charge request. The Immigration Office has clarified that, in line with the CJEU ruling in *Mengesteab*,[291] the time limit for issuing a Dublin request starts running from the moment an asylum seeker makes an application at the Immigration Office and not from the moment they are issued a 'proof of asylum application' ('Annex 26').[292]

A decision to transfer following an implicit or explicit agreement to take back or to take charge of an asylum applicant is delivered in a written decision containing the reasons for the decision in person (the so-called 'Annex 26quater', or 'Annex 25quater' in case of a border procedure). The asylum seeker's lawyer does not automatically receive a copy of the decision sent to the asylum seeker.[293]

**Individualised guarantees**

The Immigration Office does not systematically ask for individualised guarantees for vulnerable asylum applicants. However, it sometimes requests guarantees when the continuity of an asylum seeker's medical treatment has to be ensured in the country of destination. In the past, the CALL has overruled the Immigration Office's practice in some cases, without this having a generalised effect on it.[294]

In 2022, some decisions of the Immigration Office to transfer an asylum applicant with a specific vulnerability to Croatia were suspended by the CALL, because no guarantees concerning the possibility to reintroduce an asylum application had been demanded beforehand.[295] In November 2022, the Croatian Ministry of Internal Affairs sent out a communication regarding its willingness to correctly apply the provisions of the Dublin III Regulation and to guarantee the possibility for applicants transferred under the Dublin III Regulation to reapply for international protection. However, the CALL ruled that this communication from the Croatian Ministry of Internal Affairs does not provide the same guarantee as individualised guarantees, which means that this communication is not sufficient to exclude any risk of a violation of Article 3 ECHR.[296] In order to overcome this risk, the Immigration Office systematically requests individual guarantees from the Croatian authorities. In such a case, the CALL does not suspend the transfer.[297]

**Transfers and the return procedure**

When receiving their Dublin decision, the applicant is informed about the procedure to organise a transfer to the responsible member state. The applicant is expected to cooperate with the transfer under the 'voluntary return procedure'. If someone does not cooperate, this could be considered as 'absconding' which is a criterion that can lead to detention under the 'forced return procedure' (see Grounds for Detention).

291 CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.
292 Myria, *Contact meeting*, 22 November 2017, para 10.
293 Article 71/3 Royal Decree 1981.
294 See e.g. CALL, Decision No 144544, 29 April 2015; No 155882, 30 October 2015; No 176192, 12 October 2016; CALL, Decision No 201167, 15 March 2018; for further examples of case law, we refer to the previous versions of the AIDA report.
295 CALL, Decision No 278 106, 29 September 2022; CALL, Decision No 278 108, 29 September 2022; CALL, Decision No 279 783, 7 November 2022; CALL, Decision No 280 105, 14 November 2022; CALL, Decision No 280 106, 14 November 2022; CALL, Decision No 281 086, 29 November 2022; CALL, Decision No 281 327, 5 December 2022; CALL, Decision No 281 547, 7 December 2022; CALL, Decision No 281 730, 13 December 2022.
296 CALL, Decision No 281 547, 7 December 2022.
297 See e.g. CALL, Decision No 297.920, 29 November 2023; CALL, Decision No 297.919, 29 November 2023 and CALL, Decision no 297.83, 20 November 2022.

During the 'voluntary return procedure', the asylum seeker should stay at the disposal of the Immigration Office for the execution of the transfer. The Immigration Office has 6 months after the agreement of the responsible state to execute the transfer. In application of article 29(1) Dublin III regulation, the 6 months transfer period is suspended when the CALL suspends the transfer in the context of an emergency appeal in view of suspension of the execution of the transfer decision (see Dublin: Appeal).

In 2021, the Immigration Office introduced a new practice in the voluntary return procedure, as an alternative to detention, called the 'ICAM-procedure'[298] to increase the return rate. When someone receives a Dublin decision, this person must actively cooperate with the voluntary return procedure. Someone residing in the reception network can be asked to move to an 'open return centre'. In this open return centre, the Immigration Office will organise interviews with the applicant concerning the voluntary return procedure. If the applicant declines the transfer to the open return centre, the right to reception can be suspended. In this case, the applicant will reside outside of the reception network.

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

If the asylum seeker does not stay at the disposal of the Immigration Office for the execution of transfer, they can be considered to be absconding. In that case, the transfer period can be extended from 6 months up to 18 months. The decision to extend the transfer deadline must be individually motivated in writing to make effective judicial review possible.[299] Currently, the Immigration Office and the CALL refer to the CJEU's *Jawo* judgment of 19 March 2019,[300] and its interpretation of 'absconding' in article 29(2) Dublin III Regulation. According to this interpretation by the CALL, the concept of absconding in this context requires the establishment of both a material and an intentional aspect. The material aspect can be proven whenever the applicant has not communicated a place of residence to the Immigration Office or the applicant cannot be found at this address if a check is conducted. As for the intentional element, the mere circumstance that the applicant indicates that they will not voluntarily comply with the transfer decision is not sufficient to consider that someone is absconding.[301] An analysis of the case law of the CALL on this concept of 'absconding', indicates that the CALL allows to conclude that the applicant has absconded in mainly two types of cases: (1) the applicant did not provide the Immigration Office with their latest address or (2) the applicant could not be found by the police at the latest known address.

In the context of the ICAM procedure, the Immigration Office considered applicants to be absconding when they did not show up for an ICAM interview, or when they expressed during the ICAM interview that they did not want to cooperate with the voluntary return. The CALL has ruled against this policy in several cases.[302] The CALL argues that when an applicant does not give voluntary effect to the transfer decision, this element is insufficient to consider that person as absconding. It refers to its interpretation of the *Jawo* judgement, and the required *material* element to be considered as absconding. In a subsequent ruling, the CALL confirmed the above case-law in the case where an applicant had expressed doubts about

298 Short for 'individual case management'.

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

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

301 See e.g. CALL, Decision No 296473, 30 October 2023.

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

voluntary return during a first interview with the 'ICAM-coach', and subsequently did not attend the second interview with the 'ICAM-coach'.[303] The Immigration Office concluded from this situation that the applicant deliberately ensured that he remained out of the reach of the authorities responsible for the transfer to prevent the transfer or make the transfer more difficult. The CALL stated that it cannot be concluded from this situation that the applicant deliberately avoided the transfer, since the required material element (*Jawo* judgment) is not fulfilled in this case. Indeed, the Immigration Office has not demonstrated that the mere fact that the applicant expressed doubts about voluntary return and did not show up for the second interview makes the transfer to the responsible Member State materially impossible. In both cases the applicants provided their address to the Immigration Office. The Immigration Office indicates that this practice is no longer applied.

In the defense memorandum, the Immigration Office sometimes provides an argument addressing the 'risk of absconding' as defined in Article 2(n) of the Dublin III Regulation and Article 1(2) of the Aliens Act. Regarding this argument, the CALL points out each time that the CJEU did not in any way state in its *Jawo* judgment that the term 'absconding' of Article 29(2) of the Dublin III Regulation should be interpreted as the way the Return Directive and the Return Manual define the term 'risk of absconding'. Moreover, the term 'risk of absconding' further only appears in Article 28 of the Dublin III Regulation, which specifically refers to the cases in which the member states may detain the person concerned to secure transfer procedures following this Regulation when there is a significant risk of a person absconding. This argument of the Immigration Office is, therefore, not relevant in these cases.[304]

To address the above ambiguities regarding interpreting the concept of 'absconding', a legislative proposal to define the concept of "absconding" is currently being drafted. The proposal expands the possibilities to consider certain actions of the applicant as absconding. However, these expansions continue to rely on the intentional element of absconding. Thus, it would allow the Immigration Office to consider someone as absconding based solely on the intentional element without investigating the material element. This seems to go against the CALL litigation and the Jawo judgement.[305] At the time of writing, the proposal is pending for a vote in the federal parliament after which it will enter into force.

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

The average time limit from accepting a request until the actual transfer is 83 calendar days.

Once the transfer period of 6 or – in case of extension – maximum 18 months has passed, Belgium's responsibility for examining the asylum application will be accepted when the persons concerned present themselves to the Immigration Office again.

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

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

305 MOVE, 'Avis de move sur le project de loi relatif à la politique de retour proactive', 6 November 2023, available in French at: https://tinyurl.com/z54rhm8h, 11-12.

### 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 must attend a specific Dublin interview in which they can state their reasons for opposing a transfer to the responsible country.[306] Lawyers cannot be present at any procedure at the Immigration Office, including the Dublin interview. They can nevertheless intervene by sending information on the reception conditions and the asylum procedure in the responsible state or with regard to individual circumstances of vulnerability, presence of family members and relatives or others.[307] This is important since the CALL has repeatedly demanded from the Immigration Office that it responds to all arguments put forward and all information submitted.

During the interview, the Immigration Office will ask about:

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

During this interview, asylum seekers can state their reasons for opposing a transfer to the responsible country according to the Dublin Regulation.[308] When a request to take back or take charge an asylum seeker is being sent to another state, this is mentioned in the "proof of asylum application" ("Annex 26").

The questionnaire contains relevant elements for determining if the sovereignty clause should be applied to avoid potential inhuman treatment of the person concerned in case of transfer to another responsible EU or Schengen Associated state. The asylum seekers are asked why they cannot or do not want to return to that country, whether they have a specific medical condition and why they came to Belgium. However, no questions are explicitly asked about the reception conditions, the asylum procedure and the access to an effective legal remedy in the responsible member state. This is for the asylum seeker to invoke and they have to prove that such general circumstances will apply in their individual situation or that they belong to a group that systematically endures inhuman treatment.

The asylum seeker should specifically ask for a copy of the questionnaire at the end of the interview. Otherwise, the lawyer will have to request a copy at the Immigration Office. In 2019 it emerged that the Belgian authorities were reluctant to issue a copy of the questionnaire automatically, as they claimed that asylum seekers were using these copies to rectify inconsistencies in their "made-up" statements.[309]

When the Immigration Office accepts that Belgium is responsible for the asylum claim, it transfers the file to the CGRS.

Since 2018, the Immigration Office also conducts interviews with adult family members in the context of Article 8 of the Dublin III Regulation to ensure that the minor's best interest is considered. Based on their

306 Article 10 Royal Decree on Immigration Office Procedure.
307 Article 18 Royal Decree on Immigration Office Procedure.
308 Article 10 Royal Decree on Immigration Office Procedure.
309 Rapport intérimaire de la Commission chargée de l'évaluation de la politique du retour volontaire et de l'éloignement forcé d'étrangers, February 2019, available in French at: https://bit.ly/2TKdcwP, 53.

advice, the Dublin Unit of the Immigration Office decides if reunification of the child with the adult involved is indeed in their best interest.

### 2.4. Appeal

**Indicators: Dublin: Appeal**
☐ Same as regular procedure

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

Applications for which Belgium is not responsible are subject to a "refusal of entry or residence" decision by the Immigration Office and are not examined on the merits. The appeal procedure 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.

The ECtHR considered this procedure not to be an effective remedy in *M.S.S. v. Belgium and Greece*. However, under the "extreme urgency" procedure, an appeal with short automatic suspensive effect may be provided (see section on Regular Procedure: Appeal). In its C-149/19 judgement of 15 April 2021 the CJEU ruled that an effective legal remedy has to give the opportunity to present any relevant elements that arose after the moment the decision of "refusal of entry or residence" was given.[310] The Belgian Council of State further clarified the implications of this ruling on the legal remedy of the "extreme urgency procedure" in the context of the Dublin-procedure. The CALL must verify whether new elements, provided by the applicant after the transfer decision has been taken, have a decisive effect on the correct application of the Dublin Regulation.[311]

The CALL further verifies if the Immigration Office has respected all substantial formalities.[312]

The CALL also considers whether the sovereignty or protection clauses should have been applied by assessing potential breaches of Article 3 ECHR. In order to do this, the CALL considers all the relevant elements concerning the state of reception conditions and the asylum procedure in the responsible state where the Immigration Office wants to transfer the asylum seeker to; frequently taking into account national AIDA reports. When such information on reception conditions and the asylum procedure in the country is only invoked in an annulment procedure, the CALL will only determine whether this information should have been known by the Immigration Office and included to its assessment of the sovereignty clause, in which case it will suspend the decision or annul it and send it back to the Immigration Office for additional examination.[313]

Following the *Tarakhel* judgment, in these suspension and action for annulment the CALL not only scrutinises the general reception and procedural situation in the responsible state on systemic shortcomings, but also evaluates the need for individual guarantees from such a state in case

310 CJEU, case C-194/19, H. A. v. Belgium, 15 April 2021, available at: http://bit.ly/3JHeYqL.
311 Council of State, Judgement No 252.462, 7 December 2021.
312 Article 39/2(2) Aliens Act.
313 See e.g. CALL, Decision No 116 471, 3 January 2014 (suspension, Bulgaria) available in Dutch at: http://bit.ly/1FxO9LJ; Decision No 117 992, 30 January 2014 (annulment, Malta), available in Dutch at: http://bit.ly/1Gon1oq.

shortcomings are not systemic, where the applicant appears to be specifically vulnerable (see the section on Dublin: Procedure).[314]

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

As with all final judgments by administrative and judicial bodies, a non-suspensive cassation appeal before the Council of State can also be introduced against the judgments of the CALL concerning Dublin transfers.[315]

### 2.5. Legal assistance

**Indicators: Dublin: Legal Assistance**
☐ Same as regular procedure

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

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

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

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

**Impact of the reception crisis**

Single male applicants who do not receive shelter often have their ‘Dublin interview’ within a month after registration. Since these destitute applicants do not have any social assistant (which is provided in the reception centre), they often experience difficulties obtaining second-line legal assistance. As a result, some applicants have to go to their ‘Dublin interview’ without having first received second-line legal assistance. This might have a negative impact on the applicant’s ability to explain their situation.

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

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

### 2.6. Suspension of transfers

**Indicators: Dublin: Suspension of Transfers**

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries? ☒ Yes ☐ No
   Greece and Hungary

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

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

**Hungary:** Since 2016, the Immigration Office stopped Dublin transfers to Hungary, and Belgium started to declare itself responsible for the concerned asylum applications.[316] In November 2023, the Immigration Office confirmed that no transfers were carried out to Hungary and that no Dublin-transfer decisions are currently taken for Hungary.[317] The Dublin procedure takes place, but Belgium declares itself responsible for the asylum application by applying article 17(1) of the Dublin Regulation.[318]

**Greece:** In November 2023, the Immigration Office confirmed that no Dublin-transfer decisions are currently taken for Greece.[319] The Dublin procedure takes place, but Belgium declares itself responsible for the asylum application by applying article 17(1) of the Dublin Regulation.[320]

**Bulgaria:** In April 2023, transfers to Bulgaria were resumed by the Belgian authorities. This was confirmed by the Immigration Office in June 2023.[321] This change is based on the latest AIDA report, the EUAA factsheet 'Information on procedural elements and rights of applicants subject to a Dublin transfer to Bulgaria' and a working visit to Bulgaria by the Immigration Office. These sources show "that Bulgaria acts in accordance with the provisions provided for in the Dublin Regulation and that transfers can take place in accordance with national and international regulations" according to the Immigration Office.[322] This policy has been confirmed by the CALL in several cases.[323]

**Italy:** As a general rule, transfers to Italy are upheld by the CALL. In cases concerning an applicant with a vulnerable profile, the CALL has ruled against a transfer.[324] Based on case law, the decisive factor appears to be the lack of individualised guarantees or an inadequate investigation of the situation upon return to Italy. In December 2022, Italy communicated it would no longer accept forced Dublin transfers. The Immigration Office continues to give Dublin decisions for Italy, indicating that applicants can still return to Italy with the 'voluntary return procedure'.[325] In practice, this means that forced transfers are not organised by the Immigration Office. No statistics are available on the number of applicants that returned voluntarily to Italy.

**Croatia:** In 2022, some decisions of the Immigration Office to transfer an asylum applicant with a specific vulnerability to Croatia were suspended by the CALL, because no individualised guarantees concerning the possibility to reintroduce an asylum application had been demanded beforehand.[326] In 2023, the Immigration Office has solved this issue by asking for individualised guarantees for every individual applicant.[327] Further information can be found under the heading "Individualised guarantees".

316 Myria, *Contact meeting*, 21 December 2016, available in French and Dutch at: http://bit.ly/2jGwYmM.
317 Myria, *Contact meeting*, 29 November 2023, p. 7, available in French and Dutch at https://bit.ly/3upHbyB.
318 Ibidem.
319 Ibidem.
320 Ibidem.
321 Myria, *Contact Meeting,* 21 June 2023, p. 9, available in French and Dutch at: https://bit.ly/3U1D9GU.
322 Ibidem, p. 10.
323 E.g.: CALL, No 296780, 9 November 2023; No 296571, 6 November 2023 and No 296884, 10 October 2023.
324 See e.g. CALL, Decision No 272 323, 5 May 2022; CALL, Decision No 278 667, 12 October 2022; CALL, Decision No 278 668, 12 October 2022.
325 Myria, *Contact Meeting,* 20 September 2023, p. 14, available in French and Dutch at: https://bit.ly/3uDau0u.
326 CALL, Decision No 281 327, 5 December 2022 and Decision No 281 547, 7 December 2022.
327 Myria, *Contact Meeting,* 26 April 2023, p. 10, available in French and Dutch at: https://bit.ly/3SRZEgp.

## 2.7. The situation of Dublin returnees

The Immigration Office considers part of the Dublin returnees as Subsequent Applicants. This is the case for Dublin returnees whose asylum application in Belgium has been closed following an explicit and/or implicit withdrawal. If an asylum seeker has left Belgium before the first interview, they will have their asylum procedure terminated.[328] When this asylum seeker is sent back to Belgium following a Dublin procedure and lodges an asylum application again, the CGRS is legally obliged to deem it admissible.[329] Nevertheless, depending on what stage of the asylum procedure they were at before leaving, these asylum seekers can be considered subsequent applicants and therefore left without shelter until the admissibility decision is officially taken.[330]

When considered as a subsequent applicant, they have no automatic access to reception. They will fall under the general practice of reception for subsequent applications (see Criteria and Restrictions to Access Reception Conditions).[331] Because of the reception crisis, single male Dublin returnees are denied access to the reception network without receiving an individually motivated decision. They can register on a waiting list, after which they will be invited to a reception place on a later date (for more information about the impact of the reception crisis on the right to reception, see Criteria and Restrictions to Access Reception Conditions). In the meantime, applicants do not have any other solution than to sleep rough, on the streets or in occupied buildings.

In the Netherlands, several male applicants who had to return to Belgium based on the Dublin regulation introduced an appeal at the court of First Instance of the Hague. The court suspended a number of transfers, since access to the reception network for single male Dublin returnees could not be guaranteed by the Belgian authorities.[332] When asked by the Dutch Court what the average waiting time on the waiting list is, the Immigration Office responded that it could not give an indication of how long an applicant has to wait before receiving a place in the reception network.[333] In this same questionnaire, the Belgian authorities indicated that they are unable to respect domestic judgements within the legal time limits.[334] On 13 March 2024, the Dutch Council of State overruled this decision. The Council ruled that the court of first instance wrongly considered that the State Secretary did not provide adequate reasons why he may still rely on the principle of interstate trust for Belgium.[335]

In Denmark, the Refugee Appeals board ruled in a similar manner for three Dublin returnees: “In February 2023, the Belgian authorities informed the Danish Immigration Service that they cannot guarantee that accommodation can be offered shortly after arrival as the reception system was under great pressure. As a result, the Refugee Appeals Board overturned the Immigration Service's decisions on the Dublin transfer”.[336]

328 Article 57/6/5.
329 Article 57/6/2(1) Aliens Act.
330 Myria, *Contact meeting*, 16 January 2019, available in Dutch at: https://bit.ly/2HeyRXu, para 175-180.
331 Myria, *Contact meeting*, 21 June 2016, available at: http://bit.ly/2k3obi9, para 9.
332 Knack, ‘Nederlandse rechters vrezen onmenselijke behandeling voor asielzoekers in België’, 13 October 2023, available in Dutch at: https://bit.ly/3Swl5UP; De Tijd, ‘Nederlandse rechter legt vinger op de wonde in Belgische asielcrisis’, 21 February 2023, available in Dutch at: https://bit.ly/40rOdya.
333 Rechtbank Den Haag, ‘ECLI:NL:RBDHA:2023:15458’, 12 October 2023, available in Dutch at: https://bit.ly/4643J4H.
334 “Currently, however, the Belgian authorities are not in a position to immediately act on a court ruling that obliges to grant a shelter” (author’s translation).
335 Dutch Council of State, ‘202304212/1/VR’, 13 March 2024, available in Dutch at: https://bit.ly/4bdf8CM.
336 EUAA, ‘Quarterly Overview of Asylum Case Law: Issue no 2’, June 2023, p. 14, available at:

## 3. Admissibility procedure

### 3.1. General (scope, criteria, time limits)

The admissibility procedure is set out in Article 57/6(3) of the Aliens Act. The CGRS can declare an asylum application inadmissible where the asylum seeker:

1. Enjoys protection in a First Country of Asylum;
2. Comes from a Safe Third Country;
3. Enjoys protection in another EU Member State;
4. Is a national of an EU Member State or a country with an accession treaty with the EU;[337]
5. Has made a Subsequent Application with no new elements; or
6. Is a minor dependant who, after a final decision on the application lodged on their behalf, lodges a separate application without justification.

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

In 2023, the CGRS issued 4,625 inadmissibility decisions.[338]

### 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 interviews both on the level of the Immigration Office and the CGRS. At the CGRS, the regular personal interview about the facts underlying the asylum application has to take place in the same level of detail as is the case for other asylum applications. The interview may be omitted where the CGRS deems it can take a decision on a subsequent application based on the elements in the file.[339]

### 3.3. Appeal

**Indicators: Admissibility Procedure: Appeal**
☐ Same as regular procedure

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

An appeal against an inadmissibility decision must be lodged within 10 days, or 5 days in the case of a subsequent application by an applicant being detained in a specific place in view of their removal from

337 Note that this ground is not foreseen in Article 33(2) recast Asylum Procedures Directive.
338 CGRS, Asylum statistics 2023, available in English at: https://bit.ly/4cwzbNs.
339 Article 57/5-ter(2) Aliens Act.

the territory (a place as described in art. 74/8 and 74/9 of the Aliens act).[340] The appeal has an automatic suspensive effect, except for some cases concerning Subsequent Applications.[341]

The CALL shall decide on the application within 2 months,[342] under "full judicial review" (*plein contentieux*).

### 3.4. Legal assistance

**Indicators: Admissibility Procedure: Legal Assistance**

☒ Same as regular procedure

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

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

## 4. Border procedure (border and transit zones)

### 4.1. General (scope, time limits)

**Indicators: Border Procedure: General**

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☐ Yes ☒ No
2. Where is the border procedure mostly carried out? ☒ Air border ☐ Land border ☐ Sea border
3. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
4. Is there a maximum time limit for a first instance decision laid down in the law? ☒ Yes ☐ No
   - ❖ If yes, what is the maximum time limit? 28 days
5. Is the asylum seeker considered to have entered the national territory during the border procedure? ☐ Yes ☒ No

Belgium has 13 external border posts: 6 airports, 6 seaports, and one international train station (Eurostar terminal at Brussels South station). Belgium has no border guard authority as such; the border control is carried out by police officers from the Federal Police, in close cooperation with the Border Control Section

340 Article 39/57(1)(3) Aliens Act.
341 Article 39/70 Aliens Act.
342 Article 39/76(3)(3) Aliens Act.

at the Immigration Office, as opposed to the territory's control, primarily within the competence of the Local Police.

Persons without the required travel documents will be refused entry to the Schengen territory at a border post. They will be notified of a decision of refusal of entry to the territory and "*refoulement*" by the Immigration Office ("Annex 11").[343] Such persons may submit an asylum application to the border police, which will carry out a first interrogation and send the report to the Border Control Section of the Immigration Office.[344] The "decision of *refoulement*" is suspended until the CGRS decides. The "decision of *refoulement*" is also suspended during the time limit to appeal and the whole appeal procedure itself.[345]

The CGRS shall examine whether the application:[346]

- Is inadmissible; or
- Can be accelerated on the grounds set in the Accelerated Procedure.[347]

If these grounds do not apply, the CGRS will decide that further investigation is necessary, following which the applicant will be admitted to the territory. This does not automatically mean that the asylum seeker will not be detained. If a ground for detention is present, they can be detained 'on the territory' under another detention ground.

Although the law provides that a person cannot be detained at the border for the sole reason that they have applied for international protection[348] (see Grounds for Detention), the asylum application will in most cases be examined while the applicant is detained in a closed centre at the border. Civil society organisations report that asylum seekers who apply for asylum at the border are almost systematically detained without a preliminary assessment of their personal circumstances.[349] The only exception based on vulnerability is made for unaccompanied children and families with children. Families with children are placed in so-called open housing units, which are more adapted to their specific needs but are legally still considered border detention centres.[350]

Most of the asylum seekers who apply for asylum at the border are held in a specific detention centre called the "**Caricole**", situated near Brussels Airport, but can also be held in a closed centre located on the territory, while in both cases, legally not being considered to have formally entered the country.[351]

The first instance procedure for persons applying for asylum at the border, detained in a closed centre or held in a return house (see Return houses) is the same as the regular procedure, although the law states that applications in detention are treated by priority.[352] If the CGRS has not taken a decision within four weeks, the asylum seeker is admitted to the territory.[353] Again, this does not automatically mean that the

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

344 Articles 50-ter and 50 Aliens Act.

345 Article 39/70 Aliens Act.

346 Article 57/6/4 Aliens Act.

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

348 Article 74/5(1)(2) Aliens Act.

349 The Immigration Office, in the context of its right to reply to the AIDA report, remarked that in the context of asylum applications at the border every case is treated and any detention decision taken, on an individual basis. Civil society organisations, however, observe that by far every person applying for asylum at the border is detained, and this based on a decision that contains a mostly standardised motivation. This issue has been confirmed by the Committee Against Torture (CAT) in its Concluding observations on the fourth periodic report of Belgium, 25 August 2021, available in English at https://tinyurl.com/bdd43ky8, §29. See also Belgian Refugee Council Nansen: *Vulnerabilities in detention : motivation of detention titles,* November 2020, available in French at https://tinyurl.com/37fvm5up.

350 Article 74/9 Aliens Act.

351 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.

352 Article 57/6(2)(1) Aliens Act.

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

asylum seeker will not be detained. If a ground for detention is present, they can be detained 'on the territory' under another detention ground.

For the removal of rejected asylum seekers at the border, the Immigration Office applies the Chicago Convention, which implies that rejected asylum seekers have to be returned by the airline company that brought them to Belgium, to the place from where their journey to Belgium commenced or to any other country where they will be admitted entry.[354] In many cases, the point of departure (and return) is not the country of origin. The CGRS does not examine potential persecution or serious harm risks in countries other than the applicant's country of origin. Not all issues arising under Article 3 ECHR in the country where the person is (forcibly) returned will therefore be scrutinised. This is the case in particular where the country of return is a country other than that of nationality or also outside the scope of application of the Chicago Convention, where the CGRS has doubts over the person's nationality or recent stay in that country, making it impossible in their opinion to pronounce itself on the risk of being treated inhumanely there.

In 2023, 650 asylum applications were made at the border.[355]

### 4.2. Personal interview

**Indicators: Border Procedure: Personal Interview**
☒ Same as regular procedure

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

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

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

Vulnerable asylum seekers also face specific difficulties related to this accelerated asylum procedure. Since no vulnerability assessment takes place before detention, their vulnerability is not always known to the asylum authorities and may not be taken into account when conducting the interview, assessing the protection needs and taking a decision. However, it is clearly provided that the asylum seeker should fill in a questionnaire specifically intended to determine any specific procedural needs at the start of the asylum procedure.[356]

354 Article 74/4 Aliens Act.
355 Myria, 'Contact Meeting International Protection', 24 January 2024, available in French and Dutch at: https://tinyurl.com/yp3zbd4w, 3.
356 Article 48/9(1) Aliens Act.

### 4.3. Appeal

**Indicators: Border Procedure: Appeal**
☐ Same as regular procedure

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

The appeal at the border is the same as in the regular procedure, except for the much shorter time limits that need to be respected. The time period within which any appeal against a decision refusing international protection must be lodged to the CALL while in border detention (including for families in an open housing unit) is only 10 days, or even 5 days in some cases, such as a second or further order to leave the territory, instead of 30 calendar days in the regular procedure.[357]

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

### 4.4. Legal assistance

**Indicators: Border Procedure: Legal Assistance**
☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ Yes ☒ With difficulty[358] ☐ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview
     ☒ Legal advice

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

In the border procedure, asylum seekers are entitled to free legal aid. In administrative detention, staff have a crucial role in making access to legal assistance effective for applicants for international protection. Where occupants do not have a lawyer upon arrival in the centre, the prompt submission of an application for the designation of a lawyer is essential, especially as the time limits for the various procedures are very short. In practice, it seems that in some closed centres, there is a difference in treatment between applicants for international protection considered as "real" by the staff and foreign nationals that, in the course of their procedures, are applying for asylum for the first time in the centre or just before repatriation, which is considered as "false". A lawyer is automatically proposed to the former category, whereas the latter are not systematically offered one, thus rendering access to legal assistance arbitrary and dependent to the staff's judgement. Moreover, practices concerning the request for the appointment of a lawyer for an applicant for international protection in administrative detention are very different from one detention centre to another. It also appears that no request for an appointment is made during weekends since no social service duty is provided at that time. It is an additional challenge to meet applicable deadlines and represents an obstacle to effective access to legal assistance.[359]

357 Article 39/57 Aliens Act.
358 The Immigration Office, in the context of its right to reply to the AIDA report, indicates that persons in detention immediately receive legal assistance.
359 UNHCR, Accompagnement juridique des demandeurs de protection internationale en Belgique, September 2019, https://bit.ly/35G2h9s, 34.

In principle, the same system described under the regular procedure applies to appointing a Pro-Deo lawyer. However, most bureaus of legal assistance assign junior trainee lawyers for these types of cases, which means that lawyers who do not have adequate experience handle, on some occasions, highly technical cases. The contact between asylum seekers and their assigned lawyers is usually very complicated. Lawyers are often not present at the personal interview because asylum seekers cannot get in touch with them prior to the interview, and lawyers tend not to visit them before the interview to prepare their clients. When the CGRS issues a negative first-instance decision, it is not always easy to contact the lawyer over the phone or in-person to discuss the reasons given in the decision. Often the lawyer decides that there are no arguments/grounds to lodge an appeal with the CALL and advises the asylum seeker not to appeal without explaining why. Some bureaus of legal assistance have or intend to create pools and lists of specialised alien law lawyers to be exclusively assigned in this type of case. Still, the necessary control and training to effectively guarantee quality legal assistance seems lacking[360] (See also: Legal assistance for review of detention).

## 5. Accelerated procedure

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

The amended Aliens Act introduces the concept of "accelerated procedure", which can be applied in cases where the applicant:[361]

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

The CGRS shall decide on the application within 15 working days.[362] When the application is treated under the accelerated procedure on the aforementioned grounds, it may pronounce the application as manifestly unfounded.[363] This affects the order to leave the territory, which will be valid between 0-7 days instead of 30 days.

360 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.
361 Article 57/6/1(1) Aliens Act.
362 *Ibid*.
363 Article 57/6/1(2) Aliens Act.

### 5.2. Personal interview

**Indicators: Accelerated Procedure: Personal Interview**
☒ Same as regular procedure

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

Exactly the same legal provisions apply to the personal interview in the accelerated procedures, including the ones dealing with the admissibility of the application, as to the one in the Regular Procedure: Personal Interview. The only difference provided for is that in case of detention, the interview takes place in the detention centre where the applicant is being held, but this has no impact on the way the interview takes place as such.[364] Also an interpreter is present during these interviews. The CGRS conducts interviews through videoconference in the closed detention centres. Since 19 September 2022, the modalities of this way of conducting remote interviews are officially laid down in a Royal Decree (see Regular procedure: personal interview).

### 5.3. Appeal

**Indicators: Accelerated Procedure: Appeal**
☐ Same as regular procedure

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

An appeal in the accelerated procedure must be lodged within 10 days and has suspensive effect. [365]

### 5.4. Legal assistance

**Indicators: Accelerated Procedure: Legal Assistance**
☐ Same as regular procedure

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

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

364 Article 13 Royal Decree on CGRS Procedure.
365 Article 39/57(1)(2) Aliens Act.

## D. Guarantees for vulnerable groups

### 1. Identification

**Indicators: Identification**

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

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

The Aliens Act defines as vulnerable persons: minors (accompanied and unaccompanied), disabled persons, pregnant women, elderly persons, single parents with minor children and persons having suffered torture, rape or other serious forms of psychological, physical or sexual violence.[366] The Reception Act mentions more profiles, and reflects the non-exhaustive list contained in Article 21 of the recast Reception Conditions Directive, referring to "children, unaccompanied children, single parents with minor children, pregnant women, disabled persons, victims of human trafficking, elderly persons, persons with serious illness, persons suffering from mental disorders and persons having suffered torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation."[367] However, there is no common policy, both regarding the asylum procedure and reception, to address the situation of all vulnerable applicants.[368]

#### 1.1. Screening of vulnerability

Both the Immigration Office and the CGRS have arrangements in place for the identification of vulnerable groups. The Immigration Office has a "Vulnerability Unit" to screen all applicants upon registration on their potential vulnerability. The Vulnerability Unit consists of officials interviewing vulnerable cases who have had specific training and are trained to identify vulnerabilities and to conduct interviews with persons with a vulnerable profile.[369]

The Immigration Office uses a registration form in which it is indicated if a person is a (unaccompanied) minor, + 65 years old, pregnant, a single woman, LGBTI, a victim of trafficking, victim of violence (physical, sexual, psychological), has children, or has medical or psychological problems. [370] These categories offer a broader definition than the one provided in the Aliens Act and the Reception Act. The form further offers an empty space for additional information, often used in practice to indicate urgent needs, e.g. medical needs. The registration process will be faster for vulnerable asylum seekers, and certain reception centres, such as emergency centres, will not be assigned to them by Fedasil.

Similarly, at the CGRS level, there are few specific provisions regarding the screening, processing and assessing of vulnerabilities of asylum seekers. There is a general obligation to consider the asylum seeker's individual situation and personal circumstances, particularly the acts of persecution or serious harm already undergone, which could be regarded as a specific vulnerability.[371] In case of a gender-related claim, applicants can refuse being interviewed by a protection officer from the other sex or with the assistance of an interpreter from the other sex.[372] Whether unaccompanied or accompanied, children

366 Article 1(12) Aliens Act
367 Article 36 Reception Act.
368 In this regard see: Saroléa, S., Raimondo, F., Crine, Z., 'Exploring Vulnerability's Challenges and Pitfalls in Belgian Ayslum System - Research Report on the Legal and Policy Framework and Implementing Practices in Belgium', 2021, available at: https://tinyurl.com/5n87tacv.
369 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.
370 Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: http://bit.ly/2jA2Yhj.
371 Article 27 Royal Decree on CGRS Procedure.
372 Article 15 Royal Decree on CGRS Procedure.

should be interviewed in appropriate circumstances, and their best interests should be decisive in the examination of the asylum application.[373]

At the moment of registration, unaccompanied children applying for asylum are handed the brochure "Guide for the unaccompanied Minor who applies for asylum in Belgium", published by the CGRS in different languages. The Aliens Act also has specific provisions on the procedures for unaccompanied children when they do not apply for asylum. Unaccompanied children should always be accompanied by their guardians during interviews. In contrast, accompanied children who apply separately or who request to be heard by the CGRS during the procedure of their parents should only be accompanied by the lawyer and person of trust during the first interview. If there are more interviews at a later stage, the CGRS can also interview the child alone.[374]

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

- A "Gender Unit" trained following the EUAA module on Gender, Gender Identity & Sexual Orientation helps ensure that gender-related applications for international protection are adequately addressed. Gender-related asylum applications include claims based on sexual orientation, gender identity or sexual characteristics (LGBTI), fear of undergoing Female Genital Mutilation (FGM), honour crimes, forced marriages, domestic violence, sexual violence;[375]
- A "Minors Unit", headed by an appointed coordinator, ensures a harmonised approach, information exchange and exchange of best practices. Unaccompanied minors are only interviewed by specially trained protection officers, who follow the EUAA training module on Interviewing Children.[376]

### 1.2. Age assessment of unaccompanied children

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

If the Guardianship service itself or any other public authority responsible for migration and asylum, such as the Immigration Office, has any doubt about the person concerned being underage, a medical age assessment can be ordered at the expense of the authority applying for it.[377]

During the reception crisis in December 2021 (see Country Report: Belgium - 2021 Update), Fedasil and the Immigration Office briefly conducted a screening of minors waiting in line at the arrival centre based on physical appearances. If a young man waiting in line did not look like a minor, he was sent to the line of single men resulting in a denial of reception. This practice being in clear violation of the legal framework, it was promptly stopped after an intervention from the Flemish Children's Rights Commissioner.[378]

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

373 Article 14 Royal Decree on CGRS Procedure.
374 Article 57/1(3) Aliens Act.
375 Information provided by the CGRS, 21 December 2022.
376 Information provided by the CGRS, 24 August 2017.
377 Article 7 UAM Guardianship Act.
378 Flemish Children's Rights Commissioner, *Standpunt Opvangcrisis: dringend oplossingen voor niet-begeleide minderjarige vreemdelingen,* available in Dutch at: https://bit.ly/3AOJc68.

2023, Caritas International Belgium reported that 24 of these minors were gone missing. No similar reports were made in 2023.

Age assessment in Belgium consists of scans of a person's teeth, wrist, and clavicle. These scans determine the developmental stages of a person's bones and teeth. Thus, when the applicant's age is unknown, it is estimated by comparing their development stage to that of persons in the reference study population.[379] Following critiques around the accuracy of the medical test to establish the age of non-Western children by order of Physicians,[380] a margin of error of 2 years is considered. This means that only a self-declared child tested to be 20 years of age or above will be registered as an adult.

An applicant may challenge an age assessment before the Council of State through a non-suspensive appeal. However, the court is not competent to review elements such as the reliability of the medical examination results or the evidentiary value of identity documents. It can only check if the competent authorities had the right to conduct an age assessment according to the law. This procedure is lengthy, often taking longer than a year, so the person often becomes an adult before the Council of State has reached a final decision. Accordingly, the procedure is not an effective appeal and has been met with criticism.[381]

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.[382] Despite these judgements, it still occurs that the Guardianship Service does not automatically use the lowest age as the one binding for the decision. If this happens, the Council of State suspends the decision.[383]

The Council of State further decided that the Guardianship Service is not competent to assign a date of birth to the person who is declared a minor following an age test but for whom the margin of error of the age test results in a higher or lower age than the age declared.[384] The Guardianship Service stated it would no longer disregard the declared age of a minor, even if estimates as higher or lower than the margin of error. However, the Guardianship Service indicated that the difference between the declared age and the minimum age indicated by the margin of error needs to be reasonable. If a minor is declared 13, and the age assessment suggests that the minor is 17, this is not considered a reasonable difference. In such a case, the Guardianship Service might still use the age indicated by the age assessment.[385]

At the end of 2021, the Belgian government announced the creation of an expert committee tasked with evaluating the medical methods used during the age assessment and ensuring all the hospitals conducting these medical methods use the same methodology.[386] In 2022, the expert committee published 17 proposals on optimising the methods used during age assessment and how to come to a uniform age assessment procedure.[387]

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

380 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.

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

382 See e.g. Council of State, Decision No 231491, 9 June 2015, available in French at: http://bit.ly/1XdO2xs; Decision No 232635, 20 October 2015, available in Dutch.

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

384 Council of State, Decision No 242.623, 11 October 2018, available in French at: https://bit.ly/2FQBcI0; Decision No 244.052, 28 March 2019, available in French at: https://bit.ly/348X1R0.

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

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

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

In 2023, 4,366 unaccompanied children were registered in the country, a decrease of 32.7% compared to 2022.[388] Of this group, 2,594 applied for asylum.[389] 87% were boys, compared to 13% girls. Among those, 26% are from Afghanistan, 18% are from Eritrea, and 15% are from Syria.

The top 5 nationalities (among the signalisation) were:

| Unaccompanied children: 2023 | |
|---|---|
| Country | Number |
| Afghanistan | 689 |
| Eritrea | 615 |
| Syria | 402 |
| Morocco | 378 |
| Ukraine | 342 |

Source: Guardianship Service.[390]

In 2,199 cases, doubt was expressed about the age of the declared minors. In 1,727 cases, an age assessment was conducted. Of these assessments, 1,282 found the declared minor to be over 18 years old.[391]

## 2. Special procedural guarantees

**Indicators: Special Procedural Guarantees**

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

### 2.1. Adequate support during the interview

The identification of a special procedural need is done on the basis of information in the administrative file, the questionnaire on specific procedural needs and all other elements and documents presented by the applicant. The Immigration Office and the CGRS indicate that the evaluation of procedural needs is an ongoing process and tries to determine procedural needs as soon as possible and offer special supporting measures if needed. Throughout the entire procedure, the applicant can make their special procedural needs known.

At the start of the asylum procedure, asylum seekers are informed about the possibility to indicate specific procedural needs and have to fill in a questionnaire determining any specific procedural needs.[392] Through this questionnaire, applicants are requested to provide, among other things, information on medical or psychological problems that might influence the interview, if they would like their partner to be present during the interview, if they he would prefer a male or a female interpreter, as well as asking pregnant asylum seekers about the impact of their pregnancy.[393]

Moreover, the applicant may submit a report from a psychologist, psychiatrist or other doctor attesting to their needs later. This usually concerns psychological problems resulting from trauma, in which case a specialised protection officer is called in to conduct an adequate interview. However, the medical

388 Guardianship Service, 'Statistics of the Guardianship Service', 2023, available in French and Dutch at: https://tinyurl.com/k9jp2z76.
389 CGRS, 'Asylum statistics: survey 2023, 12 January 2024, available at: https://tinyurl.com/2p8778s6.
390 Guardianship Service, 'Statistics of the Guardianship Service', 2023, available in French and Dutch at: https://tinyurl.com/k9jp2z76.
391 Ibidem.
392 Article 48/9(1) Aliens Act.
393 Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available in Dutch at https://bit.ly/2S7NtO5, 25.

certificate must be comprehensive, and the needs must be clearly demonstrated. In one case in 2019, for example, an applicant's anxiety attacks, psychological problems and various physical injuries were mentioned in a letter from the medical service of a pre-reception arrangement in Brussels and in a medical report from Fedasil. However, the Immigration Office judged these were insufficient to demonstrate that the applicant was not fit to conduct an interview. The CGRS confirmed that it did not notice any particular needs during the interview and stated the medical attestations were not recent enough to prove current problems. Similarly, the CALL did not consider the medical attestations in its judgement.[394]

While certain applicants mention the reasons to be considered in need of special procedure during interviews and although they receive information about this on the moment of registration of their asylum application, certain applicants – especially extremely vulnerable persons – are not capable of communicating their needs correctly; some are even not capable of identifying these needs for themselves. Many do not know how the procedure will continue, what questions will be asked, and what needs may arise. It is, therefore, crucial that adequate measures are adopted from the outset to prepare, guide and provide information to all applicants, including those who - at first sight - do not seem to have any special needs or do not indicate to have any.

Furthermore, a doctor appointed by the Immigration Office can recommend procedural needs based on a medical examination. However, this is not mandatory,[395] and the Immigration Office does not provide statistical information on if and how often this is applied in practice.

If the procedural needs have not been signalled at the beginning of the asylum procedure, the asylum seeker can still submit a written note to the CGRS describing the elements and circumstances of their request.[396] However, this does not entail an obligation on the part of the CGRS to restart the examination of the asylum application. The Immigration Office and the CGRS remain free to decide if any special procedural needs apply, and their decision is not appealable.[397]

On the level of the CGRS, (i) a first evaluation will take place when the file is transferred to the CGRS, (ii) a second assessment will be undertaken during the interview, and (iii) another evaluation is conducted at the moment of the decision. Those different evaluations can be conducted both in relatively short or long timelines.[398]

Furthermore, according to the law, reception centres should evaluate if special reception needs apply and proactively look for signs of special procedural needs themselves. Where such needs are identified, the centres must inform the Immigration Office and/or the CGRS accordingly on the condition that the asylum seeker consents.[399]

Specific procedural needs that have been observed in practice include the need to conduct the interview in rooms at ground level in cases where the applicant has a physical disability,[400] to organise several breaks during the interview, to postpone the interview after the birth of a child etc. Overall, when specific procedural needs are identified, the measures mainly consist of hearing the person concerned in an appropriate manner and providing them with the opportunity to take a break at any time during the interview. The assistance of an interpreter during a personal interview has also been described in some decisions as a special procedural need. In practice, however, this is not the case since one is entitled to an interpreter during every asylum procedure described in Article 51/4 of the Aliens Act.

394 CALL, Decision No 217.807, 28 February 2019.
395 Article 48/9(2) Aliens Act.
396 Article 48/9(3) Aliens Act.
397 Article 48/9(4) Aliens Act.
398 Myria, *Contact meeting*, 18 April 2018, available in Dutch at: https://bit.ly/2sIMaXC, para. 56; information confirmed by the CGRS in December 2022.
399 Article 22(1/1) Aliens Act.
400 CALL, Decision No 214.454, 20 December 2018; CALL Decision No 215.972, 30 January 2019; CALL, Decision No 213 350, 30 November 2018.

The above examples demonstrate that the CGRS makes efforts to meet specific special procedural needs. However, certain limits have been noted in practice. As an example, in the case of a minor who had reached the age of 18 during the asylum procedure, special assistance was no longer attributed to him.[401]

The law on guardianship of unaccompanied minors contains general provisions on the protection of unaccompanied minors and on the role of the guardian. Based on this law, the Guardianship Unit of the Federal Public Service of Justice has established a hotline that operates 24/7 to notify the detection of unaccompanied children so that the necessary arrangements can be made.[402] For unaccompanied minors, the specific procedural needs mainly consist of a guardian's assistance, an interview conducted by a protection officer trained in child protection and the fact that the CGRS considers the age and level of maturity when evaluating the applicant's declarations.[403]

Since 2018, the CALL is taking steps towards a more child-friendly justice. In a judgment of June 2018, the CALL tried to make the decision as understandable as possible by adapting the language of the judgement to the 13-year-old concerned Iraqi boy who had made his own request for international protection.[404] The language of the judgment was adjusted to such an extent that the minor could, even without the assistance of an adult, understand the reasoning of the judgment. By doing so, the CALL acts under the Guidelines for a Child-Friendly Judgment of the Council of Europe. The CALL further confirmed that the Immigration Office should apply the UNCRC and respect the child's best interest. In 2023, the CALL decided to create a hearing room specifically for minor applicants. This measure is taken on the basis of recommendations by a doctoral researcher who is currently conducting research on children's rights in the asylum appeal procedures.[405]

In gender-related asylum claims, the official of the Immigration Office must check if the asylum seeker opposes being assigned a protection officer of the other sex.[406] Women and girls applying for asylum in their own name are also handed in a brochure called "Information for women and girls that apply for asylum", published by the CGRS in 9 languages.[407]

### 2.2. Exemption from special procedures

If the CGRS decides that the applicant has special procedural needs, in particular in the case of torture, rape or other serious forms of violence, which are incompatible with the accelerated or border procedures, it can decide not to apply those procedures.[408]

Since August 2018, the government has opened family units within the closed centres in which several families were detained, despite the practice having previously been suspended after the ECtHR condemned Belgium.[409] The current government has agreed that it can no longer detain children in closed centres, as a matter of principle. New, alternative measures will be developed to avoid abusing this

401 CALL, Decision No 217807, 28 February 2019.
402 Program Law (I) (art. 479), 24 December 2002 - Title XIII – Chapter VI: Guardianship of unaccompanied minors.
403 CALL, Decision No 216062, 30 January 2019; CALL, Decision No 215.418, 21 January 2019; CALL, Decision No 214735, 7 January 2019; CALL, Decision No 228246, 30 October 2019.
404 CALL, 28 June 2018, No 206213, https://bit.ly/2sUvOvj. In its communication on the official website, the CALL makes specific reference to the guidelines for a child-friendly justice: https://bit.ly/2CO2oDh.
405 CALL, 'Doctoral research at the CALL', 5 October 2021, https://tinyurl.com/3fbzx2dd and CALL Activity report 2023, available in Dutch and French at: https://tinyurl.com/3rec62sr.
406 Article 8 Royal Decree on Immigration Office Procedure.
407 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.
408 Article 48/9(5) Aliens Act.
409 ECtHR, *Muskhadzhiyeva v. Belgium*, Application No 41442/07, Judgment of 19 January 2010.

measure to make a return impossible.[410] So far, this agreement has not been codified into law. This is part of the Migration Deal and the pro-active return policy legislation.

Although unaccompanied children are not detained, they are not exempted from the accelerated procedure in the law. However, the accelerated procedure is not applied to unaccompanied children.[411]

### 3. Use of medical reports

**Indicators: Use of Medical Reports**

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
   ☒ Yes ☐ In some cases ☐ No

2. Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

The Aliens Act provides the possibility for the CGRS to request a medical report relating to indications of acts of torture or serious harm suffered in the past if the CGRS considers it relevant to the case. It can request such a medical examination as soon as possible by a doctor assigned by the CGRS. In the medical report, a clear difference should be made between objective observations and those based on the declarations of the applicant. The report can only be sent to the CGRS with the applicant's consent.[412] However, refusal to undergo a medical examination shall not prevent the CGRS from deciding on the asylum application.[413] The CGRS has stated that it has not yet used this possibility.[414]

If no such request is made by the CGRS and the applicant declares to have a medical problem, the CGRS should inform him or her of the possibility of providing such a report on their initiative and expenses. In this case, the medical report should be sent to the CGRS as soon as possible, and the CGRS can request advice concerning the report from a doctor they appointed.[415]

The CGRS should evaluate the report together with all the other elements of the case.[416]

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

#### 3.1. Mental state and credibility

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

If an asylum seeker has psychological problems that could influence the results of the interview or hinder its realisation, the CGRS expects the asylum seeker and/or their lawyer to provide a medical attestation.

410 Chamber of Representatives, *Policy Note on asylum and migration, 4 November 2020, available in Dutch and French, available at:* https://bit.ly/3sJdgMd, 34.
411 Myria, *Contact meeting*, 16 January 2019, available in Dutch at: https://bit.ly/2HeyRXu, para 290.
412 Article 48/8(1) Aliens Act.
413 Article 48/8(3) Aliens Act.
414 Myria, *Contact meeting*, 16 January 2019, available in Dutch at: https://bit.ly/2HeyRXu, para 300.
415 Article 48/8(2) Aliens Act.
416 Article 48/8(4) Aliens Act.

There is not yet a standardised procedure for this kind of case, but the CGRS evaluates on a case-by-case basis if an interview is possible or if special arrangements need to be made.[417] In such cases, the applicant will be asked - through the intermediary of his lawyer - to answer specific questions in writing to provide the CGRS with all the elements necessary to process the asylum application. In such cases, the CALL has referred to UNHCR's Handbook on Procedures and Criteria for Determining the Status of Refugees, which recommends adapting the fact-finding methodology to the seriousness of the applicant's medical condition; to reduce the burden of proof normally placed on the applicant and to rely on other sources to obtain information that the applicant cannot provide.[418]

In a judgment of 22 October 2020, the CALL annulled a decision of the CGRS in a case concerning a woman with serious psychological problems. Based on the psychological reports provided by the applicant and mentioning, inter alia, symptoms of post-traumatic stress disorder, the CGRS had decided she had particular procedural needs. During the personal interview, the woman frequently said she felt unwell and wanted a break. Each time, a break was allowed. However, the interview lasted 6 hours, whereas the internal charter of the CGRS prescribes a personal interview of 4 hours, in exceptional cases, to be prolonged with a maximum of 30 minutes. The CALL judged that given the psychological vulnerability of the woman, a personal interview of 6 hours was inadequate to assess the credibility of her story correctly.[419]

### 3.2. Medical evidence of past persecution or serious harm

To date, medical reports demonstrating physical harm as evidence of past persecution or inhuman treatment have been mostly put aside by the CGRS, arguing that they cannot determine the exact cause of the harm, their perpetrator or the reasons behind it.[420] However, in some rare cases, the CALL requested the CGRS to examine further the circumstances surrounding the physical harm experienced by an asylum seeker. In the presence of physical scars, for example, the burden of proof is reversed, and the CGRS is obliged to look further into the causes of persecution or serious harm.[421]

In March 2019, the Council of State annulled a judgment of the CALL because it had not sufficiently considered the medical attestations that were provided. In that case, the medical certificates submitted by the applicant in the context of his subsequent application included findings of physical and psychological injuries which may have resulted from ill-treatment linked to the state of slavery. While the CALL had ruled that the evidence provided did not restore the credibility of the applicants account of his status as a slave, the Council of State found that the administrative judge did not carry out a detailed examination of the risk of persecution and violated the rights guaranteed by articles 3 and 4 ECHR.[422]

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

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417 Myria, *Contact meeting*, 18 January 2017, available at: http://bit.ly/2kx93eZ, para 25.
418 CALL, Decision No 222091, 28 May 2019.
419 CALL, Decision No 242762, 22 October 2020.
420 See for example CALL, Decision No 64 786, 13 July 2011. In this case, the doctor himself mentioned in his medical report that the injuries were "most probably" inflicted by torture, but the CGRS found this insufficient as evidence since the other declarations were considered to be not credible. The proven hypo-reaction, which a psychologist determined to be also "possibly" caused by a traumatic experience, was not accepted as an explanation for the incoherencies in the declarations. The CALL agrees that the medical reports in themselves are not sufficient proof to cast out any doubt on the causes of the harm undergone, but states that the presence of the physical scars as such are sufficient reason already to apply the reversal of the burden of proof in case of past persecution or serious harm and urges the CGRS to conduct additional research into the circumstances surrounding their causes.
421 Article 48/7 Aliens Act.
422 Council of State, Judgment No 244 033, 26 March 2019, available in French at: https://bit.ly/2uWoO57.

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

In this context, it is also important to mention the so-called "medical regularisation procedure", which is not technically part of the asylum procedure but is closely related to it. In cases where return to the country of origin would create a risk of inhuman or degrading treatment resulting from the deterioration of the health of the person concerned – e.g. due to a lack of access to appropriate medical treatment - an application should be lodged with the Immigration Office instead of the CGRS.[423] This application for protection based on medical reasons has been removed from the asylum procedure and replaced with a separate procedure that entails fewer procedural guarantees. In the latter, a standardised medical form has to be filled out and communicated before the request is considered admissible and examined on its merits. A refusal can further only be subjected to an annulment (and suspension) appeal. The existence of this procedure is a way for the CGRS to avoid having to consider medical elements put forward during the asylum procedure, even if they could be relevant to the asylum application.

In *M'Bodj* and *Abdida*,[424] two judgments delivered on 18 December 2014, the CJEU ruled that the so-called "9ter procedure" is not a form of international protection but a national protection measure on which the EU asylum rules do not apply because it does not entail protection against harm caused by "actors of persecution or serious harm", in the meaning of the Qualification Directive. This jurisprudence was later reflected in Belgian jurisprudence.[425] Nevertheless, as the Return Directive and the EU Charter of Fundamental Rights remain applicable, and there needs to be an effective remedy available that automatically suspends the execution of the refusal decision in case a return might create a risk of serious or irrevocable damage to the health of the person concerned, that could amount to a violation of Article 3 ECHR. The current appeal procedure does not seem to satisfy this requirement completely, given the short deadline to file an automatically suspensive urgent appeal.

### 4. Legal representation of unaccompanied children

**Indicators: Unaccompanied Children**

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

Every unaccompanied child who applies for asylum or is otherwise detected on the territory or at the border has to be referred to the Guardianship service at the Ministry of Justice. The so-called Programme Law of 24 December 2002 has established the service and procedures to be followed in such a case.[426]

Once identified as a child, a guardian will be assigned to the child applicant. The guardian represents their pupil in legal acts and is responsible for ensuring that all necessary steps are taken during the unaccompanied child's stay in Belgium. The guardian has to arrange for the child's accommodation and ensure that the child receives the necessary medical and psychological care, attends school etc. The guardian has to see to the child's asylum or other residence procedures, represent and assist the child in these and other legal procedures, and, if necessary, find a lawyer. During an ongoing asylum procedure, it is legally possible to cumulate the specific procedures directed at finding a durable solution for unaccompanied children (family reunification, return or right to reside in Belgium).[427] In practice, the

423 Article 9-ter Aliens Act.
424 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.
425 CALL, Decision No 168 897, 1 June 2016; Constitutional Court, Decision No 13/016, 27 January 2016.
426 Article 479 Title XIII, Chapter VI of Programme Law of 24 December 2002 (UAM Guardianship Law).
427 Article 61/15 Aliens Act.

Immigration Office often postpones the specific procedure while awaiting the results of the asylum procedure.

The guardian also has to help in tracing the parents or legal guardians. If that has not been done yet, the guardian can also introduce an asylum application for their pupil.[428] It should be noted, however, that a pending asylum procedure in practice could cause other procedures for finding a durable solution to be temporarily suspended until a final decision is taken on the asylum application, since, in that case Belgian authorities are not allowed to contact the authorities of the country of origin to assess whether return or family reunification is possible.

The guardian has to attend the different interviews at the Immigration Office and the CGRS and should inform the child of the decisions taken in their regard in an understandable manner and language. In case of an unfavourable decision, the guardian should explain appeal possibilities and request the child to provide arguments. They should also contact the lawyer to prepare the appeal and the social worker in the reception centre to prepare for possible consequences of the decision on the child's right to reception.[429]

If necessary, a provisional guardian can be appointed immediately upon notice to the Guardianship Service; for instance, when an unaccompanied child is detained, the Guardianship Service's directing manager or deputy shall take on guardianship.[430]

On 1 December 2023, there were 3,638 guardianships, of which 2,581 were new guardianships since the start of 2023. One guardian can take on several guardianships. On 13 January 2024, 670 guardians were active for the Guardianship Service, out of which:

- 518 guardians on a voluntary basis (77% covering 33% of the pupils)
- 96 professional guardians on a self-employed basis (14%, covering 37% of the pupils)
- 19 professional guardians registered as a private company (3%, covering 15% of the pupils)
- 37 professional guardians in the context of a work contract (6%, covering 15% of the pupils)[431]

Due to a shortage of guardians, around 560 unaccompanied minors were on a waiting list in the beginning of 2022, the average waiting time amounts up to 4 months. In January 2024, 731 minors were waiting for the appointment of a guardian, the average waiting time amounting to 3 months.[432] To further reduce waiting times, the Guardianship Service plans to hire new professional legal guardians and it will launch a recruitment campaign for volunteer guardians in 2024.[433]

428 Article 479(9)(12) UAM Guardianship Law.
429 Article 11 UAM Guardianship Law; 9 Royal Decree Immigration Office Asylum Procedure; Article14 Royal Decree CGRS Procedure; Guardianship Service, *General guidelines for guardians of unaccompanied children*, 2 December 2013, available in Dutch at: http://bit.ly/2FFW1GG.
430 Article 479(6) UAM Guardianship Law.
431 Guardianship Service, 'Statistics of the Guardianship Service', 2023, available in French and Dutch at: https://tinyurl.com/k9jp2z76.
432 Myria, 'Contact Meeting International Protection', 24 January 2024, available in French and Dutch at: https://tinyurl.com/yp3zbd4w, 40.
433 Ibidem.

## E. Subsequent applications

**Indicators: Subsequent Applications**

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No
2. Is a removal order suspended during the examination of a first subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage ☒ Yes ☐ No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
   - ❖ At first instance ☐ Yes ☒ No
   - ❖ At the appeal stage Not in all cases

The Immigration Office is also competent for registering subsequent applications i.e. the asylum seeker's declaration on new elements and the reasons why they could not invoke them earlier, and transmit the claim "without delay" to the CGRS.[434]

After the application is transmitted, the CGRS first decides on the Admissibility of the claim by determining whether there are new elements which significantly add to the likelihood of the applicant qualifies as a beneficiary of international protection.[435] The claim is deemed admissible because the previous application was terminated based on implicit withdrawal.[436]

The CGRS should take this decision within 10 working days after receiving the application from the Immigration Office. If the person is in detention, this decision should be taken within 2 working days.[437] If the CGRS declares the application admissible, it examines the merits under the Accelerated Procedure. The final decision should be made within 15 working days.[438] In the past years, significant delays in these procedures were noted in practice.[439] The CGRS indicates it cannot decide within this strict legal deadline but stresses that treating subsequent applications is a priority.[440]

If the subsequent application is dismissed as inadmissible, the CGRS should determine whether the applicant's removal would lead to direct or indirect *refoulement*.[441] Recent case law of the CALL concerning Afghan applicants confirmed this.[442]

An appeal to the CALL against an inadmissibility decision should be made within 10 days, or 5 days when the applicant is in detention.[443] The appeal has an automatic suspensive effect, except where:[444]

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

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

434 Article 51/8 Aliens Act.
435 Article 51/8 Aliens Act.
436 *Ibid*, citing Article 57/6/5(1)-(5) Aliens Act.
437 Article 57/6(3) Aliens Act.
438 Article 57/6/1(1) Aliens Act.
439 Myria, *Contact meeting* 19 September 2018, available in Dutch at: https://bit.ly/2MvKKc8, para 11.
440 Myria, Contact meeting 15 June 2022, available in Dutch and French at: https://bit.ly/3ZHDEVL.
441 Article 57/6/2(2) Aliens Act.
442 CALL, *Specific questions concerning Afghanistan*, 20 October 2022, available in Dutch and French at: http://bit.ly/3UbUECF.
443 Article 39/57 Aliens Act.
444 Article 39/70 Aliens Act.

An applicant does not have a right to remain on the territory even before the CGRS pronounces itself on admissibility in cases where:[445]

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

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

A total of 5,918 applicants lodged subsequent applications in 2023:

| Subsequent applicants by 5 main countries of origin: 2023 | |
|---|---|
| Country | Number |
| Afghanistan | 1184 |
| Iraq | 402 |
| Moldova | 324 |
| Palestine | 286 |
| Iran | 278 |

Source: Information provided by the CGRS.

## F. The safe country concepts

**Indicators: Safe Country Concepts**

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

### 1. Safe country of origin

The safe country of origin concept was introduced in the Aliens Act in 2012. Applications from safe countries of origin are examined under the Accelerated Procedure.[446]

According to the law, countries can be considered safe if the rule of law in a democratic system and the prevailing political circumstances allow concluding that, in a general and durable manner, there is no persecution or real risk of serious harm, taking into consideration the laws and regulations and the legal practice in that country, the respect for the fundamental rights and freedoms of the ECHR and the principle

445 Article 57/6/2(3) Aliens Act.
446 Article 57/6/1(1)(b) Aliens Act.

of non-*refoulement* and the availability of an effective remedy against violations of these rights and principles.[447]

After receiving detailed advice from the CGRS, the government approves the list of safe countries of origin upon the proposal of the Secretary of State for Migration and Asylum and the Minister of Foreign Affairs. The list must be reviewed annually and can be adjusted.[448] The Royal Decree of 7 April 2023 on Safe Countries of Origin removed Georgia from the former list and lists as safe countries of origin: **Albania**, **Bosnia-Herzegovina**, **Northern-Macedonia**, **Kosovo**, **Serbia**, **Montenegro**, and **India**.[449]

Applicants from safe countries of origin face a higher burden of proof to refute the presumption of the safety of their country of origin, they must present serious reasons explaining why their country cannot be considered safe in their situation.

In 2023, a total of 1.890 persons from safe countries of origin applied for asylum. The breakdown per nationality was as follows:

| Country | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|---|
| Kosovo | 320 | 242 | 194 | 70 | 164 | 160 | 113 |
| Albania | 882 | 668 | 680 | 447 | 588 | 595 | 405 |
| FYROM / North Macedonia | 251 | 194 | 190 | 89 | 177 | 195 | 218 |
| India | 52 | 81 | 46 | 18 | 16 | 31 | 29 |
| Bosnia-Herzegovina | 44 | 23 | 45 | 34 | 72 | 104 | 56 |
| Montenegro | 5 | 8 | 20 | 5 | 9 | 9 | 13 |
| Serbia | 232 | 198 | 220 | 134 | 150 | 203 | 145 |
| Georgia | 468 | 695 | 563 | 266 | 593 | 1,026 | 911[450] |
| **Total** | 2,722 | 2,804 | **2,521** | **1,329** | **2,362** | **2,323** | **1,890** |

Source: iBz, Annexe DPI nationalités_Bijlage VIB nationaliteiten_2008-2023, available at: https://bit.ly/4cuWHdz.

## 2. Safe third country

Following the reform that entered into force on 22 March 2018, the Aliens Act contains the "safe third country" concept[451] as a ground for inadmissibility.[452] The CGRS has already stated that it will only apply this concept exceptionally and that there will not be a list of safe third countries. In 2021, this concept was used in 13 cases, primarily for people having received international protection status in Switzerland.[453] No such figures were provided for 2022 and 2023.

### 2.1. Safety criteria

A country may be considered as a safe third country where the following principles apply:[454]

1. Life and liberty are not threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion;
2. There is no risk of serious harm;

447 Article 57/6/1(3) Aliens Act.
448 Article 57/6/1 Aliens Act.
449 Royal Decree of 7 April 2023, available in French at: https://bit.ly/3Hl3poc.
450 The following table includes data collected for Georgia, although Georgia is no longer considered a safe country of origin as of April 2023, the data for Georgia in this table covers the period 01/2023-04/2023.
451 Article 57/6/6 Aliens Act.
452 Article 57/6(3)(2) Aliens Act.
453 Myria, Contact meeting 19 January 2022, available in French and Dutch at: https://bit.ly/3sy9SFN, 37.
454 Article 57/6/6(1) Aliens Act.

3. The principle of *non-refoulement* is respected;
4. The prohibition of expulsion in violation of the prohibition of torture and other cruel, inhuman or degrading treatment is complied with; and
5. The applicant has the possibility to request refugee status and, if found to be a refugee, to receive protection in accordance with the Refugee Convention.

### 2.2. Connection criteria

A third country can only be regarded as a safe third country if the applicant has such a relationship with the third country based on which it can reasonably be expected of them to return to that country and to have access thereto.[455] The existence of a connection should be assessed based on "all relevant facts and circumstances, which may include the nature, duration and circumstances of previous stay".[456]

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

## 3. First country of asylum

Following the 2017 reform, the concept of "first country of asylum" is defined in Article 57/6(3)(1) of the Aliens Act as a ground for inadmissibility. A country can be considered as a first country of asylum where the asylum seeker is recognised as a refugee and may still enjoy such protection, or otherwise benefits from "other real protection" in that country, including *non-refoulement*, provided that they can again have access to the territory of that country.

This first country of asylum concept has been mainly applied to refuse asylum applications from Tibetans having lived in India before coming to Belgium. However, India is not a signatory to the Refugee Convention. In the past, Rwandans and Congolese with (often Mandate UNHCR) refugee status in another African country had been refused international protection on this ground, but this practice has been halted due to some judgments of the CALL considering this protection status ineffective and/or inaccessible.[457] The CALL has repeatedly refused to refer a preliminary question to the CJEU on the interpretation of the concept of "real protection".

The CGRS has confirmed it also applies the concept in other situations, e.g. in the case of Syrian refugees from a non-specified country from the Middle East (probably Jordan) because it was accepted that it was possible to return to that country, they had a residence permit there and because of their socio-economic situation.[458]

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

455 Article 57/6/6(2) Aliens Act.
456 *Ibid*.
457 See e.g. CALL, Decision No 129 911, 23 September 2014; No 123 682, 8 May 2014.
458 Myria, *Contact meeting*, 19 April 2016, available at: http://bit.ly/2jGUHTW, para 28.

is not safe or that there is no effectively accessible international protection available – is put completely on the asylum seeker.

In 2021 the application of the first country of asylum led to the inadmissibility of the asylum application in 11 cases, 10 of those concerning Tibetans, having India as the first country of asylum and one concerning a person having a status other than the international protection status, in Greece.[459] No such figures were provided for 2022 and 2023.

## G. Information for asylum seekers and access to NGOs and UNHCR

### 1. Provision of information on the procedure

**Indicators: Information on the Procedure**

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

#### 1.1. Content of information

The Royal Decree on Immigration Office Procedure provides an information brochure to be handed to the asylum seeker when they introduce the asylum application. The brochure is supposed to be in a language the asylum seeker can reasonably be expected to understand and should at least contain information about the asylum procedure, the application of the Dublin III Regulation, the eligibility criteria of the Refugee Convention and of subsidiary protection status, access to legal assistance, the possibility for children to be assisted during the interview, reception accommodation, the obligation to cooperate, the existence of organisations that assist asylum seekers and migrants and the contact details of the UNHCR representative in Belgium.[460]

#### 1.2. Information provision tools

On the day of registration/lodging of the asylum procedure at the Immigration Office, asylum seekers receive a folder containing various information, including information on the trajectory that will be followed on that same day of registration/lodging of the application and an extensive brochure at the Immigration Office on the day they make the application. This brochure was recently updated.[461]

A brochure entitled “Asylum in Belgium”, published by the CGRS and the reception agency, Fedasil, explains the different steps in the asylum procedures, the reception structures and rights and obligations of the asylum seekers. It is distributed at the dispatching desk of Fedasil, where people are designated to a reception accommodation place.[462]

In October 2019, Fedasil further launched the website www.fedasilinfo.be, which is available in 12 languages: Dutch, French, English, Arabic, Farsi, Pashto, Russian, Spanish, Albanian, Turkish, Somali and Tigrinya. 8 of these languages also include an audio version. Eight main topics are addressed: asylum and procedure, accommodation, living in Belgium, return, work, unaccompanied minors, health and learning. The website can only be reached if one connects with a Belgian IP address.

459 Myria, Contact meeting 19 January 2022, available in French and Dutch at: https://bit.ly/3sy9SFN, 37.
460 Articles 2-3 Royal Decree on Immigration Office Procedure.
461 Information provided by the Immigration Office, May 2024.
462 CGRS and Fedasil, Asylum in Belgium: Information brochure for asylum seekers regarding the asylum procedure and reception provided in Belgium, available at: http://bit.ly/2kvQCpP.

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

Besides this, some specific leaflets are also published and made available. The brochure 'Women, girls and Asylum in Belgium' was created for female asylum seekers and is translated in nine different languages. It not only contains information about the asylum procedure itself, but also on issues related to health, equality between men and women, intra-family violence, female genital mutilation and human trafficking. The CGRS also created brochures explaining the asylum procedure for unaccompanied and accompanied minors.[463] Leaflets with specific information are also available for asylum seekers in a closed centre, at a border or in prison. There is also the so-called 'Kizito' comic dated 2007, designed for unaccompanied children who do not speak any of the official languages in Belgium (Dutch, French and German), conceived to be understood only by the drawings, that explains the different steps of the asylum procedure and life in Belgium.

The Guardianship Service has developed a leaflet on assistance to unaccompanied children. This leaflet is available in 15 languages.[464]

Moreover, the CGRS has published several brochures on different aspects of the asylum procedure. A code of conduct for interpreters and translators and a so-called charter on interview practices serves as the CGRS protection officers' code of conduct (see Regular Procedure: Personal Interview). All these publications are freely available on the CGRS website.[465]

A team from Vluchtelingenwerk Vlaanderen ('Startpunt') is present every morning at the entrance of the Immigration Office to provide asylum seekers waiting in line with information about the asylum procedure and their rights. They distribute brochures with legal and practical information on various topics – such as the asylum procedure, the Dublin procedure and practical tips for people who are refused reception – which is translated into 18 languages.[466]

A procedural guide by Ciré was updated in 2019, and available in French.[467]

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

463 CGRS, Guide for unaccompanied minors who apply for asylum in Belgium; Guide for accompanied minors in the asylum procedure in Belgium, available at: http://bit.ly/2kvQCpP.
464 The leaflets can be consulted at: http://bit.ly/2l019Xb.
465 CGRS, *Publications*, available at: http://bit.ly/2kvQCpP.
466 Flyers available in English at: https://bit.ly/3NAuDJu.
467 Ciré, *Guide de la procédure d'asile*, 2019, available in French at : https://bit.ly/2tvuPFF.

## 2. Access to NGOs and UNHCR

**Indicators: Access to NGOs and UNHCR**

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

Individuals applying for asylum at the border are placed in detention, which affects their possibility to access to NGOs and UNHCR. A coalition of 4 NGOs (MOVE) visits every closed centre on a weekly basis. Their visitors provide preliminary socio-legal support, and they try to ensure that a lawyer is appointed to applicants in closed centres.[468] Each of these visitors receives an accreditation by the Immigration Office, allowing them to visit the detention centres. This right to access the centres is, however, not enshrined in law.

Asylum seekers on the territory have easy access to NGOs. Specialised national, Flemish and French-speaking NGOs such as Vluchtelingenwerk Vlaanderen, Coordination and Initiatives for Refugees and Aliens (Ciré), Association for Aliens Law (ADDE), JRS Belgium, Caritas International, Nansen – to name only some – as well as Myria have developed a whole range of useful and qualitative sources of information and tools, accessible on their respective websites or through their first line legal assistance helpdesks.[469]

According to the Reception Act, reception facilities should ensure that residents have access to legal advice, and to this end, they can also make arrangements with NGOs.[470] However, there is no structured approach to this, so it depends on the reception centre. Currently, no information regarding such arrangements is available.

In any case, UNHCR's role during the asylum procedure should be highlighted. In Belgium, the law foresees that UNHCR may inspect all documents, including confidential documents, contained in the files relating to the application for international protection, throughout the course of the procedure with the exception of the procedure before the Council of State.[471] It may further give an oral or written opinion to the Minister in so far as this opinion concerns the competence to determine the State responsible for the processing of an application for international protection, and to the CGRS, on his own initiative or at his request. If the CGRS deviates from this opinion, the decision must explicitly state the reasons for the deviation.[472]

468 For more information see: MOVE, available at:https://tinyurl.com/yc5w3x2s.
469 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.
470 Article 33 Reception Act.
471 Article 57/23 bis Aliens Act.
472 *Ibid*.

## H. Differential treatment of specific nationalities in the procedure

**Indicators: Treatment of Specific Nationalities**

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

2. Are applications from specific nationalities considered manifestly unfounded?[473] ☒ Yes ☐ No
   - ❖ If yes, specify which: Bosnia-Herzegovina, Serbia, Montenegro, Kosovo, Albania, FYROM, India

The CGRS uses the accelerated procedure for nationals of safe countries of origin. The list has been renewed by the Royal Decree of 7 April 2023 (see Safe country of origin).

In 2022, the CGRS also prioritised the cases of people with certain profiles coming from certain countries of origin with a relatively high protection rate. In 2023, it concerned persons with specific profiles coming from, for example, Syria, Afghanistan and Burundi. Not all cases from applicants from these countries of origin are treated with priority; the profiles for which this prioritised procedure is applied are selected through an internal screening procedure.[474]

**Burundi:** In a judgment of 22 December 2022, the CALL, in a chamber composed of 3 judges, stated that the mere fact of having applied for asylum in Belgium constitutes a sufficient reason to prove a well-founded fear of persecution in Burundi. The CALL considered that country of origin information shows that the Burundi regime considers this category of persons as opponents.[475] The CGRS has introduced a 'cassation appeal' before the Council of State (see Onward appeal to the Council of State) against the judgment of the CALL, stating that it does not agree with the legal motivation and that the judgment would have the undesirable consequence that all people with the Burundi nationality would almost automatically receive a status of international protection in Belgium. It announced that it will continue to examine Burundi applications on an individual basis.[476] Nevertheless, in 2023 the first instance protection rate for Burundian applicants remained high at 81%.[477]

**Afghanistan**: After the takeover of power by the Taliban in August 2021, the CGRS decided in mid-August to temporarily and partially suspend decisions on Afghan applications for international protection.[478] If possible, refugee status was still recognised. The following decisions were suspended:

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

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

474 Myria, Contact meeting 20 March 2024 and Myria, Contact meeting 25 January 2023, available in French and Dutch at: https://bit.ly/3KATnSl, 18.

475 CALL 22 December 2022, nr. 282.473, available in French via https://bit.ly/3zOgi6o.
*4.19. Il découle de ce qui précède que si les sources consultées pour la rédaction du COI Focus du 28 février 2022 n'ont relevé jusqu'à présent aucun cas documenté de ressortissants burundais, demandeurs de protection internationale ou non retournés au Burundi en provenance de la Belgique et ayant été persécuté de ce seul fait, il n'en apparaît pas moins clairement que les sources, s'étant prononcées plus spécifiquement sur les Burundais ayant introduit une demande de protection internationale en Belgique, considèrent que le seul fait d'avoir séjourné en Belgique en qualité de demandeur d'asile est de nature à rendre une personne suspecte de sympathies pour l'opposition, aux yeux des autorités burundaises. Il ressort tout aussi clairement des informations résumées plus haut que le fait d'être suspect de sympathie pour l'opposition au régime en place à Bujumbura suffit à faire courir à l'intéressé un risque sérieux d'être persécuté du fait de ses opinions politiques ou des opinions politiques qui lui sont imputées. Il s'ensuit que, dans le contexte qui prévaut actuellement au Burundi, la seule circonstance que la requérante a séjourné en Belgique où elle a demandé à bénéficier de la protection internationale, suffit à justifier dans son chef une crainte avec raison d'être persécutée du fait des opinions politiques qui lui seraient imputées.*

476 Myria, Contact meeting 25 January 2023, available in French and Dutch at: https://bit.ly/3KATnSl, 20-21.

477 CGRS, 'Asylum statistics December 2023, 12 Januari 2024, available at: https://bit.ly/420UFwY, 8.

478 CGRS, 'Afghanistan Policy', 6 January 2022, available in English on: https://bit.ly/3IyzWpg.

As of 24 May 2022, after updating the COI report and following some judgments of the CALL in cases concerning Afghanistan, the CGRS has fully resumed decision-making in Afghan cases.[479] Overall, the CGRS indicates that the situation for many Afghans has clearly deteriorated. As a result, various "profiles at risk" can "count on refugee status". Among these are journalists, human rights activists, political opponents and critics of the Taliban regime, people occupying certain functions under the previous government, staff members of the previous foreign military troops or foreign organisations, certain minorities, members of the LGBT community and other people opposing the conservative religious norms and values fostered by the Taliban rules, isolated minors or women not supported by a family network, family members of specific profiles at risk.[480] Concerning the need for subsidiary protection, the CGRS states that the level of indiscriminate violence has significantly decreased since the Taliban takeover. It highlighted that there still is violence in the country but that most attacks are acts of targeted violence. As a result, the CGRS evaluated that there is no longer a real risk of falling victim to indiscriminate violence in Afghanistan. Therefore, subsidiary protection status will no longer be granted based on the security situation.[481]

This new policy was reflected in the protection rates of 2022: 43,9% of Afghan applicants received the refugee status (compared to 29,6% in 2021), whereas only 0,2% (compared to 16,7% in 2021) received the subsidiary protection status. The protection rates continued to drop in 2023: 35,1% of Afghan applicants received refugee status, whereas only 13 applicants received the subsidiary protection status. 64,6% of the decision given to Afghan applicants were a negative decision in 2023.[482]

In several judgments of 12 and 13 October 2022, the CALL, in chambers composed of 3 judges, has examined certain issues that arise in the treatment of international protection applications by Afghan nationals.[483] As for the subsidiary protection status based on article 48/4, §2, c) of the Aliens Act (indiscriminate violence), the CALL has confirmed the view of the CGRS on the significant decrease of the level of indiscriminate violence since the Taliban takeover leading to the conclusion that not all Afghan nationals risk, merely based on to their presence there, a threat to their life or person due to indiscriminate violence. However, regional risks persist, and the CALL considers that it is up to the applicant to indicate how their personal circumstances increase the risk for them individually.[484] The CALL also considered that the socio-economic situation in Afghanistan does not constitute an 'inhuman treatment' in the sense of article 48/4, §2, b) of the Aliens Act. In this sense, the inhuman treatment must be caused by an intentional act or omission by an actor directed against the applicant. Although the socio-economic situation in Afghanistan has deteriorated since the takeover of power by the Taliban, this is not merely the consequence of this takeover but of a complex crisis for which not one specific actor is responsible. However, the CALL stressed that the current socio-economic situation could constitute a violation of article 3 ECHR and should be investigated in the context of issuing a return decision.[485]

Concerning the risk of persecution for Afghans who fear being considered as 'Westernised' by the Taliban regime, the CALL has stressed that although applications of this group demand a careful approach, not all Afghans returning from Europe have adopted Western norms and values or would be considered as 'westernised' in Afghanistan. It is up to the applicant to prove that they have internalised Western values and norms or characteristics or behaviours in such a way that it cannot be expected of them to abandon these. Applicants in these situations cannot be considered as constituting a 'certain social group' in the sense of article 48/3, § 4, d) of the Aliens Act but can be granted refugee status based on their political

479 CGRS, 'Afghan applications', 24 May 2022, available in English: https://bit.ly/3GAVJyh.
480 CGRS, 'Afghanistan: New Policy', 2 March 2022, available in English: https://bit.ly/35H5pIe.
481 CGRS, 'Afghanistan: New Policy', 2 March 2022, available in English: https://bit.ly/35H5pIe.
482 CGRS, 'Asylum statistics December 2023, 12 Januari 2024, available at: https://bit.ly/420UFwY.
483 For a resume of these judgments in Dutch and French, see the website of the CALL, 'Specific issues Afghanistan', 20 October 2022, https://bit.ly/3UbUECF.
484 CALL 12 October 2022, nr. 278 654, available in Dutch on: https://bit.ly/407Weqd; CALL 13 October 2022, nr. 278 701, available in Dutch on: https://bit.ly/3oaUj7m.
485 CALL 12 October 2022, nr. 278 654, available in Dutch on: https://bit.ly/407Weqd; CALL 13 October 2022, nr. 278 701, available in Dutch on: https://bit.ly/3oaUj7m.

or religious convictions. In two judgments rendered in January 2023, the CALL has further specified in which cases someone can be considered as 'Westernised'.[486]

For Afghan applicants belonging to the Hazara minority, the CALL has confirmed the view of the CGRS that the Taliban regime does not systemically persecute Hazaras. However, belonging to the Hazara minority can constitute an additional risk of being the victim of sectarian violence and societal discrimination. Combined with other risk factors (e.g., elements of westernisation originating from a region with high ISKP presence, …), persons belonging to the Hazara minority can be considered to have a well-founded fear of persecution because of their (perceived) political or religious convictions.[487]

In a report published in October 2022, the organisation Nansen analysed the new policy of the CGRS in the context of Afghan applications for international protection. The organisation criticised some aspects of the new approach, such as the fact that not all Afghan applicants have been invited for a (new) interview after the takeover of power by the Taliban and that the examination of the need for subsidiary protection is not based on precise and up-to-date information from various sources.[488]

The Belgian authorities do not organise forced returns to Afghanistan. Fedasil is currently the only entity organising voluntary returns to the country, given that IOM suspended its voluntary return programme in August 2021. IOM has confirmed this suspension in 2023 after an internal evaluation indicating that the economic and humanitarian crisis in Afghanistan have reached unprecedented levels.[489] In 2023, Fedasil received 15 requests for voluntary return to Afghanistan. 10 persons effectively returned using the Fedasil return programme.[490]

As a result, the group of Afghan persons not receiving international protection but not being able to return to their country of origin and thus being stuck in Belgium in irregular stay is steadily increasing.[491]

**Palestine:** Before the escalation of the Israeli-Palestinian conflict in October 2023, the treatment of the request depended primarily on whether the applicant was registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereafter UNRWA). Requests from those not registered with the UNRWA were treated just like any other request for international protection, using the standard criteria and procedure from articles 48/3 and 48/4 of the Aliens Act. In principle, Palestinians from Gaza who are registered with the UNRWA fall under the exclusion clause of article 1D of the Geneva Convention. For other UNRWA-registered Palestinian applicants from Gaza, the CGRS only grants international protection if they demonstrate that the protection from UNRWA does not suffice. The CALL accepts that UNRWA cannot protect those whose individual safety is threatened following severe persecution and thus grants refugee status to people in such conditions.[492]

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

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

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

489 Myria, Contact Meeting International Protection', 21 June 2023, available in French and Dutch on: https://bit.ly/3U1D9GU, 53-56.

490 Myra, Contact Meeting International Protection', 29 November 2023, available in French and Dutch on: https://tinyurl.com/bddp6ufc, 41-42.

491 De Standaard, 'Groen: 'We creëren groeiende groep mensen zonder papieren'', 10 June 2022, available in Dutch at: https://bit.ly/4dDShSa.

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

The past few years, there has been a lot of discussion about the granting of international protection to UNRWA-registered Palestinian applicants, the practice of the CGRS and the case-law of the CALL diverging on certain points (see AIDA report Belgium 2022 update). In January 2023, the CGRS announced it would change the policy towards UNRWA-registered Palestinian applicants, using a more individualised approach. It considers that after having analysed the situation, the almost systematic granting of international protection on the mere basis of origin of these applicants is no longer justified.

Following the escalation of the Israeli-Palestinian conflict in October 2023, the CGRS first decided to temporarily suspend decisions to grant or refuse subsidiary protection status in Palestinian cases. This suspension only concerned cases of Palestinians from the Gaza Strip and the West Bank, in which the CGRS would have concluded to refuse refugee status on the basis of the Geneva Convention according to its policy as determined before 7 October. In December 2023 the CGRS completed the assessment, and it unblocked the suspended cases. According to the CGRS the situation in Gaza clearly indicates a need for international protection. The situation in the West Bank also merits a deeper assessment. However, the CGRS will thoroughly assess the individual need for protection in each case.[493] In practice, this means that Gazans (and Palestinians in general) have an increased chance of obtaining refugee status.

**Ukraine:** Following the activation of the European Temporary Protection Directive through the Council of the European Union decision of 4 March 2022, Ukrainian refugees can register for the granting of temporary protection status. More information about this status, the procedure and the content of the temporary protection is provided in the section on 'temporary protection'.

Ukrainian nationals who do not fall within the scope of temporary protection, can apply for international protection following the general international protection procedure. However, the CGRS announced on 28 February 2022 that it would freeze the treatment of requests for international protection introduced by Ukrainian citizens. This means no decisions are taken, and no personal interviews are organised. In 2023, the treatment of asylum applications by Ukrainian applicants remained frozen.

493 CGRS, 'CGRS Resumes the processing of all Palestinian cases', available at: https://bit.ly/4aZsvGM.

# Reception Conditions

**Short overview of the reception system**

Fedasil - the Federal agency for the reception of asylum seekers – is responsible for the reception of applicants for international protection and certain other categories of people. Persons who are entitled to and in need of reception benefit from material assistance in the context of the reception network of Fedasil and its partners (i.e. accommodation, meals, clothing, medical, social and psychological assistance, a daily allowance – pocket money – and access to legal assistance and services such as interpreting and training). If the asylum seekers decide not to be accommodated by Fedasil, they are not entitled to these forms of material assistance, except for medical assistance.

Belgium has over 35,600 reception places in total.[494] The network comprises collective and individual reception structures. It consists of a 'first phase' where applicants for international protection are accommodated for the first days/weeks of their procedure. After this short period, applicants are transferred to a more definitive place in the second phase of the reception network that corresponds to their needs. At the time of writing, the first phase had 3,138 places in 14 different reception structures and the second phase 32,392 places.[495] Collective reception consists of reception centres managed by Fedasil, the Belgian Red Cross or other entities. Individual reception comprises housing managed by the Public Social Welfare Centre ('local reception initiatives' or LRI) or NGOs. The current reception model, the implementation of which started in 2016, generally assigns people to collective reception centres (86% of the places).[496] Only asylum seekers with specific vulnerabilities or reception needs are directly transferred to specialised NGO reception structures or individual structures.

The reception centres in the network of Fedasil are 'open', meaning the residents can come and go. Only in the context of the border procedure (see Border procedure) and for persons applying for asylum while staying in a closed detention centre, the asylum procedure will be conducted in the context of a closed detention centre. These closed centres are managed by the Immigration Office (see Detention of asylum seekers).

The right to reception ends once the procedure for international protection is completed. In the event of a positive decision, beneficiaries of international protection receive a residence permit and may start to look for their own accommodation. They are entitled to remain at the reception structure for an (extendable) additional two months to allow them to find suitable accommodation. They may request assistance from a Public Social Welfare Centre (PSWC). Following a negative decision, the applicant receives an order to leave the territory. Those whose negative decisions are confirmed by the CALL are invited to go to one of the four Fedasil centres with 'open return places', where possibilities for voluntary return are discussed. In case applicants refuse to cooperate with their voluntary return, the Immigration Office can initiate a procedure of forced return, including the transfer of the person concerned to a closed centre. Closed centres are managed by the Immigration office. (See End of the right to reception)

Since September 2021 and up until the time of writing, the reception network has been under a lot of pressure and is unable to accommodate all applicants for international protection. Families and children get priority, while single men are systematically refused access to a reception place (see 2021 – 2024: reception crisis). At the end of 2023, 2,921 persons were on the waiting list to get access to reception.

494 Statistics frequently provided by Fedasil at: www.fedasil.be/en/statistics. In March 2024, the reception network consisted of 35,643 places.
495 Information provided by Fedasil, March 2024.
496 Information provided by Fedasil in March 2024: 5,076 individual places on a total of 35,651 reception places.

# 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 allow for access to material reception conditions for asylum seekers in the following stages of the asylum procedure?

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

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

### 1.1. Right to shelter and assignment to a centre

According to the Reception Act, every asylum seeker has the right to material reception conditions ensuring a dignified standard of living from the moment of making an asylum application.[497]

There is no limit to this right connected to the nationality of the asylum seekers in the Reception Act. Asylum seekers from safe countries of origin will have a reception place assigned to them. EU citizens applying for asylum and their family members are entitled to reception as well, although in practice they are not accommodated by Fedasil (see Differential Treatment of Specific Nationalities in Reception). This means that they need to secure housing with their own means. EU citizens applying for asylum can challenge the formal refusal decision of Fedasil (known as 'non-designation of a code 207') before the Labour Court.

In theory, no material reception conditions, with the exception of medical care, are due to a person with sufficient financial resources.[498] Expenses that have been provided in the context of reception can also be recovered in such cases.[499] Nevertheless, no assessment of these financial resources or the actual risk of destitution of the person concerned occurs at the moment of the intake. In practice, the withdrawal of material aid is only rarely applied since Fedasil has limited means to check the financial resources a person has (see Reduction or withdrawal of reception due to a professional income).

The Aliens Act provides that "registration" and "lodging" of the asylum application are two different steps in the asylum procedure.[500] The Reception Act, however, now clearly provides that an asylum seeker has the right to shelter from the moment they make the asylum application, and not only from the moment the asylum application is registered,[501] in line with the recast Reception Conditions Directive.

In December 2018, an 'arrival centre' was established at the open reception centre 'Klein Kasteeltje'/'Petit Château' located in the city centre of Brussels, where all asylum applications had to be made and registered and where applicants accessed the reception system. Both the Immigration Office and Fedasil were present at the arrival centre: the Immigration Office for registering the asylum applications, and Fedasil for screening the newly arrived asylum seekers to providing them with information on their right to reception conditions and access to the reception system for those in need. The arrival centre was (and remains) also the place where asylum seekers who were already in the reception system but need to be

497 Article 3 Reception Act.
498 Article 35/2 Reception Act.
499 Article 35/1 Reception Act.
500 Article 50/1 Aliens Act.
501 Article 6(1) Reception Act.

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

**Impact of the reception crisis on the arrival centre:** For security reasons, the registration centre has been moved from 'Klein Kasteeltje' to the offices of the Immigration Office on 29 August 2022.[502] Since then, applicants for international protection have to register at the Pachecolaan 44. Fedasil is not present at this location. This means that applicants for international protection who do not receive access to the reception network are not seen by Fedasil and are informed by the personnel of the Immigration Office of the fact that they need to register on a waiting list of Fedasil. Those who do receive access to the reception network on the day of the application are transferred to 'Klein Kasteeltje' or another reception centre in the first phase. Applicants for international protection who are not immediately given access to the reception network can be invited to receive a place on a later date. These applicants are asked to present themselves at the 'Klein Kasteeltje'.

Applicants who receive shelter are first invited for an intake in the arrival centre, where they undergo a medical screening and can get vaccinated (optional) and have to undergo a tuberculosis test (compulsory). Fedasil assesses any specific reception needs that might arise (e.g. medical needs). Afterwards, applicants are first accommodated in one of the 14 first-phase reception centres (with a total capacity of 3,138 places)[503] for at least 3 days. Once a place in a second phase reception structure becomes available, the person is moved to this new reception place.[504] The document of designation by Fedasil is called "Code 207". Due to the reception crisis, the average stay in a first phase reception places rose to 44 days in 2023.[505]

Asylum seekers who stay at private addresses and indicate they do not need material assistance will only be entitled to medical care (to be requested to Fedasil via an online 'requisitorium'; see Health care). Their right to have the assistance of a pro bono lawyer may also be affected if they live with someone who has sufficient means. When the need arises, these applicants can always opt for material aid again if their asylum procedure is pending.

#### Constraints in accessing accommodation

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

In January 2020, the government issued new instructions on the 'Modalities relating to the right to material assistance of applicants for international protection with an Annex 26quater or a protection status in another Member State'.[506] This instruction limited the material reception to medical assistance for persons restarting their asylum procedure in Belgium after the expiry of the Dublin transfer period (see Right to reception: Dublin procedure) and for applicants who have already been granted international protection in another EU member state (see Right to reception: Applicants with a protection status in another EU Member State).

This new policy was adopted due to the overcrowding of the reception system and the increase of applications for international protection made by these two categories of applicants. After several national, Flemish and French-speaking NGOs had introduced an appeal to the Council of State aiming for the suspension and the annulment of the Fedasil instructions, Fedasil withdrew the instructions of 3 January 2020 in September 2020, right before the hearing before the Council of State was scheduled.[507]

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

503 Information provided by Fedasil, March 2024.

504 Fedasil, 'In a reception centre', available at: http://bit.ly/3SkOkrm.

505 Information provided by Fedasil, March 2024.

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

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

*2020: COVID-19 pandemic and online registration system*

In the context of the COVID-19 pandemic, an online registration system for applications for international protection was introduced by the Immigration Office (see Registration of the asylum application), due to which some applicants for international protection had to wait multiple weeks before they were able to make their application. Since applicants for international protection are only entitled to material assistance from the moment they make their application for international protection, applicants had no access to the reception system during this waiting period.[508]On 5 October 2020, the Brussels court of first instance ruled that completing the online registration was equal to 'the formal lodging of a request for international protection' and should give the immediate right to reception conditions.[509] The Belgian state was given 30 days to change the registration system to ensure the immediate access of applicants to the reception system. As a result, the Immigration Office suspended the online registration system and resumed the previous system of physical, spontaneous registrations on 3 November 2020.

*2021 – 2024: reception crisis: systematic denial of reception for male applicants for international protection and incidental denial of reception for families and minors*

Since September 2021, the reception network is under enormous pressure and Fedasil is unable to provide all applicants with a reception place. Consequentially, priority is given to those applicants considered 'vulnerable' (families, children, single women, etc.). Unless they present an exceptional (medical) vulnerability[510], single male applicants are almost systematically not considered as vulnerable and are thus denied access to a reception place. During the whole year of 2023, single male applicants for international protection were systematically deprived of their right to reception. After registering their application for international protection, single men with a need for accommodation are not given an individually motivated decision that refuses them a reception place.[511] They are merely informed about the shortage of places and instructed to register themselves on a waiting list of Fedasil.[512] The average waiting time for those on the waiting list increased up until 6 months at the time of writing. On 7 February 2024, 3,122 persons were registered on the waiting list.[513] During the waiting period, the applicants are left to fend for themselves, many living in extremely precarious conditions (see Consequences on the applicants' livelihoods). The past two years, multiple legal procedures have been initiated in order to force the Belgian government to respect the international and national obligation to provide reception to people asking for international protection (see Legal proceedings).

Although the reception crisis mostly impacts single men applying for asylum in Belgium, families and unaccompanied minors have also suffered important consequences because of the severe shortage of places. In October and November 2022, there were some days on which Fedasil could not provide shelter to families with children and unaccompanied minors.[514] As for unaccompanied minors, self-proclaimed male minors above 16 did not receive accommodation on the day of their application. The screening of their age (over or under 16) was done by personnel of the registration centre based on physical characteristics.[515] Initially, those excluded could choose to undergo an age assessment. If their minority was proven, they were given a reception place. However, as of 26 October 2022, the Guardianship

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

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

510 Federal Parliament, 'Committee on Internal Affairs, Security, Migration and Governance: CRIV 55 COM 1184, 4 October 2023, available in Dutch at: https://bit.ly/3FBiqBi, 8.

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

512 Fedasil, 'Register for reception', https://tinyurl.com/mureyrc9; the waiting list can be accessed online at: http://bit.ly/3LzAIr0.

513 Chamber of Representatives, Nicole de Moor, CRIV 55 COM 1267, 7 February 2024, 12, https://tinyurl.com/2mhwru8p.

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

515 Myria, 'Contact Meeting International Protection', 23 November 2022, 30-31, available in Dutch and French at: https://bit.ly/3Lxwccu.

Service no longer conducted age assessments for this group. According to the Service, the situation was "untenable for the hospitals and the Guardianship Service" since the age assessment test had to be conducted in "demeaning circumstances".[516] As a result, the self-proclaimed minor without reception could not contest the doubt on their minority. This in turn prolonged the time during which they were denied access to reception. Without access to a reception place, they were forced to sleep in the streets.[517] Humanitarian organisations did their best to support them by providing humanitarian aid such as food and carton tents. On 17 December 2022, the police of Brussels destroyed the carton tents in which the minors were sheltered.[518] In December the occupancy rate of the reception network for minors and the number of minor applicants for international protection decreased again, allowing Fedasil to again provide reception to all unaccompanied minors on the day of their application. In total, 294 unaccompanied minors were not given reception on the day of their application during the winter of 2022. 70 self-proclaimed minors were found to be above 18 years of age after an age assessment and were not given reception. 202 unaccompanied minors were given reception after undergoing an age assessment or after a certain period.[519] Caritas International announced that 24 unaccompanied minors were officially reported missing.[520] This situation was denounced on multiple occasions by the Flemish Child Rights Commissioner.[521]

In the summer of 2023, the reception crisis reached a point where there were not enough places for families in the reception network. To avoid families ending up on the street, some families were housed in 7 youth centres (310 places) as of 12 September 2023.[522] The agreement with these youth centres ended in February 2024 because the youth organisations need the locations at the end of the winter period.

On 29 August 2023, the Secretary of State for Asylum and Migration officially announced a temporary suspension of reception for all single male applicants.[523] The reason for this suspension was the limited number of available places in the reception network for families and children and the need to prevent this group of vulnerable applicants from ending up on the streets. Only in exceptional cases can single men receive a reception place.[524] Upon appeal by several NGO's, this measure was considered as unlawful by the Council of State, the highest administrative court in Belgium (see Legal proceedings).[525] However, after the judgement, the Secretary of State announced being unable to respect the ruling and that the suspension of access to reception for single men would continue.[526] This means that the waiting list is in theory frozen and single men are no longer offered a reception place. In practice, Fedasil continues to

516 Ibidem, 42.

517 Brussels Times, 'Asylum reception crisis: 21 unaccompanied minors left sleeping on streets', https://bit.ly/3TJp3Kj.

518 Vrt Nws, 'Brussel burgemeester Close laat kartonnen tenten van minderjarige migranten verwijderen, hulporganisaties verbolgen', 19 October 2022, available in Dutch at: https://bit.ly/4aMo0PC.

519 Myria, 'Contact Meeting International Protection', 25 January 2023, available in Dutch and French at: https://bit.ly/3JKpIWk, 48.

520 Brussels Times, 'Belgian Reception Crisis: 24 underage asylum seekers officially missing', 11 January 2023, available at: http://bit.ly/3YU6pOK.

521 KRC, 'Opvangcrisis: dat jongeren op straat moeten slapen mogen we niet gewoon worden', 2 December 2022, available in Dutch at: https://bit.ly/49S39dn; KRC, 'Bernard De Vos and Caroline Vrijens', 'Opvang van niet-begeleide minderjarigen gaat van kwaad naar erger', 21 October 2022, available in Dutch at: https://bit.ly/47Tt6rl.

522 Fedasil, *Families received in emergency accommodation,* 18 September 2023, available in English at https://tinyurl.com/mwzwfuxy.

523 Euronews, 'Belgium's asylum shelters will no longer take in single men in order to make room for families', 2 September 2023, available at: https://bit.ly/4989oJN; Nicole de Moor, 'Tijdelijk geen opvang meer voor alleenstaande mannen',29 August 2023, available in Dutch at: https://bit.ly/3PHqC7R; Fedasil, 'Pas d'accueil pour les hommes isolés', available in French at: https://bit.ly/3QyxJ40.

524 Federal Parliament, 'Committee on Internal Affairs, Security, Migration and Governance: CRIV 55 COM 1184', p. 8 available in Dutch at: https://bit.ly/3FBiqBi.

525 Council of State, Ruling n° 257.300 of 13 September 2023, available in French at https://tinyurl.com/v5w53wcy; Euractiv, 'Belgian court halts decision denying housing to single male asylum seekers', 14 September 2023, available at: https://bit.ly/3QA4KNx.

526 The Brussels Times, 'Decision to stop providing shelter for single men reversed by Council of State', 13 September 2023, available at: https://bit.ly/3scsldB and Federal Parliament, 'Committee on Internal Affairs, Security, Migration and Governance: CRIV 55 COM 1169', available in Dutch at: https://bit.ly/3QcaETx, 12

invite single men, but at a very slow pace, which entails that the number of persons registered on the waiting list does not diminish, the number of applicants with reception needs arriving each day being far higher than the amount of people provided access to a reception place. Consequently, the number of people waiting for a place and the average waiting time continues to increase. On 7 February 2024, 3,122 persons were registered on the waiting list and this number continues to rise. In March 2024, invitations for a reception place were being sent to persons having applied for asylum in June 2023 (waiting time of 9 months).

In September 2022, 51 civil society organisations published a 'roadmap' proposing several measures to solve the reception crisis.[527] The secretary of state stated that certain of the proposed measures, such as providing emergency shelter in hotels, activating the federal phase of the national disaster plan or the mandatory distribution plan will not be considered.[528] In September 2023 she repeated that this distribution plan or other possible solutions like a temporary residence permit for Afghans are not taken into consideration.[529]

The reception crisis also impacted access to the asylum procedure in 2022 and 2023 (see Registration of the asylum application).

*Consequences on the applicants' livelihoods*

Applicants without access to the reception network sleep rough for multiple months. Some sleep on the streets, only protected by sleeping bags, mattresses and blankets provided by humanitarian organisations and solidary citizens, who also distribute food and warm drinks. Since the summer of 2022, a group of asylum seekers set up tents on a bridge over and alongside the canal, right across the famous Arrival Centre "Petit Château". Other homeless asylum seekers have sought shelter in several unoccupied buildings in Brussels. The largest of those occupations or 'squats', situated in Rue des Palais and called by its inhabitants the "Palais des droits", soon became completely overcrowded, hosting around 1000 persons. After the situation became precarious, due to unsafe living conditions[530] and the spread of infectious diseases[531] the Federal government and the region of Brussels decided to evacuate the building in February 2023.[532] After this evacuation, Fedasil indicated that it provided shelter to 840 registered asylum seekers who were living in the squat.[533] However, due to an underestimation of the amount of asylum seekers residing in the building, not all of them received a place in the Fedasil reception network. A remaining 150 to 200 persons, although entitled to reception, were forced to search shelter in the tent camp at the Arrival Centre.[534] As a result, the number of tents increased to 110 with an estimated 250 persons.[535] In the beginning of March 2023, the mayor of Molenbeek decided to evacuate this makeshift

527 Vluchtelingenwerk Vlaanderen, 'De weg uit de opvangcrisis', September 2022, available in Dutch at: https://bit.ly/3DDgHe9.

528 Federal Parliament, 'Committee on Internal Affairs, Security, Migration and Governance: CRIV COM 877, 21 September 2022, available in French and Dutch at: https://bit.ly/45PpJQw, 28.

529 Federal Parliament, 'Committee on Internal Affairs, Security, Migration and Governance: CRIV COM 1169, 20 September 2023, available in French and Dutch at: https://bit.ly/3QcaETx, 23-34.

530 BX1, 'Sad weekend at "Palais des droits" in Schaerbeek : one dead and one wounded", 29 December 2022, available in French at https://tinyurl.com/yc3vdxwd; La Libre, 'A drama avoided after a fire at Palais des Droits in Schaerbeek: the sanitary conditions or the residents continue to worsen', 12 January 2023, available in French at https://tinyurl.com/45hj9838.

531 VRT NWS, 'Infectious diseases rife at Schaarbeek squat housing around 800 asylum seekers', 9 December 2022, available at: http://bit.ly/3zwD6HF.

532 The Brussels Times, 'Residents of 'Schaerbeek squat' to be evacuated and given new place to shelter', 10 February 2023, available at: https://bit.ly/484Yd3F.

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

534 VRT NWS, '150 asylum seekers from Paleizenstraat squat spend the night on the street', 16 February 2023, available at http://bit.ly/3nNSGMD; Rtbf, 'Crise de l'accueil: 200 demandeurs d'asile à la rue après evacuation complete du squat de la rue des Palais, 16 February 2023, https://bit.ly/3Hff48a.

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

camp.[536] Around 135 asylum seekers were either sheltered by Fedasil or brought to temporary shelter for destitute and homeless persons. A remaining 50 persons were left behind, deprived from their tents. They found shelter in an empty building further alongside the canal, "Alée du Kaai".[537] Two days later, this building was evacuated as well.[538] With the help of a collective of citizens called "Stop the reception crisis"[539], the persons concerned occupied the empty building of the future National Crisis Centre.[540] These applicants were offered a place in emergency accommodation, from where they would afterwards be integrated in the general reception network.[541] In April 2023, another large building – the former headquarters of political party CD&V – was occupied by the same collective of citizens, offering accommodation to dozens of asylum seekers.[542] In October 2023, the asylum seekers sheltering there were evicted.[543] Dozens of other smaller squats are present in the city of Brussels.[544] In a period of a few months, civil society organisation Samusocial, that provides support to people living in occupied buildings, counted 2,000 persons (not all asylum seekers) in 13 buildings in Brussels, without counting those sheltered in smaller squats.[545] In November 2023, there were reports of new informal camps appearing near the registration centre and the Humanitarian Hub.[546] After these reports, the tents were quickly dismantled by the local police.[547]

Medical organisations have denounced the dire medical situation for destitute asylum seekers on multiple occasions. Although Fedasil remains responsible for the reimbursement of medical costs, the group of applicants deprived of reception in the context of the reception crisis encountered many difficulties accessing medical aid through the online "requisitorium" (see Health care). Language barriers, lack of access to internet and urgent and complex medical needs because of precarious living situations, were some of the reasons why this group had difficulties accessing medical aid via this system.

In order to make medical care more accessible for the applicants for international protection sleeping rough, Doctors Without Borders (MSF) Belgium opened a medical unit at the registration centre (Pacheco) in October 2022. After one month, they had conducted more than 500 medical consultations. 94% of the patients were male, of which 90% were sleeping rough. The organisation counted 40 cases of cutaneous diphtheria and 99 cases of scabies, it gave 20 prescriptions to resume medical care for chronic non-transmittable illnesses like diabetes, epilepsy and hypertension.[548] In the three months during which the

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

537 BX1, 'Molenbeek : les demandeurs d'asile non-relogés sont hébergés à l'Allée du Kaai, mais les conditions sont difficiles', 8 March 2023, available in French at: https://bit.ly/48trR2w.

538 La Libre, 'Crise de l'accueil : une soixantaine de personnes, dont des demandeurs d'asile, évacués de l'Allée du Kaai', 10 March 2023, https ://bit.ly/3vxzC9d.

539 Translated from the Dutch "Stop de opvangcrisis" or the French "Stop à la crise d'accueil": https://bit.ly/48wWswf.

540 VRT NWS, 'Video: Asylum seekers occupy future National Crisis Centre HQ', 13 March 2023, available at: http://bit.ly/3MegVO8; The Brussels Time, 'Asylum seekers occupying Crisis Centre demand national crisis plan', 16 March 2023, available in English at https://tinyurl.com/3br95nzz.

541 VRT NWS, 'Accommodation solution for asylum seekers occupying the future office of the National Crisis centre', 14 March 2023, available in Dutch at https://tinyurl.com/k6dphvs4.

542 The Brussels Time, 'Activists with masks of Belgian politicians open up disused building for asylum seekers', 24 April 2023, available in English at https://tinyurl.com/yzfsxcu7.

543 The Brussels Time, 'Asylum seekers at Rue de la Loi evicted by police on Friday morning', 20 October 2023, available in English at https://tinyurl.com/yc44kxxm.

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

545 Het Nieuwsblad, 'Samusocial telt tot 2.000 mensen in Brusselse kraakpanden', 28 February 2023, available in Dutch at: http://bit.ly/3UhT9Tu. '

546 Bruzz, 'Tentenkamp in de maak aan Dienst Vreemdelingenzaken', 8 November 2023, available in Dutch at: https://bit.ly/46AJT1b.

547 Bruzz, 'Politie verhindert opbouw tentenkamp aan Humanitaire Hub', 23 November 2023, available in Dutch at: https://bit.ly/46teFZH and Bruzz, 'Politie ontruimt mini-tentenkamp aan Dienst Vreemdelingenzaken', 9 October 2023, available in Dutch at: https://bit.ly/4a8399t.

548 Doctors without Borders, '1 maand medische interventie aan Pacheco-registratiecentrum: cijfers, tendenzen en aanbevelingen', available in Dutch at: http://bit.ly/3KAZfv1 and Doctors without Borders, 'Crise de l'accueil: un mois après, quel bilan pour MSF à Pachéco ?', 15 november 2022, https://bit.ly/48Ox0lz (shortened version).

post was operational, 2,480 patients sought medical and psychological help. Of these patients, 2,203 people (88,8%) registered as applicants for international protection without reception.[549] Since January 2023, this medical unit is taken over by Croix-Rouge and called the "Refugee Medical Point" and funded by the federal government.[550] Humanitarian organisations providing medical care, such as the medical services at the Humanitarian HUB ran by MSF and Doctors of the World (MdM), registered an increase in the ratio of applicants for international protection on their entire visitors' population. While before the reception crisis, only 5% of the visitors of the service 'Mental health care' of MSF consisted of applicants for international protection, the share of this category increased up to 85% in March 2023.[551] This increase is also clearly visible in the other medical (and legal) services of the Humanitarian HUB.[552] There was also a clear increase in the amount of people whose need to medical care was directly related to a lack of housing.[553] Medical services indicate that many of the health problems treated among applicants for international protection are directly related to their dire living situations and the lack of access to preventive and curative health care: skin diseases, digestive issues and dental problems, joint problems and mental health problems.[554] They also treat several contagious diseases that would usually be prevented or cured when people would undergo a medical examination on the moment of entering the Fedasil reception network, such as diphtheria, scabies, tuberculosis and measles.[555] MSF teams also observed a marked deterioration in the mental health of applicants for international protection living on the streets. Main diagnoses identified are: psychotic disorders, post-traumatic stress and depression. These disorders are exacerbated by the insecurity and uncertainty associated with the lack of housing. In some cases, this can lead to suicidal thoughts or suicide attempts. During medical consultations for the Immigration Department, 8 persons spontaneously reported experienced violence in Belgium.[556]

*Access to legal assistance and information*

The reception crisis has severely hindered access to legal assistance for applicants sleeping rough. After the registration of their application, single men are automatically left on the streets without any information about their rights – including the right to legal assistance – nor any practical indications on accessing the legal assistance they are entitled to. As a result, they are not able to challenge the violation of their right to a reception place. Most applicants lack information on the course of the asylum procedure. This can result in missing their first interview, potentially leading to the closure of their procedure. Many go to their interviews uninformed and unprepared. Although the presence of a lawyer is allowed during interviews of the CGRS, many do not have a lawyer by the time they are invited for this interview and they go without the legal assistance they are entitled to. In addition, 1,300 applicants on the waiting list have already received a decision on their application whilst being deprived of accommodation.[557] In case this decision is negative, the possibility to introduce an appeal is dependent on the access to legal assistance.

Several NGO's try to mitigate this issue by providing legal information and ensuring access to lawyers to victims of the reception crisis. SISA, the social and administrative information service of the NGO BelRefugees, has been providing legal information and assistance to migrants living in precarious situations for a long time and continues to do so in the context of the reception crisis. Whereas SISA is accessible for all persons living in precarious situations and having questions about migration, the share of applicants of international protection among the total amount of visitors was above 80% and often above 90% in January – September 2023.[558] In April 2022, a legal helpdesk was set up by the NGO Vluchtelingenwerk Vlaanderen, a consortium of law firms and the Bureau of legal aid of Brussels (Barreau

549 'Crise de l'accueil: etat des lieux', May 2023, available in French at : https://bit.ly/46be1QI, p. 11.
550 Croix Rouge, 'Bruxelles: la clinique mobile de la Croix-Rouge devient un véritable centre médical', 16 January 2023, https ://bit.ly/3tQ7NZg ; News Belgium, 'Fedasil: subsidies aan gemeenten 2022 en verlenging van het 'Refugee Medical Point'', 29 september 2023, https ://bit.ly/3tFlsCt.
551 'Crise de l'accueil: état des lieux', May 2023, available in French at : https://bit.ly/46be1QI, 10.
552 Ibidem, 7-9.
553 Ibidem, 7.
554 Crise de l'accueil: état des lieux, May 2023, available in French at : https://bit.ly/46be1QI, 11-12.
555 Ibidem, 12.
556 Ibidem.
557 Information provided by Fedasil during the Contact Meeting for International Protection of October 2023.
558 Vluchtelingenwerk Vlaanderen et al., 'Politique de non-accueil: état des lieux', 4 December 2023, available in French at : https://bit.ly/48rTljt, 9.

de Bruxelles). In this 'first line' helpdesk, volunteers provide information about the asylum procedure to applicants without access to a reception place, help them with registering on Fedasil's waiting list and finding their way to emergency accommodation and other humanitarian services. Through this helpdesk, a 'second line' lawyer is appointed for further legal support in their asylum procedure. To this purpose, a collaboration has been set up with different bureaus of legal aid in Gent, Antwerp, Leuven, Limburg and Brussels, so as to ensure the swift designation of a lawyer. In 2023, 3,400 individual applicants came to the legal helpdesk, with a total amount of 7,464 visits throughout the year.[559]

In September 2023, Fedasil has reopened their Info Point, an information centre where applicants for international protection, migrants in transit and undocumented persons can get information about the asylum procedure, medical aid, legal advice etc.[560] Although the Info Point does not serve as a point of access to reception for those excluded in the context of the reception crisis, it can provide this group with information and help them, for example, to fill out the medical requisitorium that allows them to get medical costs reimbursed (see Health care).

*Legal proceedings*

In the past two years, multiple legal procedures have been initiated in order to force the Belgian government to respect the international and national obligation to provide reception to people asking for international protection. In individual procedures initiated by lawyers of applicants being denied reception, Fedasil has been condemned at least 8,812 times by Labour Courts for violation of the right to reception.[561] Similarly, the European Court of Human rights (ECtHR) has indicated more than 2,086 interim measures to the Belgian state, ordering to provide shelter to the persons involved.[562] A consortium of NGO's has also initiated several collective procedures, asking Belgian courts to condemn the violation of the right to reception and the right to asylum.[563]

- *Individual legal proceedings*

From the early stage of the reception crisis, lawyers started legal procedures to challenge the violation of the right to reception of their clients, often through 'unilateral request' (non-contradictory procedure in extreme urgency) lodged before the presidents of the Labour courts. In many of these cases, courts confirmed the right to reception to the applicants, ordering Fedasil (and later also the Belgian State, being declared responsible *in solidum*) to give them immediate access to a reception place, on penalty of a fine of €100 to €250 per working day it fails to respect the court decision. Fedasil has been condemned by Belgian labour courts 8,812 times since the start of the reception crisis.[564] The total amount of fines that are due is estimated to be above 100 million euros. The amount of cases brought before the Brussels Labour Court, led this court to publish a press release in May of 2022. It stated that in normal years it treats -on average - 38 cases against Fedasil. At the time of the press release, the number of cases brought before the Brussels Labourt Court reached 1007.

Some Labour courts included additional elements in their convictions, adding to the legal pressure on Fedasil. In a ruling of 13 June 2022, the Brussels Labour Court communicated an individual case against Fedasil to the public prosecutor's office.[565] In its communication the Court explained that Fedasil appears to have a deliberate, concerted and persistent practice of not granting the right to reception to applicants

559 Information provided by Vluchtelingenwerk Vlaanderen, author of the AIDA report. For more information, contact info@vluchtelingenwerk.be.
560 Fedasil, 'Ouverture du Point Info à Bordet', 29 September 2023, available in French at: https://bit.ly/41sfBgh.
561 Federal Parliament, 'Committee on Internal Affairs, Security, Migration and Governance: CRIV 55 COM 1169', 20 September 2023, available at: https://bit.ly/3QcaETx, 13.
562 Myria, 'Contact Meeting for International Protection', 24 January 2024, available at: https://tinyurl.com/yp3zbd4w, 33.
563 The Brussels Times, 'Tribunal of first instance condemns Belgium for reception crisis', 5 July 2023, available at: https://bit.ly/476vESx.
564 Information provided by Fedasil in March 2024.
565 Francophone Labourt Court of Brussels, 22/1343/K, 13 June 2022, available in French at: https://bit.ly/3MANYfF.

for international protection who are clearly entitled to it. The Court asked the public prosecutor to start an investigation on the claim that there "seems to have been put in place a system by persons holding public authority with a view to not granting the right to reception guaranteed by the Reception Law". This could be a possible violation of Belgian penal law, prohibiting measures contrary to the law concerted by a public authority. On 24 June 2022, the public prosecutor closed the investigation, indicating that there was no violation.[566] In a ruling of 28 March 2023, the Brussels Labour Court fined Fedasil for €2.500 to be paid as a 'civil penalty', because of "clear procedural abuse".[567] The court ruled that Fedasil showcased a deliberate and manifest violation of the Reception Law, hereby not executing its legal mission. In this case, Fedasil fails to provide adequate legal justification for the violation of the Reception Law. Continuing, the Court states that an aggravating circumstance is disruption of the public service of justice: "this disruption is very significant in view of the number of cases and the urgency with which they have to be dealt with, profoundly affecting the functioning of the French-speaking labour court of Brussels, to the detriment of this court and, ultimately, of all its litigants". Both the Court of Appeal and the Court of Cassation upheld this conviction, imposing the maximum civil fine of €2,500 on Fedasil. [568]

The wide amount of case proceedings and convictions against Fedasil has so far had a limited impact in practice, with less results registered in the latter phases of the reception crisis. While at the beginning of the reception crisis, applicants who received a positive court decision were given an appointment for accommodation within a week, the waiting time for persons having received a positive court order soon started increasing, to reach several months. As a result, applicants started introducing requests for interim measures at the European Court of Human Rights.[569] The first interim measure was granted on 31 October 2022.[570] On 12 March 2024, the ECtHR had granted 2,128 interim measures in this context (751 in 2022, 1,297 in 2023).[571] Although the interim measures were effective in the beginning, leading to an invitation to access the reception network within a short period, the waiting time increased for this group of applicants as well.

In July 2023, Fedasil announced it would no longer give priority to persons having received a positive court order: every applicant in need of reception is requested to register on a waiting list, after which they will be invited in a chronological order based on the date on which they have asked for asylum.[572] This practice renders the available legal remedies at the domestic and European level virtually ineffective. The *Camara v. Belgium* case resulted in a judgement of the European Court of Human Rights, in which the ECtHR found that Belgium violates article 6 of the European Convention on Human Rights and observed "a systemic failure on the part of the Belgian authorities to enforce final court decisions relating to the reception of applicants for international protection". [573] The failure of the Belgian government to comply with the rule of law has been largely criticised on both the national and international level (see International reaction).

Several lawyers have tried to force Fedasil and the Belgian state to respect the court decisions by claiming the penalties imposed by the courts in case of non-respect of the court decisions. However, Fedasil has until now refused to pay, a decision that has been confirmed on several occasions by the Secretary of

566 Openbaar Ministerie, 'Communiqué de Presse – Bruxelles', 24 June 2022, available in French at: http://bit.ly/3KgamYG.

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

568 Court of Cassation, Decision n° S.23.0046.F of 12 February 2024, available in French at https://tinyurl.com/5dceufs9.

569 HLN, 'Europees Mensenrechtenhof verzoekt België opnieuw onderdak te geven aan asielzoekers', 16 December 2022, available in Dutch at: https://bit.ly/40ajGoJ.

570 De Standaard, 'Mensenrechtenhof beveelt België asielzoeker onderdak te geven', 3 november 2022, available in Dutch at: https://bit.ly/3Sfduto.

571 Information provided by Fedasil on 12 March 2024.

572 Myria, 'Contact Meeting International Protection', 20 September 2023, available in French and Dutch: https://bit.ly/3Mdfw9E, 48; Federal Parliament, 'Committee on Internal Affairs, Security, Migration and Governance: CRIV COM 1154', 12 July 2023, 9 available in French and Dutch: https://bit.ly/4908b7j and Myria, 'Contact Meeting International Protection', 21 July 2023, available in French and Dutch at: https://bit.ly/3MjZRp1, 28.

573 ECHR, 'Camara v. Belgium', 18 July 2023, available at: https://bit.ly/3Sc3GQZ, §118.

State for Asylum and Migration and Fedasil.[574] The lawyers have thus taken further legal steps in order to force the payment of the penalties by Fedasil and the Belgian state by the confiscation and public sale of goods of Fedasil and of the cabinets of the Secretary of State and the prime minister.[575] However, the possibilities of confiscating public goods are strongly limited by Belgian law in order to not hinder the functioning of these services, making the enforcement of the judicial convictions very difficult in practice.

- *Collective legal proceedings*

In a decision of 19 January 2022 in a case brought on the initiative of several NGOs,[576] the court of first instance of Brussels condemned the Belgian State and Fedasil for not ensuring access to the asylum procedure and to reception conditions and ordered both parties to ensure the respect of these fundamental rights, imposing a €5000 penalty payment for the respective parties for each day during the following 6 months on which at least one person did not receive access to the asylum procedure (penalty for the Belgian State) or to the reception system (penalty for Fedasil).[577] Although the situation had improved slightly since the opening of new places in December 2021 and the opening of an emergency night shelter in January 2022,[578] the court deemed the state of the reception system too unstable to guarantee access to the asylum procedure and to reception conditions for all applicants in the near future. The court also explicitly stated that the waiting list used by Fedasil is unlawful.

After this judgement, single men were still being denied access to the reception network, and the waiting list was still used. On 24 January 2022 – only 5 days after the Court of First Instance ruled against the Belgian State and Fedasil – the government launched a 'five-point action plan' to counter the 'growing problem of asylum seekers crossing Belgium'.[579] One of the pillars of this action plan consisted in giving priority to 'new' asylum seekers, who had not yet applied for or/and received asylum in another EU member state. Male applicants with a Eurodac hit indicating they had already applied for or received international protection in another country, were denied access to the reception network and were told to send an e-mail to Fedasil in order to be put on the waiting list.[580] Between the 24th of January and 23rd of March of 2022, 813 applicants with a Eurodac hit were excluded from reception.[581]

As a result, the NGO's filed a new appeal at the court of first instance, requesting an increase of the penalty payment from €5000 to €10.000 for each day that the judgement would not be respected. In a judgement of 25 March 2023, the Court condemned Fedasil again, thereby increasing the penalty payment to €10.000. The court repeated that Fedasil is bound by the European Reception Directive to provide accommodation to all first-time applicants for international protection, regardless of external

574 Nicole de Moor, Federal Chamber of Representatives, CRIV 55 COM 1288, 12 March 2024, available in French and Dutch at: https://tinyurl.com/5n7t9nvr, 12 and The Brussels Times, 'State ignoring court judgements in asylum seeker cases', 8 October 2022, available at: https://bit.ly/46Oh0iQ.

575 VRT NWS, 'Dwangsommen niet betaald? Rechter laat nu ook spullen van Fedasil in beslag nemen', 20 januari 2023, available in Dutch at: https://bit.ly/3PWCEv3; VRT NWS, 'Dwangsommen blijven staatssecretaris De Moor (CD&V) in de nek hijgen', 1 February 2023, available in Dutch at: https://bit.ly/4145Kvp; VRT NWS, 'Deurwaarder neemt diepvriezer en koffiemachine kabinet-De Moor in beslag', 11 January 2024, available at: https://bit.ly/4aySHqT.

576 Vluchtelingenwerk Vlaanderen, CIRÉ, Médecins sans Frontières, Médecins du Monde, NANSEN vzw, ADDE, Ligue des Droits Humains, SAAMO and the Order of French and German speaking bar associations (OBFG).

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

578 VRT Nws, 'Asielzoekers kunnen voor nachtopvang terecht in voormalig ziekenhuis', 4 January 2022, available at: https://bit.ly/3CuJpfF.

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

580 Chamber of Representatives, Sammy Mahdi, 'CRIV 55 COM 672', 26 January 2022, 17 available in Dutch and French at: https://bit.ly/3TnqQlU.

581 Myria, 'Contact Meeting, 23 March 2022, available in Dutch and French at: https://bit.ly/3lthNTX.

factors influencing the availability of places. It specifically stated that it is unlawful to automatically exclude applicants for international protection with a Eurodac hit or with a protection status in another EU member state. Fedasil introduced an appeal against this judgement of 25 March at the Court of Appeal. This led to a new judgement on 13 October 2022. The Court of Appeal discarded Fedasil's arguments and upheld the judgement of the 25 March. It also lifted the period of 6 months during which the penalty fees could be claimed. It argued that Fedasil did not provide a concrete action plan to solve the reception crisis. The court went further and stated that Fedasil 'deliberately and manifestly disregards the judgement of the 19 January 2022'. Therefore, the penalty fees could be claimed for every working day that Fedasil did not respect the judgment of 24 January 2022, until the date of the in-merit decision on the case from the Court of First instance.

On 29 June 2023, the Court of First Instance of Brussels (French-speaking) condemned the Belgian State and Fedasil on the merits for their persistent misconduct in violating the right to asylum and the right to reception, as well as for not respecting judicial decisions.[582] The Belgian state violated the right to asylum by restricting access to asylum procedure. The court held that the right to apply for asylum may not be unlawfully prevented or delayed. The fact that the Belgian state is doing its best to organise the situation and does not intend to prevent the exercise of this right is irrelevant in this regard. The court finds that the Belgian state was in violation of the abovementioned obligations.

With regards to Fedasil, the Court found that the Federal Agency violated the right to reception. According to the court, it is not in doubt that the right to reception has been violated since the summer of 2021. The fact that there is a waiting list for reception sufficiently demonstrates this violation, according to the court. The Belgian state and Fedasil argued that there is force majeure that makes guaranteeing the right to shelter impossible. The court concludes that there is no force majeure. Therefore, saturation of the shelter network does not relieve the state of its obligations.

According to the court, it is demonstrated beyond doubt that the defending parties do not respect judicial decisions. This attitude endangers the foundations of the rule of law. Consequently, the Belgian state and Fedasil violate Article 1382 of the Civil Code.

Despite these judgements, Fedasil has continued to violate the right to reception up until the time of writing.[583] This has been confirmed by Fedasil in several official communications.[584] On 13 February 2024, it communicated that it could not provide accommodation to 8,816 applicants in 2023.[585] Fedasil has not yet paid the penalty fees that are due, hereby violating legal judgements.[586] The 10 NGOs have tried to demand the payment of the penalty fees, so far without success. Legal procedures on the payment of these penalties are currently pending. In January 2024, the Court of Appeal of Brussels authorised the NGO's to proceed to the seizure of certain specific bank accounts of Fedasil, under certain conditions specified by the Court.[587] The NGO's announced that the amounts that would be seized following this authorisation – which could amount up to 2,9 million euros of penalties due by Fedasil – would be entirely

582 Brussels Court of First Instance, '2022/4618/A', 29 June 2023, available in French at: https://bit.ly/3QxbV98,

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

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

585 Fedasil, 'A reception network under pressure', 13 February 2024, available at: https://tinyurl.com/2ubavru7.

586 Fedasil, 'Inbeslagname goederen bij Fedasil', 20 January 2023, available in Dutch at: https://bit.ly/3yWVbyy.

587 Court of Appeal Brussels, Judgment n° 2024/QR/3 of 23 January 2024, available in French at https://tinyurl.com/26xap9mk.

used for the direct support of victims of the reception crisis.[588] Fedasil appealed both this decision and the subsequent seizure of one of their bank accounts. These appeals are currently pending. Until a decision has been taken in the procedures, the amounts on the seized bank account remain frozen.

*(Inter)national reaction*

On 13 December 2022, the Commissioner for Human Rights for the Council of Europe Dunja Mijatovic sent a letter to the Belgian secretary of state for asylum and migration expressing her concern about the deteriorating reception crisis in Belgium.[589] In August 2023, the Commissioner repeated that "the lack of accommodation has serious consequences for the human rights of people applying for asylum in Belgium, including from the perspective of their right to health."[590]

In January 2023, the European Commission issued Belgium a formal notice concerning incorrect transposition of Directive 2013/33. The Press Release does not specify which provisions are included in the infringement action, but it is possible that the reception crisis is at the basis of this procedure.
On 30 March 2023, four UN Special Rapporteurs (the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and the Special Rapporteur on the right to drinking water and sanitation) sent a letter to the Belgian Government to underline their deep concern regarding the deterioration of the reception conditions.[591]

In September 2023, several Belgian human rights institutions addressed an open letter to the rapporteurs and representatives of various European institutions and the United Nations, voicing their concern on the ongoing infringement of both human rights and the rule of law and calling the European institutions and UN to examine the situation in Belgium.[592] Despite insistence of the human rights institutions, their letter received very little response.

In October 2023, Amnesty International published a statement urging the Belgian authorities to take all possible measures in order to adequately respect, protect and fulfil the rights of asylum seekers and to comply with the court rulings ordering Belgium to provide adequate accommodation.[593] In December 2023, Amnesty International launched an international campaign, calling on the Belgian Government to provide adequate shelter to asylum seeker applicants and to respect international human rights obligations.[594]

**Reception support**

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588 Vluchtelingenwerk Vlaanderen, 'Government omission forces NGO's to seize bank accounts of Fedasil', 2 February 2024, available in Dutch at https://tinyurl.com/5fr4jd6t; Ciré, 'Court authorizes NGO's to seize Fedasil's bank accounts', 2 February 2024, available in French at https://tinyurl.com/mr45apnk; Le Soir, 'Three million seized on bank account of Fedasil on behalf of several NGO's', 2 February 2024, available in French at https://tinyurl.com/59y72rnx.

589 Dunja Mijatovic, 'Letter to Belgium concerning reception of applicants for international protection', CommHR/DM/sf 040-2022', 13 December 2022, available at: https://bit.ly/3Kz8RGi.

590 Associated Press, 'Belgium's asylum shelters will no longer take in single men in order to make room for families', 30 August 2023, https://bit.ly/47dSGHf.

591 United Nations, 'AL BEL 1/2023', 30 March 2023, available in French at: https://bit.ly/3ROGMP7.

592 Myria et al., 'Human Rights Institutions invite Europe and the United Nations to investigate human rights violations', 2 October 2023, available in Dutch at: https://bit.ly/49wPnfZ; The Brussels Time, Human rights institutions sound the alarm on asylum seekers' rights in Belgium, 26 October 2023, https://bit.ly/3sguuF99. The letter was sent by the following human rights institutions: Myria Federal Center on Migration, Federal Institute for Human Rights, Federal Ombudsman, Unia, Institute for the Equality of Women and Men, General Delegate for Children's Rights, Kinderrechtencommissariaat and Interfederal Service for Combating Poverty.

593 Amnesty International, 'Belgium: Urgent Action Needed to End Human Rights Violations against Asylum Seekers', 31 October 2023, available at: https://bit.ly/483CqJD.

594 Amnesty International, 'Urgent Action: Asylum seekers denied shelter', 14 December 2023, https://bit.ly/4aqTjQ0.

In December 2021, the EUAA and Belgium signed their first operating plan, focusing on increasing reception capacity and improving reception quality, in the short and medium term.[595] An amendment was signed in May 2022 following the full-scale invasion of Ukraine and subsequent displacement, and adding a third pillar of enhancing the capacity of the Belgian authorities to implement effectively the TPD.[596] A second amendment was signed in November 2022, extending the operational support throughout 2023.[597]

The support of EUAA comes in the form of experts, interpreters, containers and support with training policies. As for the creation of reception places through containers, the creation of 750 additional reception places in EUAA containers is foreseen in 2024.[598] The search for suitable locations for these containers took several months and in January 2024 Fedasil communicated that the containers would be used in Ypres and Charleroi.[599] The containers in Ypres are expected to open in July 2024, providing 375 additional places. The containers in Charleroi are expected to open in December 2024, providing 375 additional reception places.[600]

Throughout 2023, the EUAA deployed 76 experts in Belgium,[601] mostly external experts (68). The majority of them were asylum information provision experts (19), along with reception child protection experts (17) and reception child protection experts (5).[602]

As of 19 December 2023, a total of 52 EUAA experts were deployed in Belgium, out of which 13 were asylum information provision experts, 11 reception child protection experts, 4 members of the roving team and 4 senior social workers.[603]

In 2023, the EUAA delivered 26 training sessions to a total of 127 experts and personnel of national authorities, relevant partners and EUAA contracted personnel.[604]

### 1.2. Right to reception: subsequent applications

The Reception Act provides the possibility for Fedasil to refuse reception to asylum seekers who lodge a second or further subsequent asylum application, until their asylum application is deemed admissible by the CGRS.[605]Between the moment of the subsequent application and the admissibility decision by the CGRS, asylum seekers who are refused reception nevertheless have the right to medical assistance from Fedasil and to free legal representation. Once the CGRS has deemed the application admissible, the right to access reception is reactivated. Asylum seekers must then present themselves to the dispatching desk to be allocated a reception place.

If the asylum seeker has not obtained reception from Fedasil during the first stage of the procedure and the CGRS declares the subsequent asylum application inadmissible, they will not be entitled to reception during the appeal with the CALL.

595 EUAA, 'Belgium: EASO launches operation to support reception authorities', 16 December 2021, available at: http://bit.ly/3ZSYoud.
596 EUAA, *Operational Plan 2022 agreed by the European Union Agency for Asylum and Belgium, amendment 1*, May 2022, available at: https://bit.ly/3YAc0cL, annex 1.
597 EUAA, *Operational Plan 2022-2023 agreed by the European Union Agency for Asylum and Belgium, amendment 1*, November 2022, available at: https://bit.ly/3Jp4FZo.
598 Federal Chamber of representatives, Commission of Internal Affairs, Security, Migration and Administrative matters, CRIV 55 COM 1044, 29 March 2023, https://tinyurl.com/3ab2zvzc, 23.
599 Myria, 'Contact Meeting International Protection', 24 January 2024, available in French and Dutch at: https://tinyurl.com/yp3zbd4w, 34.
600 Myria, 'Contact Meeting International Protection', 20 March 2024.
601 EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.
602 Information provided by the EUAA, 26 February 2024.
603 Information provided by the EUAA, 26 February 2024.
604 Information provided by the EUAA, 26 February 2024.
605 Article 4(1)(3) Reception Act.

If, after a final negative decision in the asylum procedure, a request for a prolongation of reception (see End of the right to reception) was pending or granted and the person lodges a second or further subsequent asylum application, the Dispatching service of Fedasil will take a new decision regarding access to reception conditions in the new procedure. If it decides to refuse reception, the previously pending or granted prolongation is withdrawn. The right to reception is thus linked to the most recent asylum procedure.[606]

Article 4 of the Reception Act is aligned with the recast Reception Conditions Directive and explicitly states that decisions which limit or withdraw the right to reception should be in line with the principle of proportionality, individually motivated and based on the individual situation of the person concerned, especially in the case vulnerable persons. Health care and a dignified standard of living should be always ensured. According to the Constitutional Court, the decision to refuse reception in such cases can only be taken in cases of abuse of the asylum procedure, e.g. when the person applies for asylum for the sole purpose of extending the right to reception.[607] In practice, however, Fedasil almost systematically refuses to assign a reception place to subsequent applicants until their asylum application is declared admissible by the CGRS, mostly through standardised refusal decisions. On multiple occasions, labour Courts have ordered Fedasil to motivate such decisions individually and consider all case elements.[608] In certain cases, subsequent applicants obtained reception after challenging such decisions before the courts. This means that the access to the right to reception in these cases often depends on whether the applicant is supported by an experienced lawyer. The Federal Mediator has received many complaints about this issue in the last years, including from families with minor children, having been refused reception after lodging a subsequent application for international protection. In several cases, Fedasil has reviewed its decision after intervention by the Federal Mediator and has granted the applicants reception.[609]

### 1.3. Right to reception: Dublin procedure

**Applicants registered as asylum seekers in another Member State**

*Right to reception until the moment of the effective transfer*

During the examination of the Dublin procedure by the Immigration Office, asylum seekers are entitled to a reception place. If a negative Dublin decision ("annex 26quater": refusal of residence with an order to leave the territory) is issued, the right to material assistance used to be terminated as soon as the deadline for leaving the territory has expired or as soon as the travel documents are delivered (in case the asylum seeker confirms their willingness to collaborate with the transfer but cannot obtain the necessary travel documents within the delay to leave the territory for reasons beyond their own will).[610] Fedasil considered this practice in line with the *Cimade and Gisti* judgement of the CJEU.[611] The Labour Courts of Brussels and Antwerp have overruled these instructions in individual cases, as they rely on a strict interpretation of the *Cimade* judgment, by ordering Fedasil to provide shelter until the Belgian state effectively executes

606 Fedasil, Update of instruction – Right to material aid – Subsequent application for international protection, 27 November 2023, available in French via https://tinyurl.com/3nvne8x2.
607 Constitutional Court, Decision No 95/2014, 30 June 2014.
608 Labour Court of Brussels, Decision No 21/538/K, 31 August 2021, available in French at: https://bit.ly/37kYDIH; Labour Court of Brussels, Decision No 17/1762/A, 8 February 2018; Labour Court of Brussels, Decision of 17 February 2015, available in French at: http://bit.ly/1Q3cOBn; Labour Court of Brussels, Decision No 16/1384/A, 14 November 2016; Labour Court of Bruges, Decision No 16/8K, 11 October 2016.
609 Federal Mediator, Annual Report 2019, available at: https://bit.ly/3u2VaFi
610 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.
611 CJEU, Case C-179/11, CIMADE, GISTI v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration, 27 September 2012.

the transfer decision itself, unless it gives clear instructions as to when and where the asylum seeker has to present themselves for this.[612]

Consequently, asylum applicants subject to a negative Dublin decision who are, on the moment of receiving this decision, residing in the reception network are invited to relocate to an 'open return place'. If they do not wish to go this centre, their right to reception will be suspended (see "Return track" and assignment to an open return centre).[613]

After the maximum period allowed by the Dublin Regulation to transfer the asylum seeker to the responsible Member State has passed (6 months in principle, possibly extended to maximum 18 months), Belgium becomes responsible for the application by default and a reception place is re-assigned when the person presents themselves to the Immigration Office and their first asylum application is re-opened (see Dublin).

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

In the context of the reception crisis that started in October 2021, the reception rights of applicants with a 'Dublin-hit' were restricted. Since 24 January 2022, applicants for whom, at the moment of registering their asylum application, a EURODAC hit indicated they had already applied for or received international protection in another country, were being denied access to the reception network and told to send an e-mail to Fedasil in order to be put on a waiting list.[614] Since March of 2022, all single men -regardless of a 'Dublin-hit'- are excluded from the reception network (see Constraints to the right to shelter). Although Labour courts have issued thousands of decisions condemning Fedasil to provide applicants with reception, the rulings have not always been positive for applicants in the Dublin procedure. According to the Courts, these applicants could have accessed reception conditions in the responsible EU member state. Therefore, leaving this state for Belgium is a 'self-inflicted' situation of precariousness. This refusal of reception by Fedasil and the Labour Court seems to contrast with the *Cimade and Gisti* judgement from the European Court of Justice, which ruled that applicants in a Dublin procedure have a right to shelter until the moment of their effective transfer. At the time of writing, applicants in the Dublin procedure still faced these difficulties (see Constraints to the right to shelter).

*2022: Dublin reception centre in Zaventem*

In the summer of 2022, the Immigration Office opened a new 'Dublin reception centre' in Zaventem. This centre is a regular open centre, meaning that its residents are free to leave if they wish to do so. The aim of this centre is to fast track the Dublin procedure for a specific target group, and to provide them with specific information and counselling. In doing so, the state secretary for asylum and migration hopes to ease the pressure on the reception network.[615] Applicants who have previously applied for international protection in another member state can be designated to this reception centre by Fedasil. Applicants who have previously applied for international protection in Hungary, Bulgaria and Greece are not designated to this reception centre.[616] Applicants who are designated to this centre can refuse this designation, after which their right to reception will be suspended.

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612 Labour Court, Brussels, Judgment of 4 December 2013; Labour Court of Antwerp, Judgment of 6 March 2014, available in Dutch at: http://bit.ly/1FGadUL. In the judgment *V.M. v Belgium* issued in July 2015, the ECtHR found that Belgium had violated Article 3 ECHR because (back in 2011) it had not provided for adequate material reception conditions for a particularly vulnerable family (asylum seekers, children, disabled, Roma) during the (non-automatically suspensive) appeal procedure against a negative Dublin decision.

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

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

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

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

Applicants in the centre in Zaventem are interviewed after 2-3 working days and will on that occasion be informed about the Dublin procedure and the possibility of a voluntary return to the responsible member state. After this interview, the Belgian Dublin Unit will proceed with the regular Dublin procedure. Once the responsible member state has agreed to take back the applicant, the Immigration Office will deliver an annex 26quater (Dublin decision) and will proceed with the voluntary return of the applicant. If the applicant does not collaborate with this voluntary return, the Immigration Office can detain the applicant and organise a forced return. In 2022 the average stay in this centre was 30 days, and 151 voluntary returns were already organised from the centre.[617] In 2023 (until 18 October), the average stay was 30,8 days, and 165 voluntary returns were organised from the centre.[618]

**Dublin Returnees**

Asylum seekers sent back to Belgium following a Dublin procedure in another country, are often considered subsequent applicants (see Situation of Dublin Returnees). Consequently, 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, their first asylum procedure will be closed with a "technical refusal". When this asylum seeker is then sent back to Belgium following a Dublin procedure and lodges their asylum application again, the CGRS is legally obliged to take it into consideration.[619] Nonetheless, these asylum seekers often are still considered as subsequent applicants and therefore are without shelter until this decision of admissibility is officially taken.

In the context of the reception crisis, male Dublin Returnees are systematically excluded from the reception network, like all other male applicants for international protection. They have to register on a waiting list in order to obtain shelter. The average waiting time to obtain shelter this way is several months at the time of writing (see Constraints to the right to shelter). In the meantime, applicants do not have any other solution than to sleep rough, on the streets or in occupied buildings. In the Netherlands and Denmark, courts have suspended Dublin transfers to Belgium as access to reception could not be guaranteed.[620]

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

The right to reception of applicants with a protection status in another EU member state has been restricted in the past. On the basis of a Fedasil instruction (see Constraints to the right to shelter), beneficiaries of protection in another EU Member State were no longer provided accommodation in Belgium from 7 January 2020 onwards. After several NGOs introduced an appeal to the Council of State aiming for the suspension and the annulment of these instructions, Fedasil withdrew them in September 2020, right before the hearing before the Council of State was scheduled, after which applicants with a protection status in another EU member state regained their full right to material assistance, including reception, during their asylum procedure.[621]

*2021-2022: Impact of the reception crisis*

In the context of the reception crisis that started in October 2021, the reception rights of applicants with a protection status in another EU Member State are again limited. Between 24 January 2022 and March 2022, Fedasil denied access to reception to applicants for who, at the moment of registering their asylum

617 Myria, Contact Meeting, 25 January 2023, available at: https://bit.ly/3JKpIWk, 10-11.
618 Myria, Contact Meeting International Protection, 18 October 2023, available at: https://tinyurl.com/2nz4rfcd.
619 Article 57/6/2 Aliens Act.
620 Rechtbank Den Haag, 'ECLI:NL:RBDHA:2023:15458', 12 October 2023, available in Dutch at: https://bit.ly/4643J4H; Knack, 'Nederlandse rechters vrezen onmenselijke behandeling voor asielzoekers in België', 13 October 2023, available in Dutch at: https://bit.ly/3Swl5UP; De Tijd, 'Nederlandse rechter legt vinger op de wonde in Belgische asielcrisis', 21 February 2023, available in Dutch at: https://bit.ly/40rOdya; EUAA, 'Quartely Overview of Asylum Case Law: Issue no 2', June 2023, available at: https://bit.ly/4afU2TB, 14.
621 Myria, *Contact meeting,* 16 September 2020, available in Dutch at: https://bit.ly/3SpsP94, § 720.

application, a EURODAC hit indicates that they have already applied for or received international protection in another country.[622] Since March 2022, single male applicants for international protection - regardless of protection status in another member state- are systematically excluded from the reception network (see Constraints to the right to shelter).

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

The law foresees a so-called "return track" for asylum seekers.[623] This is a framework for individual counselling on return set up by Fedasil, which promotes voluntary return to avoid forced returns.[624]

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

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

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

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

In November 2019, Fedasil published instructions specifically addressed to persons who cannot be accommodated in open return centres due to medical reasons which would render the accommodation inadequate.[625] A specific track has thus been established for them by the "voluntary return" service of Fedasil. This service foresees the possibility to set up 3 appointments during which possibilities for voluntary return are discussed and which can take place in the reception centre of the asylum seeker, if necessary. The decision to further prolong the right to the reception of the concerned person will depend on their medical situation and cooperation.

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

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

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

623 Article 6/1 Reception Act.

624 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.

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

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

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

Regularly, decisions of transfer to an open return place are challenged before the Labour courts by applicants having received an annex 26quater, especially when an appeal against this Dublin decision has been brought before the CALL. According to Belgian law, this latter appeal possibility does not have an automatic suspensive effect (see Appeal). Consequently, notwithstanding the introduction of this appeal, a return procedure is initiated at the open return place. Lawyers have argued that this return procedure violates the applicants' right to an effective appeal and other fundamental rights. In 2020, Belgian judges referred to the CJEU for a preliminary ruling in several cases to clarify this question of an effective appeal in the context of a Dublin transfer decision.[626] In two orders on request for a preliminary ruling of 26 March 2021, the CJUE has decided that the transfer to an open return place, where the Dublin transfer is being prepared, does not violate the right to an effective appeal, as long as the information provided to the applicants in the context of the return tracks does not put undue pressure on the applicants to abandon their procedural rights.[627] Some labour courts have nevertheless decided that the return track in open return places violates other fundamental rights – such as the inviolability of the home, article 3 and 5 ECHR, the right to legal assistance as guaranteed in article 23(3) Directive 2013/32/EU and article 6 ECHR – and puts applicants under undue psychological pressure. Therefore, labour courts ruled that Fedasil should allow the applicants to remain in their former reception centre for the duration of the appeal procedure before the CALL.[628]

### 1.6. End of the right to reception

The right to material reception ends when:[629]

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

Appeals do not have suspensive effect when they are appeals against:

- a decision of the Immigration Office (like a Dublin decision or an order to leave the territory),
- a judgment before the Council of State against a judgment of the CALL refusing to grant the appeal, or deciding to grant subsidiary protection;

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

- the CALL suspends or annuls the decision of the Immigration Office or CGRS;
- the Council of State declares a cassation appeal against a decision of the CALL admissible.

Therefore, the right to reception in the open return centre ends when the order to leave the territory expires. In case of a negative Dublin decision this deadline is mentioned on the “Annex 26quater” (see Right to reception: Dublin procedure). In case of a negative decision by the CGRS and if the person does not have a residence permit on another basis, the Immigration Office delivers an order to leave the territory only when the suspensive appeal has been rejected by the CALL, or after the deadline for introducing the appeal has expired. If a third (or further) asylum application was declared inadmissible by the CGRS and it deems that there is no risk of direct or indirect *refoulement,* the order to leave the territory is delivered

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

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

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

629 Article 6 Reception Act.

immediately after the decision of the CGRS.[630] The time limit of the order to leave the territory will vary between 0 and 30 days (see Procedures).[631]

Until the expiry of the deadline of the order to leave the territory, every asylum seeker (whether they collaborate with voluntary return or not) is entitled to full material reception conditions. The order to leave the territory can be prolonged only if the person collaborates with their return.[632] When the period for voluntary return as determined in the order to leave the country expires and there is no willingness to return voluntarily, the right to reception ends and the Immigration Office can start the procedure to forcibly return the person, including by using administrative detention. In practice, the police may come to the open return centre and arrest a person whose right to reception has ended and is unwilling to return voluntarily.[633]

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

- to end the school year (from the beginning of April until the end of June);
- during the last 2 months of pregnancy until 2 months after giving birth;
- when a family reunification procedure with a Belgian child has been started;
- when the person cannot return to their country of origin for reasons beyond their own will;
- for medical reasons, when an application for legal stay has been made on this ground at the Immigration Office; or
- whenever respect for human dignity requires it.[634]

Fedasil has adopted internal instructions about these possibilities and how to end the accommodation in the reception structures in practice.[635]

A proposal limiting the right to reception for applicants who have received a final negative decision is pending at the time of writing. In the current system, applicants who receive a final negative decision on their application have a right to reception until they receive an order to leave the territory. In practice, it often takes several weeks before this order to leave the territory is given to the applicant. The proposal aims to reduce the right to reception, by having it end 30 days after receiving a final negative decision.

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), there is a transition phase during which the person can look for another place to live and transit from material aid by Fedasil to financial help of the PCSW if necessary.[636] People staying in collective structures at the moment of obtaining a positive decision about the residence in Belgium (international protection or other form of legal stay) will be offered the choice between moving to an individual reception structure, or leaving the collective structure within a short time with the support of food cheques for two months. If there is no place in an individual reception structure, the transition phase will take place in the collective reception centre. For persons who already stay in an individual reception structure, the transition phase takes place in this same place. The duration of the transition phase is two months (or 6 months or persons who came to Belgium through the resettlement scheme). In case it is impossible to leave the

630 Article 52/3 Aliens Act; Article 6 Reception Act.
631 Article 74/14 Aliens Act.
632 Article 6/1 Reception Act and Article 52/3 Aliens Act.
633 Myria, *Contact Meeting*, September 2019, available in Dutch at: https://bit.ly/32Bz939
634 Article 7 Reception Act.
635 Fedasil, Instructions on the termination and the prolongation of the material reception conditions, 15 October 2013.
636 Fedasil, *Instructions on the transition from material reception to social aid: measures for residents of collective centres and the accompaniment in the transition phase*, 3 April 2020, available in Dutch: https://bit.ly/3vusomC.

reception place after two months, up to three requests for extension of the transition phase can be done.[637] In general, prolonging one month is common; in exceptional cases - e.g., finishing the school year from April onwards or having a signed lease that starts after a month – prolongation can be granted for more than a month. A first, and exceptionally second prolongation can be granted on the basis of the steps taken by the persons to secure their own housing. A third prolongation request can exceptionally be granted for reasons linked to human dignity. This is not specified in the Reception act but Fedasil has adopted internal instructions allowing such rules to be put in place.[638]

## 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 in individual reception places as of 1 January 2024:
   - Accommodated single adult: 268-288€
   - Additional adult: 200-220€
   - Additional children: Depending on the age (see financial allowances)

2. Value of bi-weekly meal vouchers for applicants leaving the reception network voluntarily during the asylum procedure:
   - Adults: €140
   - Minors: €60

### 2.1. Material or financial aid?

Since the adoption of the Reception Act, the system of reception conditions for asylum seekers has shifted completely from financial assistance to purely material assistance. This includes accommodation, food, clothing, medical, social and psychological help, access to interpretation services and legal representation, access to training, a voluntary return programme, and a small daily allowance (so-called pocket money). Nevertheless, as discussed below, the help can be partially delivered in cash, as is the case in the Local Reception Initiatives (LRI). The Federal Agency for the Reception of Asylum Seekers (Fedasil) coordinates the whole reception structure. Fedasil regularly issues internal instructions on implementing specific rights provided for in the Reception Act, as referred to throughout this report.

Only in exceptional cases the social welfare services provided by the PCSW deliver financial aid to asylum seekers.[639] For example, this could be the case when the asylum seeker wants to live with their partner who already has a legal stay in Belgium. However, this is only exceptional and can only be the case after the explicit permission of Fedasil. To obtain this permission, the asylum seeker should ask for an abrogation of the designated reception place ("Code 207").[640]

In the context of the reception crisis, destitute applicants for international protection start appeal procedures at Labour Courts based on the violation of the right to reception. In some cases, destitute applicants have asked the Labour Court to suspend this code 207. In several judgements, the Court condemned Fedasil and forced them in first instance to provide a reception place. If the reception place is not provided, the Court orders the suspension of the code 207 in second instance. With this suspension, the destitute applicant can go to the PCSW and apply for financial aid. Some Labour courts have recently ruled establishing they do not have competence over the suspension of the code 207, but that in the situation where Fedasil does not assume its responsibility of providing material aid (which is systematically the case in the context of the reception crisis), the PCSW cannot refuse to grant financial aid.[641]

637 Ibid.
638 Ibid.
639 Article 3 Reception Act.
640 Article 13 Reception Act.
641 Labour court Antwerpen (Mechelen), 23/218/A, 21 June 2023, available in Dutch at https://bit.ly/3vBAiKX; Labour court Brussels, 23/1547/A, 18 September 2023, available in Dutch at: https://bit.ly/3vw35Rg; Labour

In 2020, Fedasil issued an instruction on 'voluntary departure with support via meal vouchers', aiming to encourage persons with a reception solution outside the reception network (e.g. with friends or family) to leave the centre, all the while supporting them financially through meal vouchers (see Allowances in case of no material reception).[642]

### 2.2. Collective or individual?

The reception model, of which the implementation started in 2016, generally assigns people to collective reception centres. Only asylum seekers with very specific vulnerabilities or reception needs are directly assigned to specialised 'individual places' in NGO reception structures or Local Reception Initiatives (LRI) managed by the PCSW's in municipalities.[643] Collective centres are spread over the Belgian territory in different types of infrastructure (old military buildings or hospitals or schools, prefabricate buildings, etc.) and vary in terms of capacity (from less than 100 to over 500 places). In collective centres, most reception conditions are delivered in-kind: meals, clothing, access to sanitary facilities, socio-legal support, medical and psychological care, daily allowance ('pocket money'), trainings... In individual reception places, persons are hosted in smaller living units, alone or with a few other persons. Certain services are provided by the NGO or PCSW (socio-legal support, medical and psychological care, information about education or access to training…), and the living unit provides the facilities allowing the person to provide for their own basic daily needs, for which the person gets a weekly allowance.

For the assignment to a specific centre, Fedasil should legally consider the centre's occupation rate, the asylum seeker's family situation, age, health condition,[644] vulnerability and the procedural language of their asylum case. There are no monitoring or evaluation reports about the effective assessment of all these elements in practice. Albeit legally binding criteria, these do not seem to always be taken into consideration. In theory, an asylum seeker or their social assistants can ask to change centre at any given time during the procedure, based on these criteria. Fedasil itself can also decide to change the location of reception, based on these criteria. Currently, the possibilities to change centre on the asylum seeker's request are limited to the situations enlisted by Fedasil in its internal instructions (see below Transfers to suitable reception ).

According to the law, all asylum seekers can apply to be transferred to an individual accommodation structure after 6 months in a collective centre.[645] Where the person's asylum application has already been refused at first instance procedure by the CGRS, the transfer will be refused or postponed. However, due to the high occupancy rate of the reception system, transfer applications of applicants whose procedure is still ongoing cannot systematically be answered favourably either.[646] This means that asylum seekers stay much longer in collective structures (see Conditions in Reception Facilities).

Specific rules concerning transfer to individual reception structures apply to the following categories:

- Persons with a high chance of recognition (nationality with recognition rate above 80%) who are still awaiting a decision of the CGRS can ask to be assigned to LRI after a 2-month stay in

court Antwerpen (Mechelen), 23/629/A and 23/630/A, 7 February 2024, available in Dutch at https://tinyurl.com/29sfvnaf and https://tinyurl.com/p8k9kpbs; resume of these decisions available in Dutch at: https://bit.ly/4ab7hoq.

642 Fedasil, 'Instruction: voluntary departure for residents of collective centres – support via meal vouchers for persons with own reception solution', 19 March 2020, available in Dutch via https://tinyurl.com/my3cr5bu; Meal vouchers are vouchers that can be used in almost any supermarket to buy food or food-related items. Employees (in all kinds of sectors) often receive meal vouchers as part of their salary as well.

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

644 See for example a recent ruling of the Labour court of Liège, 23/1656/A, 24 October 2023, available in French at https://www.agii.be/sites/default/files/20231024_arbrb_luik.pdf. The court finds that given the serious health issues of the applicant, he should be assigned a reception place in a centre with a personal room and access to private sanitary facilities, in Brussels or a city from which Brussels is easily accessible.

645 Article 12 Reception Act.

646 Information provided by Fedasil.

collective reception centres. At the time of writing nationals of the following countries had a high chance of recognition:[647]

- Burundi
- Eritrea
- Yemen
- Syria
- Libya

❖ Persons staying in collective structures when granted a legal stay of more than 3 months (for example, refugee status) have the choice between moving to an individual reception structure for 2 months (can be extended) or leaving the collective structure with support of a meal voucher with a value of €560 per adult and €240 per minor (one-time payment) (see End of the right to reception).

Persons reaching Belgium through the resettlement scheme and apply for asylum upon arrival are sheltered in one of the 5 collective centres who have places for resettled refugees. In September 2023, a new centre with 115 places exclusively for resettled refugees opened in Alveringem, the first of its kind. The opening of this centre aims to ensure that the resettlement programme is not hindered by the (lack of) availability of reception places in the regular reception network.[648] Once persons arrived through the resettlement scheme obtain international protection, they need to stay in a collective structure for 3 to 6 weeks before they can apply for an individual reception place. They can stay in the individual reception place for a transition period of 6 months, which is longer than the general transition period (see End of the right to reception).

The Belgian government aims to create a reception network with 60% collective and 40% individual reception places. In 2023, only 14% of the reception network consisted of individual places.[649] The reason for this is twofold: the number of LRI has lowered significantly over the past years, and some of the existing LRI are not available because the persons living there cannot leave due to the saturated housing market. Although the government has recently taken measures to encourage local administrations to create more local reception places (including an increase of the allowance with 5%), there is very little willingness on the local level to create new LRIs. The Association of Flemish cities and communes (VVSG) expressed the opinion that the measures taken by the government, although positive, will not suffice to have a real impact on the amount of LRIs.[650]

The Court of Auditors (*Rekenhof / Cour des comptes*) conducted a financial and qualitative audit of the functioning of Fedasil in 2017.[651] It found that the average duration of stay in collective reception centres was too long and that refusals to transfer asylum seekers after 6 months not only has negative consequences to the well-being and psychological health of the individuals concerned but also for the management and personnel of centres, as it causes tensions and conflicts. The Court of Auditors also found that reception in collective centres is more expensive than individual accommodation, although many more individual accommodation places were empty at the time of the report. It recommended that the government consider other criteria such as cost-effectiveness and quality in prospective closures of reception places. To this end, and according to the Court of Auditors, Fedasil should continue its efforts in developing common quality norms and audit mechanisms, collect more data on duration of stay in the centres, duration of procedures, numbers of transfers, numbers of vulnerable persons and so forth.

647 Fedasil, Instruction concerning transfers from collective reception to a Local reception Initiative (LRI) – designation of asylum seekers with a high rate of recognition - update, 9 November 2021, available in Dutch at: https://bit.ly/3vUGADb.

648 Fedasil, *What is resettlement?,* available in Dutch at https://bit.ly/3TyqZ6x and *Welcome first residents!*, available in Dutch at: https://bit.ly/3TUqCog.

649 Information provided by Fedasil in March 2024: 5,076 individual places on a total of 35,651 reception places.

650 VVSG (Association of Flemish cities and communes), *Material aid – Better financing and more certainty in order to convince local administrations to open LRI's,* available in Dutch at: https://bit.ly/3TCNmYw.

651 Court of Auditors, Opvang van asielzoekers, October 2017.

NGOs have requested for an evaluation of the current reception model. An evaluation of the reception model was planned in 2021, but due to the sanitary situation related to COVID-19 and the reception crisis, these plans were not yet concretised.[652]

### 2.3. Transfers to suitable reception facilities

Within 30 days after the arrival in the assigned reception place, an evaluation should be made to see if the individual reception needs of the asylum seeker are met. After that, a regular assessment is made – at least every six months - during the entire stay of the asylum seeker in the reception system.[653] The Reception Act allows changing an asylum seeker's reception place if the assigned place turns out to be not adapted to the individual needs.[654] Two instructions of Fedasil enlist specific criteria to be met before a transfer to another, more adapted (individual or collective) place can be allowed.[655] The request for a transfer can be done either by the asylum seeker or by the reception facility in agreement with the asylum seeker, but the actual application always needs to be done by the reception facility.

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

1. has a severe handicap which is incompatible with the assigned place;
2. has limited mobility and there is no possibility to adapt the infrastructure or to get help from family members;
3. has a severe pathology which requires having a hospital nearby;
4. loses their autonomy and has no family member that can help;
5. has a specific medical need;
6. needs to live with a very strict diet (e.g. coeliac, no salt etc.);
7. is in danger because of certain diseases present in the centre, e.g. has a weak immune system;
8. has an addiction and does substitute therapy which necessitates the presence of a pharmacy close-by;
9. has psychiatric problems which are not compatible with the everyday life of a collective reception centre;
10. needs to support a first-degree family member who is in the hospital;
11. is in need of continuous care and needs to be transferred to a care institution.

A transfer based on other grounds than medical reasons can be requested if it is not possible to adapt the assigned place to the individual needs of the asylum seeker and if they meet one of the following criteria:

- Language of the school of the children: their children went to school in a region speaking a different language for at least three months or they have gained sufficient knowledge of that other language to be able to be taught in that language;
- A close family member (e.g. partner or minor children) lives in another reception centre on the Belgian territory. The term "family member" can be broadened if the asylum seeker is categorised as vulnerable;
- Employment: the asylum seekers has been employed (at least a half-time position and not a student job) for at least one month and has paid contributions. They should not have been excluded from shelter;
- Training or education: the asylum seeker has subscribed to higher education or to a training provided by VDAB or Forem;

652 Information provided by Fedasil, March 2024.
653 Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.
654 Article 22 Reception Act
655 Fedasil, *Instruction on the transfer to an adapted place for medical reasons*, 7 May 2018, available in Dutch at: https://bit.ly/39gg7Ev; Fedasil, *Instruction on the transfer to an adapted place for other reasons,* 7 May 2018, available in Dutch at: https://bit.ly/2KP79oo

- ❖ The asylum seeker feels isolated because they are the only person in the centre belonging to a certain nationality, or they are the only one speaking a certain language, which clearly impacts their psychological wellbeing.

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

### 2.4. Financial allowances

**Pocket money**

All asylum seekers, whether in collective or individual reception places, receive a fixed daily amount of pocket money in cash.[656] In 2024, adults and all children from 12 years on who attend school receive 9.7€ a week, younger children and children 12 years of age or older who do not attend school receive 5.7€ a week, and unaccompanied children during the first phase of shelter (in the "observation and orientation centres") receive 6.9€ a week.[657]

**Allowances in individual reception facilities (NGO or LRI)**

Asylum seekers in individual NGO or LRI places all receive a weekly amount in cash or in meal vouchers, to provide for material needs autonomously; this 'weekly allowance' includes a budget for food[658] and personal hygiene and the pocket money. It does not include budget for costs related to e.g. school, public transport, cleaning products, leisure, etc. For 2024, the amounts are as follows on a monthly (4-week) basis:[659]

| Category of applicant | Allowance in LRI |
|---|---|
| Single adult | 268-288€ |
| Additional adult | 200-220€ |
| Additional child <3 years | 140-160€ |
| Additional child 3-12 years | 76-92€ |
| Additional child 12-18 years | 84-100€ |
| Single-parent extra allowance | 40€ |
| Unaccompanied child | 268-288€ |

Besides this, the organising authority of the accommodation remains in charge of certain material needs such as transport, clothing, school costs, interpreters, etc. Since the LRI have a lot of autonomy as regards the way they are organised, they can choose if and how they distribute material aid themselves. This means that asylum seekers might exceptionally receive a financial allowance that equals the social welfare benefit (called "social integration") for nationals, diminished with the rent for the flat or house they are accommodated in and expenses.

**Allowances in case of no material reception**

If all reception structures are completely saturated and Fedasil decides to not assign a reception place, the asylum seeker has the right to financial aid provided by the PCSW.[660] 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

656 Article 34 Reception Act.
657 Information provided by Fedasil, March 2024.
658 No food is provided in the context of individual reception facilities; residents need to cook themselves.
659 Extrapolated from the weekly amount, times 4: Information provided by Fedasil in March 2024.
660 Article 11(4) Reception Act.

Fedasil allows the asylum seeker to live with a partner who already has a legal stay in Belgium. Since 1 November 2023, a person receives following amounts per month:[661]

| Monthly amounts of "social integration" for Belgian nationals | |
|---|---|
| Category | Monthly amount |
| Single adult | €1,263.17 |
| Cohabitant | €842.12 |
| Person with family at charge | €1,707.11 |

In its February 2014 judgment in *Saciri*,[662] the CJEU ruled that in case the accommodation facilities are overloaded, asylum seekers may be referred to the PCSW, provided that this system ensures the minimum standards laid down in the Reception Conditions Directive. In particular, the total amount of the financial allowances must be sufficient to ensure a dignified standard of living and should provide enough to ensure their subsistence. The general assistance should also enable them to find housing, if necessary, meeting the interests of persons having specific needs, pursuant to Article 17 of that Directive.

Nevertheless, since several years, Fedasil has not referred to the PCSW because of a lack of reception capacity. In the context of the current reception crisis (since 2021 and ongoing in 2024), the Council of Ministers has discussed this option for several times, but it has not been approved politically. As a result of the reception crisis, some destitute applicants have obtained a referral to the PCSW by going to the Labour Courts (see Material or Financial Aid?).

In 2020, Fedasil issued an instruction on 'voluntary departure with support via meal vouchers', aiming to encourage persons with a reception solution outside the reception network (e.g. with friends or family) to leave the centre, all the while supporting them financially with meal vouchers (see Allowances in case of no material reception).[663] This instruction applies to persons who have an ongoing procedure for international protection and have been staying in the reception network for an uninterrupted period of at least 1 month. Unaccompanied minors can also qualify for the measure under certain conditions (e.g. at least 16 years old and sufficiently autonomous, agreement of the guardian…). Persons to who this measure is applied receive biweekly meal vouchers of €140 per adult and €60 per minor on an electronic card or in paper format until the end of their right to material aid connected to the ongoing asylum procedure or until their reintegration into the reception network. Except for unaccompanied minors, the application of this measure leads to a designation of a Code 207 No-show. Apart from the meal vouchers, the person no longer receives reimbursement of other costs (such as costs related to school or public transport). Only reimbursement of medical expenses is ensured, as for other persons with a code 207 no-show, via application through the medical *requisitorium* (see Health care). The instruction stresses that people should be thoroughly informed of all the consequences of subscribing to this system. However, their decision is not final: as long as the asylum procedure is ongoing, they can always apply for a reintegration in the reception network.

661 VVSG, Social Integration Amount, 2023, available at: https://bit.ly/3xdOVVm.

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

663 Fedasil, 'Instruction: voluntary departure for residents of collective centres – support via meal vouchers for persons with own reception solution', 19 March 2020, available in Dutch via https://tinyurl.com/my3cr5bu or in French via ; Meal vouchers are vouchers that can be used in almost any supermarket to buy food or food-related items. Employees (in all kinds of sectors) often receive meal vouchers as part of their salary as well.

## 3. Reduction or withdrawal of reception conditions

**Indicators: Reduction or Withdrawal of Reception Conditions**

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

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

### 3.1. Sanctions for violation of house rules

Different limitations to the enjoyment of reception conditions can be imposed for infractions of the house rules of a reception centre. Two decrees regulating the matter were published in 2018:

- A royal decree on the system and operating rules in reception centres and the modalities for checking the rooms;[664]
- A ministerial decree on common house rules in reception centres.[665]

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

The common obligatory house rules include:

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

Possible sanctions are enumerated in Article 45 of the Reception Act:

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

The procedures for applying these sanctions can be found in a Royal Decree.[666]

As a sanction for having seriously violated the house rules, and thereby putting others in a dangerous situation or threatening the security in the reception facility, the right to reception can be suspended for a

664 Royal Decree on the system and operating rules in reception centres and the modalities for checking rooms, 2 September 2018.
665 Ministerial Decree on house rules in reception centres, 21 September 2018.
666 Royal Decree of 15 May 2014 on the procedures for disciplinary action, sanctions and complaints of residents in reception centres.

maximum of one month.[667] This measure was taken against 148 persons in 2023, for an average duration of 16 days.[668]

The law makes it possible to withdraw reception permanently.[669] The sanction can only be used for persons, who had been temporarily excluded from reception before, subject to the aforementioned sanction, or in serious cases of physical or sexual violence. Three applicants were permanently excluded from reception in 2023.[670]

Sanctions are issued by the centre's managing director and must be motivated. The person who received the sanction must be heard before the decision. Most sanctions can be appealed before the managing authority of that reception centre (the Director-General of Fedasil, the NGO partner or the administrative council of the PCSW). An onward non-suspensive appeal is possible in front of the Labour Court.[671] As with every other administrative or judicial procedure, the asylum seeker is entitled to legal assistance, free of charge if they have no sufficient financial means. In all these cases, the reception conditions will be reinstated as soon as the sanction – mostly temporary– has elapsed. During 2023, 23 appeal procedures against exclusions decisions taken by Fedasil were introduced before Labour tribunals.[672]

The sanctions that exclude the asylum seeker from the reception facilities (one month or permanently) must be confirmed within 3 days by the Director-General of Fedasil. If they are not confirmed, the sanction is lifted. During the time of exclusion, the asylum seeker still has the right to medical assistance from Fedasil. The applicant has the legal right to ask Fedasil for a reconsideration of this sanction, in case theycan demonstrate that there is no other possibility to ensure living conditions in accordance with human dignity. Fedasil should answer this request within 5 days, after which an onward appeal is again possible in front of the Labour Court.[673] In 2022, only one requests for reconsideration of the exclusion from the reception facilities were made. The request led to a decrease in the number of days of the exclusion.[674]

Before its adoption, the permanent exclusion sanction was met with criticism by UNHCR who highlighted that Article 20(1)-(4) of the recast Reception Conditions Directive only allows a limited number of situations in which reception facilities can be withdrawn or reduced and that exclusion as a sanction is not one of them. UNHCR recommended that attention should be given to Article 20(5) of the Directive, which guarantees an individual, impartial and objective decision that considers the person's particular situation (e.g., vulnerability) and the principle of proportionality. Health care and a dignified standard of living should always be ensured. Further recommendations were to make sure the law explicitly mentions the possibilities to ensure dignified living conditions and to describe clearly in which situations this sanction applies.[675] The Council of State also advised that there should be an explicit guarantee in the law on how to ensure dignified living conditions for those excluded from the reception facilities.[676] Nevertheless, the options on how to ensure dignified living conditions were in the end not clearly mentioned in the law, although during the preparatory works of the law Fedasil made clear that it has a cooperation with an organisation that works for homeless people to which it could refer some of those excluded from shelter. In practice when they communicate the decision to the asylum seeker, they inform them of the refund of medical costs and of shelter possibilities for homeless people, but "guarantees for dignified living

667 Article 45(8) Reception Act.
668 Information provided by Fedasil, March 2024.
669 Article 45(9) Reception Act.
670 Information provided by Fedasil, March 2024.
671 Article 47 Reception Act.
672 Information provided by Fedasil, March 2024.
673 Article 45 Reception Act.
674 Information provided by Fedasil, March 2023.
675 UNHCR, *Commentaires du Haut Commissariat des Nations Unies pour les réfugiés relatifs à l'avant projet de loi modifiant la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers (ci-après « avant-projet de loi »), introduisant des sanctions supplémentaires en cas de manquement grave au régime et règles de fonctionnement applicables aux structures d'accueil*, 22 April 2016, available at: https://bit.ly/3tZArSX.
676 Council of State, Opinion 59/196/4, 27 April 2016, available at: http://bit.ly/2kVBgvT.

conditions" are not used as a criterion during the decision-making. The applicant can also contact Fedasil again if dignified living conditions cannot be guaranteed.

In March 2018 the Labour Court of Brussels referred preliminary questions to the CJEU regarding the circumstances under which material reception conditions under the Reception Conditions Directive may be reduced or withdrawn and the need to examine the consequences of such decisions, particularly about unaccompanied children.[677] The case concerned an unaccompanied minor who was refused the right to an accommodation for 15 days. He therefore had to live on the street and at a relative's place. After 15 days, he was finally accommodated by Fedasil again. In its decision *Haqbin* of 12 November 2019, the CJEU ruled that, where house rules of an accommodation are breached or where a violent behaviour occurs, the sanction cannot be the withdrawal of material reception conditions relating to housing, food or clothing, even if it is temporary. Such sanctions must be taken with even more precaution when they involve vulnerable applicants such as unaccompanied minors. According to the CJEU, even the most severe sanction should not deprive the applicant of the possibility of meeting his most basic needs. Member States should ensure such a standard of living continuously and without interruption. They should grant access to material reception conditions in an organised manner and under their responsibility, including when they call upon the private sector to fulfil that obligation. It is therefore not sufficient for them to provide a list of private homeless centres which could be contacted by the applicant, as Fedasil did in the present case. The competent authorities must always ensure that a sanction complies with the principle of proportionality and does not affect the applicant's dignity.[678]

Based on this CJUE decision, the Brussels Labour Court ruled against Fedasil on 7 October 2021, condemning the Agency to moral damages of 1€ for having excluded Haqbin from reception conditions, in violation of the Reception Directive.[679]

Notwithstanding the jurisprudence of the CJUE and the Brussels Labour Court, Fedasil continues to apply temporary and indefinite exclusion as sanctions for certain situations of violent behaviour (148 temporary and 3 definitive exclusions in 2023).[680] Fedasil has indicated that it is examining new measures, such as allowing night reception and issuing meal checks during the period of the exclusion sanction. However, due to urgent events such as the COVID-19 outbreak and the reception crisis, the envisaged partnerships with e.g., organisations providing night shelter have not yet been put in practice. In the meantime, Fedasil provides excluded applicants with a list of emergency shelters and informs them that, in case a dignified living standard cannot be ensured, they can request a reconsideration of the exclusion decision.[681]

### 3.2. Other grounds

Under the Article 4(1) of the Reception Act, Fedasil may refuse or withdraw the assignment of a reception place if:

1. Such a place has been abandoned by the asylum seeker. This applies in cases where the asylum seeker is absent for 3 consecutive days without prior notice or for more than 10 nights in one month (with or without prior notice). The asylum seeker is then 'de-registered' from the centre and has the right to ask for a new place. In the context of the reception crisis that started in 2021, this measure is still applied: in 2022, 1593 persons were expelled from their centre due to absence without permission.[682] No figures are available for 2023. However, asylum seekers who are thus de-registered from their centre are not able to re-integrate the reception network due to a lack of places in the context of the current reception crisis. Consequently, they must register on the waiting list of Fedasil, which leads to a waiting time of several months before they are able to re-integrate the reception network.

677 Labour Court Brussel No 2017/AB/277, 22 March 2018, available at: https://bit.ly/2Thk6dM.
678 CJEU, Case C-233/18 *Haqbin*, Judgment of 12 November 2019.
679 Labour Court Brussels N° 2017/AB/277, 7 October 2021, available in Dutch at: https://bit.ly/3MGUwqA.
680 Information provided by Fedasil, March 2024.
681 Information provided by Fedasil, March 2023.
682 Information provided by Fedasil, March 2023.

2. The asylum seeker does not attend interviews or is unwilling to cooperate when asked for additional information in the asylum procedure. Worryingly, Fedasil is not required to await an official decision of the Immigration Office, CGRS or CALL on the asylum procedure to take such a decision. In early 2020, Fedasil published instructions applying this possibility.[683] If an asylum seeker does not lodge the application for international protection after they made it (on the appointment date the Immigration Office gave on "the certificate of declaration"), and they were not present to the new appointment date obtained with the help of the social worker in the centre, the centre will end the material reception. The asylum seeker will only have the right to ask for the reimbursement of medical costs, until they regularise their situation and lodge an application at the Immigration Office. Once the annex 26 has been obtained, the applicant can request material reception again at the "Infopunt" of Fedasil.

3. The applicant makes a Subsequent Application.

Article 4(3) of the Reception Act prescribes that the decisions of revocation or limitation of reception conditions should always:

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

A sanction can also be imposed for having omitted to declare resources at the time of making the application.[684] Until now, only the withdrawal of the reception place assigned to the asylum seeker has been decided in case of a proven sufficient and sufficiently stable income in practice. In 2023 however, this measure was not been applied.[685]

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

### 3.3. Reduction or withdrawal of reception due to a professional income

The Reception Act allows reducing or withdrawing the reception of applicants with a professional income. The concept and means used for calculating financial resources and the part to be contributed are determined in a Royal Decree of 2011. The Royal Decree stipulates that if an asylum seeker resides in a reception facility (LRI or collective centre) and is employed, they have an obligation to contribute with a percentage of their 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 their income is higher than the social welfare benefit amounts mentioned above and the working contract is sufficiently stable.[686] The applicant also has an obligation to inform the authorities. A control mechanism is provided for in the abovementioned Royal Decree. In 2022, one cross-examination was done with lists of people residing in the Fedasil reception network and the Crossroads Bank for Social Security, which allowed to identify residents who had worked in the period September 2021-september 2022.[687] The possibility to conduct such cross-examinations of data on a regular basis is introduced in a new proposal for Royal Decree concerning the contribution scheme, that is in the process of validation.[688]

683 Instructions of Fedasil on the limitations on the right to reception in case of non-lodging an application for international protection, of 20 January 2020.
684 Articles 35/1 and 35/2 Reception Act.
685 Information provided by Fedasil, March 2024.
686 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).
687 Information provided by Fedasil, March 2023.
688 Information provided by Fedasil, March 2024.

In 2023, contributions were asked of 736 persons and Fedasil received a total amount of €334,000.[689]

In November 2022, in the context of the reception crisis, Fedasil issued a new instruction concerning the forced and voluntary withdrawal of reception conditions for working applicants.[690] The aim of this instruction being to free up spaces in the reception network, it ordered the compulsory withdrawal of reception conditions for applicants having a stable work contract (min. 6 months) providing an income higher than the minimal living wage. 360 applicants were given a decision of forced withdrawal ('code 207 no show') and were initially expected to leave the centre within a month. In most cases, the deadline for was extended to give the applicants more time to look for housing. Given the housing crisis on the private housing market, it appeared to be very difficult to find housing within a month. After November 2022, no forced withdrawal decisions were issued. Some applicants who were working opted for a voluntary withdrawal of reception conditions, mostly to avoid the contribution scheme (43 in 2022, 76 in 2023).[691]

## 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 (collective or individual) reception centre enjoy freedom of movement across the national territory without restrictions. If the asylum application is refused, the rejected asylum seeker is transferred to a so called "open return place" in a regular centre, where they can enjoy full reception rights until the end of the right to reception and where they also enjoy freedom of movement across the Belgian territory.

On the other hand, an asylum seeker cannot choose their place of reception. As explained in Criteria and Restrictions to Access Reception Conditions, the reception structure is assigned by Fedasil's Dispatching service under a formal decision called "assignment of a Code 207". Asylum seekers can only enjoy the material and other provisions they are entitled to in the reception place they are assigned to. If the asylum seeker refuses the place assigned or is absent from the assigned place for 3 consecutive days without prior notice, or is absent for more than 10 nights in one month (with or without prior notice), Fedasil can decide to refuse them material conditions or exclude them from the centre that was assigned to them. If they apply for it again afterwards, they will regain their right, but might get a sanction from Fedasil.[692]

689 Information provided by Fedasil, March 2024.
690 Fedasil Instruction, *Forced and voluntary abrogation of the designated reception place (Code 207) on the basis of employment,* 10 November 2022, available in Dutch: https://bit.ly/3QPZCTZ.
691 Information provided by Fedasil, March 2024.
692 Article 4 Reception Act.

## B. Housing

### 1. Types of accommodation

| Indicators: Types of Accommodation | |
|---|---|
| 1. Number of collective reception centres:[693] | 114 |
| 2. Total number of places in the reception network: | 35,651 |
| 3. Total number of places in the collective reception centres: | 30,094 (3,138 in 1st phase, 26,956 in 2nd phase) |
| 4. Total number of individual reception places in | 5,076 |
| 5. Total number of places in open return places: | 360 |

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

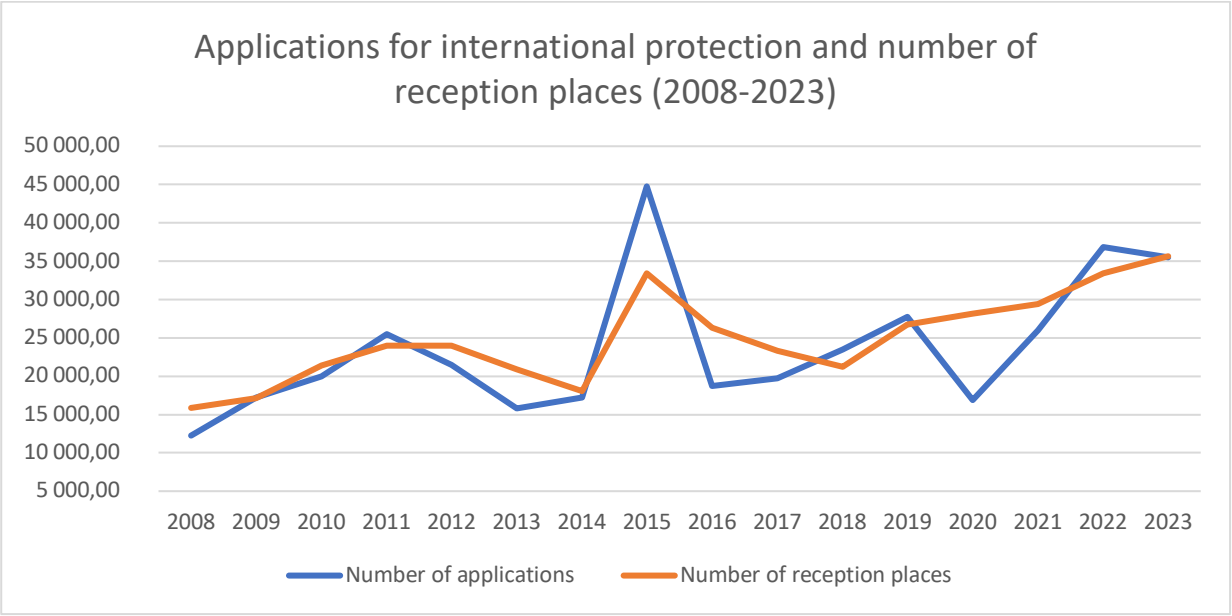
7. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

Accommodation may be collective i.e. a centre, or in individual reception facilities i.e. a house, studio or flat,[694] depending on the profile of the asylum seeker and the phase of the asylum procedure the asylum seeker is in (see section on Forms and Levels of Material Reception Conditions).

The practical organisation and management of the reception centres is done in partnership between government bodies, NGOs and private partners.[695]

Over the course of 2015 – 2023 the reception network has undergone several changes. The number of available places has been very dynamic in this period and is interlinked with the number of applications for international protection in Belgium. After the peak of applicants for international protection in 2015, the capacity peaked at 33.659 places. In 2018, after a steady decrease in the number of international protection applicants, the capacity was reduced to 21.343. This decrease in places was mainly reached by closing emergency shelter and individual reception facilities. When applications for international protection reached a first peak again in 2019, the reception network had to increase its capacity again in a very short timeframe. The capacity being too limited, the immigration office was forced to refuse the applications for international protection of asylum seekers and thus their access to the reception system (see Right to shelter and assignment to a **centre**). This situation also led to the introduction of new instructions by Fedasil limiting the reception conditions for several categories of asylum seekers (see Right to reception: Dublin procedure and Right to reception: Applicants with a protection status in another EU Member State).[696]

693 Information provided by Fedasil, March 2024..
694 Article 16, 62 and 64 Reception Act.
695 Article 62 Reception Act.
696 Fedasil, 'Sluiting 7 centra uitgesteld', 2 October 2018, available in Dutch at https://bit.ly/2RfAANv; Vluchtelingenwerk Vlaanderen, 'Staatssecretaris zet limiet op asielaanvragen: vandaag al 60 mensen op straat', 23 November 2018, available in Dutch at: https://bit.ly/2DAo7R7. De Morgen, 'Opvangcentra zitten overvol door grotere instroom: tenten voor asielzoekers weer in beeld', 16 November 2018, avaialble in Dutch at: https://bit.ly/2Wzhu91; Fedasil, 'Druk op opvangnetwerk steeds hoger', 8 November 2019, available in Dutch at: https://bit.ly/384yGry.




Applications for international protection and number of reception places in Belgium (2008 – 2023), based on data from CGRS and Fedasil.

Due to the constant change in capacity, local governments were subsequently asked to open a reception facility, close it and re-open it later. They denounced this 'yoyo-policy' in November of 2019, indicating that they were no longer willing to open new reception facilities. They demanded a more structural, long-term policy for the reception network that can absorb the fluctuating numbers of applications for international protection.[697] In November 2020 the Secretary of State for migration issued a *Policy Note on asylum and migration,* establishing as a priority the development of a stable but flexible reception system, in order to meet the demands of the local governments.[698]

However, since September 2021, the reception network has been under enormous pressure, the occupancy rate being at 96% for months (the saturation capacity at 94%) (see Constraints to the right to shelter). Possibilities of opening new reception places were urgently examined by the Belgian government and Fedasil and several new reception centres – some structural, some emergency shelters opened in the last months. However, these were insufficient to provide reception for all applicants needing shelter.[699] Difficulties are encountered especially due to the remaining unwillingness of local administrations to accept opening centres on their territory.[700]

At the end of 2023 the reception network had a capacity of 35,651 places.[701] Although 3,388 new places were created in 2023, 1,669 places closed. The overall number of places was largely insufficient to provide reception to all asylum seekers in need. The reception crisis persisted throughout 2023, with a total of 8,816 persons with a reception need not being able to get a reception place.

697 VVSG, 'Lokale besturen zijn jojo-effect federaal opvangbeleid beu', available in Dutch at: http://bit.ly/3mcud36.

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

699 The Brussels Time, *Closed Hotel Mercure in Evere becomes reception center for asylum seekers*, 9 December 2021, available at: https://bit.ly/3vRM81n; Bruzz, *Gesloten Hotel Mercure in Evere wordt opvangplaats asielzoekers,* 9 December 2021, https://bit.ly/3KuFUZh; Bruzz, *Opvangcentrum voor 40 asielzoekers opent in Elsene,* 24 December 2021, available at: https://bit.ly/3hU3JNW.

700 Examples: Municipality Koksijde, *Asylum center in Koksijde will close down due to infringements of construction regulations,* 22 January 2024, available in Dutch at: https://bit.ly/4ataCiA; De Morgen, *Resistance against reception centre in Jabbeke: "This is a residential area. All that noise doesn't belong here, right?",* 22 October 2022, available in Dutch at: https://bit.ly/49cc0VJ; VRT Nws, *Municipality of Spa demands via legal penalties reception of less asylum seekers,* 24 december 2021, available in Dutch at https://bit.ly/3IWlitc; De Standaard, *Noodopvang in Glaaien kan morgen openen*, 2 December 2021, available at: https://bit.ly/3vOIrcV; De Tijd, *Mahdi krijgt voorlopig geen grip op opvangcrisis*, 28 October 2021, available at: https://bit.ly/3Crx0Jn.

701 Fedasil, *A reception network under pressure,* 15 February 2024, available in English at: https://bit.ly/49cc4or.

As of March 2023, the 114 main collective reception centres were mainly managed and organised by Fedasil (35 centres, capacity of 10,604 places), Croix Rouge (26 centres, 8,180 places and Rode Kruis (21 centres, capacity of 5,374 places). Some other smaller partners manage and organise 32 centres with a capacity of 2,798 places.[702]

The NGO partners (SAM, Agentschap Opgroeien, Caritas, Ciré and Stad Gent) and PCSW (LRI) run the individual reception initiatives.

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

## 2. Conditions in reception facilities

| Indicators: Conditions in Reception Facilities | | |
|---|---|---|
| 1. | Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? | ☒ Yes ☐ No |
| 2. | What is the average length of stay of asylum seekers in the reception centres? | N/A[703] |
| 3. | Are unaccompanied children ever accommodated with adults in practice? | ☐ Yes ☒ No |
| 4. | Are single women and men accommodated separately? | ☐ Yes ☒ No |

### 2.1. Shortage of places

Since September 2021 Fedasil can no longer provide a reception place for all applicants for international protection. Despite efforts to create new places, there are not enough places available in the reception network. Fedasil therefore needs to prioritise 'vulnerable' groups. Single men are considered to be the 'least vulnerable' group, due to which they are systematically denied access to the reception network. Although 3,388 new places were created in 2023, this was largely insufficient to provide reception to all asylum seekers in need. The reception crisis persisted throughout 2023, with a total of 8,816 persons with a reception need not being able to get a reception place. At the end of 2023, approximately 3,000 asylum seekers were registered on the waiting list, the average waiting time before getting access to a reception place being approximately 6 months. (see extensive information on the reception crisis under Constraints in accessing accommodation).

### 2.2. Average duration of stay

In 2021, the average length of stay of applicants for international protection in the reception system was 14,9 months.[704]

Most applicants stay a considerable part of this period, or all of it, in collective reception centres. The law provides for accommodation to be adapted to the individual situation of the asylum seeker,[705] but in practice places are primarily assigned according to availability and preferences under the reception model introduced in 2015. It was then decided that reception should mainly be provided in collective centres, while only certain cases would benefit from individual accommodation (see Forms and Levels of Material Reception Conditions).

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702 Ibidem.
703 Last available information: 14,3 months in 2021
704 Information provided by Fedasil, February. The average is based on the duration of stay of all persons leaving the reception network in 2021 and is thus impacted by the temporary decision to stop Afghan asylum cases in 2021. There is no update provided about the average stay in 2022 or 2023.
705 Articles 11, 22, 28 and 36 Reception Act.

## 2.3. Overall conditions

The minimum material reception rights for asylum seekers are described in the Reception Act, mainly in a very general way.[706] Fedasil puts them into 4 categories of aid:[707]

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

Many aspects such as the social guidance during transition to financial aid after a person has obtained a legal stay, or the legal guidance during the asylum procedure and the quality norms for reception facilities have not yet been regulated by implementing decrees as the law has stipulated. Until then, those are left to be determined by the individual reception facilities themselves or in a more coordinated way by Fedasil instructions. Due to this, the quality norms for reception facilities are still not a public document, although they exist and were updated and agreed upon by all the partners of Fedasil in 2018. They contain minimum social and legal guidance standards, material assistance, infrastructure, contents and safety.

In 2015 Fedasil developed a framework to conduct quality audits based on these uniform standards. Setting minimum standards and an audit mechanism was difficult as different partners, such as the Red Cross, have developed their own norms and standards over the years. Moreover, some partners criticised the possibility to have audits being performed by Fedasil instead of an independent authority.[708]

As of today, these audits are performed by Fedasil and there is still no independent and external monitoring system put in place. The past years, audits were conducted at all levels of the reception system (both by Fedasil and partners, and both in collective and individual shelters): 40 in 2019, 30 in 2020, 44 in 2021, 43 in 2022 and 32 in 2023. For 2024, 35 audits are planned, 14 of which in reception centres.The findings are not public and only communicated to the reception facility concerned.

A Royal Decree regulates the system and operating rules in reception centres as well as on the modalities for checking the rooms.[709] This contains several general rights for the asylum seeker, such as:

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

Due to the current reception crisis, the reception network has been at full capacity since September of 2021. No public documents are available about the impact of the reception crisis on the living conditions in the reception network.

In 2022 Fedasil conducted a study on its residents' wellbeing, comparing collective[710] and individual[711] reception facilities. The residents of the former type of reception express an overall negative perception of their wellbeing. Almost all residents indicate that their basic physical and mental needs are not satisfied. They experience a lack of privacy, feel isolated and a lack of control over their day-to-day life. The overall conclusion is that collective reception facilities provide "a difficult environment". The residents of the

706 Articles 14-35 Reception Act.
707 Fedasil, *Stay in a Reception Centre*, available at: https://tinyurl.com/rd29k52s.
708 Court of Auditors, *Opvang van asielzoekers*, October 2017, 47-48.
709 Royal Decree on the system and operating rules in reception centres and the modalities for checking rooms, 2 September 2018.
710 Fedasil, 'Welbeing and daily life in collective reception', December 2022, available in Dutch via https://tinyurl.com/45w6tyst.
711 Fedasil, 'Welbeing and daily life in individual reception', December 2022, available in Dutch via https://tinyurl.com/3svb3a9t.

individual reception facilities express an overall positive perception of their wellbeing. The residents obtain more freedom and autonomy in these facilities, which has a positive impact on their wellbeing. The study highlighted a risk of isolation in individual facilities. Residents who moved from collective to individual reception facilities experienced a positive change in their wellbeing.

Despite an increased wellbeing in individual reception facilities, most reception places are in the form of collective reception facilities. At the time of writing, 14% of the reception places are individual reception facilities, whereas the government aims to have 60% collective and 40% individual reception places.[712]

## C. Employment and education

### 1. Access to the labour market

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

Asylum seekers' access to the labour market is regulated by the Law of 9 May 2018[713] and the implementing Royal Decree of 2 September 2018.[714] Asylum seekers who have not yet received a first instance decision on their asylum case within 4 months following the lodging of their asylum application are allowed to work until a decision is taken by the CGRS, or in case of an appeal, until the CALL has notified a negative decision. However, they are not allowed to work during the appeal procedure before the CALL if the procedure at the CGRS did not last longer than 4 months.[715]

Asylum seekers who lodge a subsequent asylum application are not able to work until the CGRS declares the application admissible and they receive an orange card.

The right to work is mentioned directly on their attestation of matriculation ('orange card'), so a separate work permit is no longer needed. The asylum seekers can work in the area they chose. Adult asylum seekers who have access to the labour market can register as jobseekers at the regional Offices for Employment and are then entitled to a free assistance programme and vocational training. In practice, however, finding a job is difficult during the asylum procedure because of the provisional and precarious residence status, the limited knowledge of the national languages, the fact that many foreign diploma are not considered equivalent to national diplomas, and labour market discrimination.

If an asylum seeker resides in a reception facility (individual or collective) and is employed, they have an obligation to contribute with a percentage of their income to the reception facility and is excluded from any material reception conditions if their income is higher than the social welfare benefit amounts mentioned

712 VVSG (Association of Flemish cities and communes), *Material aid – Better financing and more certainty in order to convince local administrations to open LRI's,* available in Dutch at: https://bit.ly/3TCNmYw.
713 Law of 9 May 2018, Law on the occupation of foreign nationals in a particular situation of residence, available in Dutch at: https://bit.ly/2XH2Pcb.
714 Royal Decree of 2 September 2018, available in Dutch at: http://bit.ly/3Kc36NH
715 Article 18, 3° and article 19,3°Royal Decree on Foreign Workers, 2 September 2018.

above and the working contract is sufficiently stable (see Reduction or Withdrawal of Reception Conditions).[716]

Participation of asylum seekers to the Belgian society, including through employment, is indicated as one of the priorities in the management plan of the federal agency for the reception of asylum seekers (Fedasil) for 2021-2026. To this end, Fedasil has created a service "participation to the society" in 2021, that aims to support and promote employment of asylum seekers. This service has reinforced its network with organisations working on employment and concluded agreements with specific sectors, such as the construction sector, to promote referrals of asylum sectors to jobs in that sector. In several reception facilities, job days are organised where employers or employment agencies can meet the residents and promote jobs. In certain regions, a project is put in place with coaches who support reception centres in their initiatives concerning employment.[717] Public employment services, such as VDAB, promote employment of asylum seekers by offering support to employers, such as advise and language coaching on the work floor.[718]

**Impact of the reception crisis (2021 – 2024)**

Single male applicants for international protection who do not receive accommodation, face difficulties obtaining their temporary residence permit (orange card). Most local administrations require a fixed residency to obtain a temporary residence permit. Applicants without accommodation often sleep rough, thereby they are unable to obtain a fixed residency. This in turn makes it impossible for them to apply for a temporary residence permit, hindering their access to the labour market in practice.

**Self-employment**

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

**Volunteering**

Asylum seekers are allowed to do voluntary work during their asylum procedure and for as long as they have a right to reception.

**Community services**

Asylum seekers are also entitled to perform certain community services (maintenance, cleaning) within their reception centre to increase their pocket money.[719]

## 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 optional for children between 3 and 5 years old, and mandatory for all children between 6 and 18 in Belgium, irrespective of their residence status. Education is mostly free until 18 years old. Any additional costs related to meals or school visits are paid by Fedasil for asylum seekers staying in a reception centre.

716 Articles 35/1 Reception Act and Royal Decree, 12 January 2011, on Material Assistance to Asylum Seekers residing in reception facilities and are employed (original amounts without indexation).
717 Fedasil, *Employment of asylum seekers,* available in Dutch and French at: https://bit.ly/4aygjfk.
718 VDAB, *Employing asylum seekers,* available in Dutch at: https://bit.ly/3xd8gWV; VDAB, *Talent speaking another language,* available in Dutch at: https://bit.ly/4axOcN0.
719 Article 34 Reception Act.

In primary schools (6-12 years old), children of asylum seekers mostly join the general classes of local schools. In secondary schools, classes with adapted course packages and teaching methods- the so-called "bridging classes" ("DASPA", in the French speaking Community schools) and "reception classes" ("OKAN", in the Flemish Community schools)- are organised for children of newly arrived migrants and asylum seekers. Those children are later integrated in regular classes once they are considered ready for it.

In practice, the capacity of some local schools is not always sufficient to absorb all asylum-seeking children entitled to education. During the school year of 2022-2023, hundreds of non-Dutch speaking children are on a waiting list to get access to the Flemish OKAN-classes. They might have to wait until September 2023 before they are able to get access to education. Numbers provided by some cities show that in April 2023 approximately 550 students were on a waiting list and do not have access to education.[720] These numbers concern all non-Dutch speaking students and not only asylum-seeking children.

Transfers of families to another reception centre or to a so-called "open return place" after having received a negative decision might also entail a move to another (sometimes even linguistically different) part of the country, which can have a negative impact on the continuity in education for the children. In that respect, it is noteworthy to recall that courts have endeavoured to guarantee asylum-seeking children the right to education. In a ruling of 6 May 2014, for example, the Labour Court of Charleroi found that the transfer of a family to the family centre of the Holsbeek open return place (in Dutch speaking Flanders) would result in a violation of the right to education since it would force the children to change from a French speaking school to a Dutch speaking one.[721]

In reception centres for asylum seekers, all residents can participate in activities encouraging integration and knowledge of the host country. They have the right to attend professional training and education courses.[722] The regional Offices for Employment organise professional training for asylum seekers who are allowed to work with the purpose of assisting them in finding a job. Additionally, they can enrol in adult education courses for which a certain level of knowledge of one of the national languages is required, but not all regions equally take charge of the subscription fees and transport costs.

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

## D. Health care

**Indicators: Health Care**

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
   ☒ 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

720 Vrt Nws, 'Hundres of foreign speaking youngsters might wait until September to go to school', 3 April 2023, available in Dutch at: http://bit.ly/3zBBNHn.
721 Labour Court of Charleroi, Judgment of 6 May 2014, available at: http://bit.ly/1F5Hyqq.
722 Article 35 Reception Act.

Under the material aid an asylum seeker is entitled to enjoy the right to medical care necessary to live a life in human dignity.[723] This entails all the types of health care enumerated in a list of medical interventions that are taken charge of financially by the National Institute for Health and Disability Insurance (RIZIV/INAMI). For asylum seekers, some exceptions have explicitly been made for interventions not considered to be necessary for a life in human dignity, but they are also entitled to certain interventions that are necessary for such a life albeit not enlisted in the nomenclature.[724]

The reception crisis has severely limited the access to reception for single male applicants. As a result, the access to health care and the overall medical situation of destitute applicants are negatively impacted (see Constraints to the right to shelter).

In addition to the limitations foreseen in the law, Fedasil often makes other exceptions on the ground that costs are too high and/or depending on the procedural situation of the asylum seeker. For example, the latest treatment for Hepatitis C has an average cost of €90,000. It is a long treatment that loses its effects when prematurely stopped. Due to uncertainty about the decision that will be taken on the asylum application and thus if the person will be able to continue the treatment in their country of nationality in case of a negative decision, Fedasil often refuses to pay back these expenses even though they are on the RIZIV/INAMI list. In that case, it only pays back expenses for older, cheaper treatment. This depends on the individual medical situation, the advice of the doctors, and the asylum procedure.[725]

Asylum seekers, unlike nationals, are not required to pay a so-called "franchise patient fee" ("*Remgeld* / *ticket moderateur*"), the amount of medical costs a patient needs to pay without being reimbursed by health insurance, unless they have a professional income or receive a financial allowance.

Collective centres and individual shelters often work together with specific doctors or medical centres around the centre or reception place. Asylum seekers staying in these places are generally not allowed to visit a doctor other than the one they are referred to by the social assistant unless they ask for an exception. A doctor recruited by Fedasil is present in only 13 centres of Fedasil.[726] This doctor may refer asylum seekers to a specialist where necessary. The other reception centres rely on the system of working with external doctors. Most LRI's (local reception initiatives on the level of the municipalities) also have agreements with local doctors and medical centres, but the costs are not refunded by Fedasil but by the federal Public Planning Service Social Integration (*Programmatorische Federale Overheidsdienst Maatschappelijke Integratie*). This service's decisions are based only on the RIZIV/INAMI list, so for the costs mentioned in the Royal Decree of 2009 but not in the RIZIV/INAMI list the PCSW to which the LRI is connected must make exceptions. Not all PCSW are familiar with the Royal Decree of 2009, however, thereby causing disparities in costs refunded for asylum seekers in LRI and those refunded in other reception places.[727]

When the asylum seeker is not staying in the assigned reception place or when the material reception conditions are reduced or withdrawn as a sanction measure, the right to medical aid will not be affected,[728] although accessing medical care can be difficult in practice. Asylum seekers who are not staying in a reception structure (by choice or following a sanction or in the context of the reception crisis) have to ask for a promise of repayment through an online form (*requisitorium)*[729] five days before going to a doctor.[730] Fedasil stated in March 2024 that it tries to reply one or two days before the date of the appointment. If someone introduces the requisitorium within the minimum period of five days before the appointment,

723 Article 23 Reception Act.
724 Article 24 Reception Act and Royal Decree of 9 April 2007 on Medical Assistance.
725 Court of Auditors, *Opvang van asielzoekers*, October 2017, 57; Myria, *Contact Meeting*, 17 October 2018, available in Dutch at: https://bit.ly/2FNSKEW, paras 96-101.
726 Information provided by Fedasil, March 2024.
727 Court of Auditors, *Opvang van asielzoekers*, October 2017, 57-58; Information provided by VVSG, February 2018.
728 Article 45 Reception Act.
729 Available in Dutch, French or English: http://bit.ly/3MawuX7..
730 Information about this process provided by Fedasil: http://bit.ly/4324cEb.

Fedasil cannot guarantee a timely reply.[731] This can be a very time-consuming process. When the workload is high, it can take up to a few weeks before the medical service of Fedasil answers.[732]

Once the asylum application has been refused and the reception rights have ended, the person concerned will only be entitled to emergency medical assistance, for which they must refer to the local PCSW.[733]

Fedasil refunds the costs of all necessary psychological assistance for asylum seekers, although these costs are not on the RIZIV/INAMI list. As stated above, medical care in LRI is reimbursed by another fund than the other reception facilities. This generates disparities with regard to access to private psychologists.

There are services specialised in the mental health of migrants, such as Solentra[734] and Ulysse[735] but they are not able to cope with the demand. Public centres for mental health care are open to asylum seekers and have adapted rates but mostly lack specific expertise. Additionally, there is a lack of qualified interpreters. The Reception Act allows Fedasil or reception partners to make agreements with specialised services. The Secretary of State accords funding for certain projects or activities by royal decree, but these are always short-term projects or activities, so the sector mainly lacks long-term solutions.[736]

In Wallonia, there is a specialised Red Cross reception centre (*Centre d'accueil rapproché pour demandeurs d'asile en souffrance mentale*, *CARDA*) for traumatised asylum seekers. In Flanders, there is a centre for the intensive assistance of asylum seekers with psychological and/or mild psychiatric problems (*Centrum voor Intensieve Begeleiding van Asielzoekers – CIBA*) in Sint-Niklaas. CIBA provides for an intensive trajectory of maximum 3 months and has 25 places; CARDA has 40 places. Neither CIBA nor CARDA have a waiting list in March 2024.[737]

On 29 October 2019, the Federal Knowledge Centre for Health Care (KCE) published the results of a field survey on the provision of health care to applicants for international protection. It shows that the organisation of health care in Belgium is unequal and not efficient. This leads to a difference in treatment of asylum seekers in the exact same procedural situation, purely on the basis of their place of residence. Access to specialised care also appears to be difficult for all asylum seekers due to a slow and complex administration that has to grant permission first. The KCE also identified other thresholds that hamper access to health care, such as language barriers, a lack of interpreters and limited transportation possibilities. The KCE proposes that the financing of health care for all asylum seekers should be included to a global envelope, which includes services for prevention, health promotion and support in terms of translation and/or transportation etc. The report identifies several avenues in this regard.[738] Fedasil has analysed the different options put forward by the report and decided a coverage of asylum seekers by compulsory health insurance is the best solution. A project in that sense, funded by the European Recovery Fund, is being developed. In January 2023, a trial phase of 6 months has started, after which the implementation of this system on the level of hospitals and pharmacies is envisaged. Implementation of this system with other actors of the health sector will take place in a later stage of the project.[739]

731 Myria, 'Contact Meeting International Protection', March 2024.
732 Court of Auditors, *Opvang van asielzoekers*, October 2017, 58.
733 Articles 57 and 57ter/1 of the Organic Law of 8 July 1976 on the PCSW.
734 See: https://www.solentra.be/en/
735 See: https://www.ulysse-ssm.be/.
736 Court of Auditors, *Opvang van asielzoekers*, October 2017, 55-56.
737 Information provided by Fedasil, March 2023.
738 KCE, *Asylum seekers: options for more equal access to health care. A stakeholder survey*, 29 October 2019, available at: https://bit.ly/2T8Ef3G.
739 Information provided by Fedasil, March 2023.

## E. Special reception needs of vulnerable groups

**Indicators: Special Reception Needs**

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

The law enumerates as vulnerable persons: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.[740] This is a non-exhaustive list, but no other definition of vulnerability is available.

### 1. Detection of vulnerabilities

On the moment of registration of the asylum application, the Immigration Office registers the elements that indicate a specific vulnerability that has become apparent on the moment of the registration of the asylum application (e.g. indication of (unaccompanied) minor, + 65 years old, pregnant, single woman, LGBTI, victim of trafficking, victim of violence (physical, sexual, psychological), has children, or has medical or affected by psychological issues (for more information see Guarantees for vulnerable groups) in the administrative file of the applicant. At the Dispatching Desk of Fedasil, the specific situation of the asylum seeker (family situation, age, health, medical condition) should be taken into consideration before assignment to a reception centre, since some are more adapted to specific needs than others.

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

In fact, the evaluation of dispatching mostly focuses on medical grounds. A medical worker of the Dispatching desk meets personally with the asylum seeker if the Immigration Office has mentioned that the person showed signs of vulnerability during the registration, if the workers of the dispatching desk notice a medical problem themselves, or if an external organisation draws attention to the specific reception needs of an asylum seeker. In addition, Fedasil's medical staff conducts a medical screening of every newly arrived asylum seeker in order to find an adapted reception centre.[741] The obtained medical information is then forwarded to the assigned reception centre. Regarding other vulnerabilities, they are mostly identified by social workers in the reception centres.

A legal mechanism is put in place to assess specific needs of vulnerable persons once they are allocated in the reception facilities. Within 30 calendar days after having been assigned a reception place, the individual situation of the asylum seeker should be examined to determine if the accommodation is adapted to their personal needs. Particular attention must be paid to signs of vulnerability that are not immediately detectable.[742] 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

740 Article 36(1) Reception Act.
741 Information provided by Fedasil, February 2018.
742 Article 22 Reception Act.

medical, social and psychological needs, with a recommendation as to appropriate measures to be taken, if any.[743] A finding of vulnerability may lead to a transfer to more adequate accommodation, if necessary. In practice however, a transfer is often impossible due to insufficient specialised places or political preferences for a collective rather than individual accommodation model. The evaluation mechanism is often insufficiently implemented, if at all, and rarely leads to a transfer to a more adapted place.[744] Since May 2018, Fedasil issued two instructions about transfers (see Forms and levels of material reception conditions), but due to the current shortage of places, the application of these instructions remains strict. In a recent ruling, the Labour court of Liège ordered Fedasil to transfer an applicant with serious health issues to an adapted reception place in a centre with a personal room and access to private sanitary facilities, in Brussels or a city from which Brussels is easily accessible.[745]

In a report from February 2017, Fedasil has highlighted several barriers to identification of vulnerable persons with specific reception needs.[746] These include a lack of time, language and communication barriers, a lack of information handover, and training and experience related to vulnerable persons. The report also found that the identification tools are not applied in a coordinated manner and strongly influenced by the reception context. In terms of communication, adapted means of communication with deaf and blind persons are lacking, as well as specialised interpreters. The study concluded that the way in which reception is organised can have an impact on vulnerable persons due to location (remote small villages), size (less privacy in big centres) and facilities (lack of adapted sanitary facilities).

Fedasil's report of December 2018 concludes that there is a significant difference between the identification conducted at the very beginning of the procedure by the Immigration Office and the Dispatching desk, and the one conducted once the asylum seeker is placed in an assigned reception centre. In fact, whereas the first identification is purely "categorical" (as it focuses on needs that can be detected quickly to assign an adapted reception place), the identification undertaken by social workers in the reception facilities is much more complex and multi-dimensional. Consequently, the second identification process diverges substantially amongst the different reception facilities, including regarding the different categories that are defined as vulnerable by the Immigration Office and the Dispatching desk.[747]

Fedasil cooperates with two organisations specialised in prevention against and support in case of female genital mutilation (FGM): Intact and GAMS. In the framework of the project FGM Global Approach, funded by the Asylum, Migration and Integration Fund, they set up a process in the reception centres for early detection of FGM and social, psychological and medical support, and for the protection of girls who are at risk of FGM. In each collective Fedasil centre there is a reference person trained by these organisations. Each social assistant and the medical service of the centre need to conduct the identification within the first 30 days after the person's arrival in the centre. A checklist was created to guide the personnel of the centre through each step of the process. Each victim of FGM should be informed of this but can choose to take part in it or not. These guidelines were created both for collective reception centres and for individual shelters.[748]

743 Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.
744 Court of Auditors, *Opvang van asielzoekers*, October 2017, 63.
745 Labour Court Liège, n° 23/1656/A, 24 October 2023, available in French at: https://bit.ly/49dEHkY.
746 Fedasil, *Study into vulnerable persons with specific reception needs*, February 2017, available at: http://bit.ly/2jA2Yhj.
747 Fedasil, *Kwetsbare personen met specifieke opvangnoden: definitie, identificatie en zorg*, 6 December 2018, available at: https://bit.ly/2S7NtO5, 25.
748 Fedasil, Note on the FGM trajectory in the framework of the Gamsproject, steps and tasks for implementation within the federal centre, 20 September 2017; GAMS, Traject VGV, available in Dutch at: https://bit.ly/2VGZTe7

## 2. Specific and adapted places

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

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

There are 7 reception places specifically aimed at the reception of LGBTQI+ applicants.[749] Other LGBTQI+ applicants are housed in the general reception network, either in collective centres (in a separate room) or in individual places, according to the needs and places available. Apart from these adapted places, Fedasil is funding several projects aiming to provide training and sensibilisation about this topic to residents and personnel of reception centres.[750]

### 2.1 Reception of unaccompanied children

The reception of unaccompanied children follows three phases:

1. **Orientation and Observation Centres:** Unaccompanied children should in principle first be accommodated in specialised reception facilities: Orientation and Observation Centres (OOC). While in these centres, a decision should be made on which reception facility is most adapted to the specific child's needs.[751] At the end of 2023, there were 541 places in OOCs.[752]
2. **Specific places in reception centres:** There are some specialised centres and specific places in regular reception facilities such as collective centres, NGO centres and LRI. There are 2,512 places in collective reception centres[753]
3. **Individual accommodation:** Once a child - that is at least 16 years old and who is sufficiently mature - receives a positive decision, a transfer can be made to a specialised individual place. They will then have 6 months to prepare for living independently and to look for their own place. This stay can be prolonged until the child reaches the age of 18. There are currently 367 places in individual reception facilities.[754]

There are specific places in Rixensart, which currently has 45 places for underage pregnant girls or young girls with children.

Children with behavioural problems or minors who need some time away from their reception place can be temporarily transferred to “time-out” places: in the reception centres of **Sint-Truiden**, **Synergie 14**, **Pamex-SAM asbl Liège** and **Oranje Huis.** There were 41 of these places available at the end of 2023.[755]

749 Information provided by Fedasil, March 2024.
750 Fedasil, *World day against homophobia,* 17 May 2021, available in Dutch and French at: https://bit.ly/43ErhO6; Rainbow House, *Inqlusion project,* available in English at: https://bit.ly/3xfCQiA.
751 Article 41 Reception Act; Royal Decree of 9 April 2007 on the centres for the orientation and observation of unaccompanied minors.
752 Information provided by Fedasil, March 2024.
753 Information provided by Fedasil, March 2024.
754 Information provided by Fedasil, March 2024.
755 Information provided by Fedasil, March 2024.

For unaccompanied children who have not applied for asylum there was a special reception facility in **Sugny** that met the requirements needed for their particular vulnerabilities, but the project has been put on hold in summer 2019, and has been on hold ever since.[756] Unaccompanied children whose asylum procedure end with a negative decision could apply for specific assistance in the collective centres in **Bovigny** (which is a residential support) and **Arendonk** (which is a project called "4myfuture" and enables unaccompanied minors to focus on their future perspectives during a one-week residency in Arendonk). These centres helped them to take decisions for their future, e.g., regarding voluntary return and the situation in which they would be if they stay illegally. At the beginning of 2024, the project in Bovigny ended due to a lack of expertise in this specific matter after staff turnover. The project in Arendonk will continue and will be revised in the course of 2024.[757]

### 2.2 Reception of families

In 2022, there were 78 places for vulnerable and pregnant women in Louvranges and some other places at the centre of Croix Rouge in Yvoir and Jette.[758]

Families with children are as much as possible housed in a family room in the reception centre, guaranteeing more privacy.

In 2023, the reception crisis reached a point where there were not enough places for families in the reception network. To avoid families ending up on the street, some families were housed in 7 youth centres (310 places) as of 12 September 2023.[759] The agreement with these youth centres ended in February 2024 because the youth organisations will need the locations outside the winter period.

Fedasil also must ensure the reception of families with children without legal stay when the parents cannot guarantee their basic needs.[760] These families are sheltered in "return houses" organised by the Immigration Office. These houses are also used as an alternative for detention for families with children. The government agreed in March of 2023 that it would prohibit the detention of children, by inscribing it into the Belgian Aliens Law.[761] The prohibition of child detention was included in a law proposal on return policy. This law proposal was scheduled to be voted on in parliament in February 2024. However, sufficient votes were obtained to once again send the proposal to the Council of state. It is expected that the law, including the prohibition of detention of children, will not be voted during this legislature.

### 2.3 Reception of victims of trafficking and persons affected by traumatic experiences

There are specialised centres such as **Payoke**, **Pagasa**, **Surya**, which are external to the Fedasil-run reception network, for victims of trafficking, and for persons with mental issues (currently 40 places in the Croix Rouge **Carda** centre and 25 places in the Rode Kruis **Ciba** centre). There are currently no waiting lists for the Carda and Ciba centre.[762] Finally, it is also possible to refer people to more specialised institutions such as retirement homes or psychiatric institutions outside the reception network.

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756 Information provided by Fedasil, January 2020, confirmed in March 2024.
757 Information provided by Fedasil, March 2024.
758 Information provided by Fedasil, March 2023.
759 Fedasil, *Families received in emergency accommodation,* 18 September 2023, available in English at: https://bit.ly/4act2nU.
760 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.
761 Nicole de Moor, CRIV 55 COM 1044, Chamber of Representatives, available in Dutch at: https://bit.ly/3Uckhmz, 10.
762 Information provided by Fedasil, March 2024.

### 2.4 Reception of persons with medical conditions

Specialised medical reception places or specific medical individual accommodation initiatives can be assigned to:

- 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 whom it is necessary to have adapted conditions of reception due to medical reasons, such as special diet, a private toilet, and a private room.

Currently, 263 medical places are available in collective reception centres, and 121 in individual reception places. In collective centres, these places are mostly situated in centres managed by Fedasil and some specific places in centres managed by Caritas. Other reception providers have no specific medical places but host persons with quite serious medical conditions; however, this is not done in specifically dedicated places. At the end of 2023, a new reception centre opened in Grimbergen specifically aimed at the reception of persons with medical conditions. Due to the reception crisis, the centre is also housing other persons, so not all medical places there are optimally used. Other medical places are situated in individual reception facilities (e.g. by Ciré). Organisations managing these places receive a special budget which allows them to offer additional support.

The number of medical places is insufficient to assign every person with special medical needs to an adapted reception place. Given that one room sometimes covers several medical places used by family members of the person with medical issues or that one person occupies a room with several medical places, not all specialised medical places are available for people with medical needs. Currently, Fedasil indicates that there is an increase of persons with serious mental health issues who need to be housed in a room with maximum 2-3 other residents, rather than 4-6. This can result in a loss of medical places.[763]

## 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 they understand (see section on Information to Asylum Seekers and Access to NGOs and UNHCR).[764] The brochure “Asylum in Belgium” currently distributed is available in ten different languages[765] and in a DVD version. These brochures are being distributed in the reception facilities.

As for the specific rights and obligations concerning reception conditions, the asylum seeker also receives a copy of the house rules available in different languages. According to the Reception Act this should be a general document applicable in all reception facilities and regulated by Royal Decree.[766] In 2018 a Royal decree and a Ministerial Decree were published to this end. (See Sanctions for violation of house rules).

763 Information provided by Fedasil, March 2024.
764 Article 14 Reception Act.
765 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.
766 Article 19 Reception Act.

This written information, although handed over to every asylum seeker, is not always adequate or sufficient in practice, since some asylum seekers need to have it communicated to them orally in person or have it repeated several times, *inter alia* due to the fact that some asylum seekers are illiterate. Fedasil launched an AMIF-founded project ('Amica') in collaboration with some universities, in the context of which 3 videos about the "Day 0" (day of registration of the asylum application and first access to the reception network in the arrival centre) were developed that were made available on the Fedasil website in the course of 2022. The website is to be accessible via QR-codes displayed in and around the arrival centre. Audio-tours in 14 different languages are available in the arrival centre, providing information about this "Day 0".[767]

The law foresees that asylum seekers accommodated in one of the reception structures should have access to the interpretation and translation services to exercise their rights and obligations.[768] In practice, however, the number of interpreters available in many reception structures is insufficient.

*Impact of the reception crisis (2021 – 2023)*
Single male applicants for international protection who do not receive shelter, do not receive the above information. The Immigration Office informs them about the waiting list with a general information leaflet about the shortage of places.[769] This leaflet contains a QR-code that directs applicants to the waiting list.

### 2. Access to reception centres by third parties

**Indicators: Access to Reception Centres**
1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
☒ Yes ☐ With limitations ☐ No

The Reception Act provides for a guaranteed access to first- and second-line legal assistance.[770] In practice most centres refer to the free assistance of lawyers, although some of them provide first line legal advice themselves as well. Consequently, there are substantial differences between the different reception centres in the way the asylum seeker is assisted in the follow-up of their asylum procedure and in the contact with their lawyers.[771] Asylum seekers are entitled to public transport tickets to meet with their lawyer at the lawyer's office.

Moreover, lawyers and UNHCR and implementing partners have the right to visit their clients in the reception facilities to be able to advise them. Their access can be refused only in case of security threats. Collective centres also have to make sure that there is a separate room in which private conversations can take place.[772]

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

## G. Differential treatment of specific nationalities in reception

In the Reception Act, there is no difference in treatment concerning reception based on nationality. The Reception Act does not exclude asylum seekers from safe countries of origin and EU citizens.

767 Myria, 'Contact meeting', 19 January 2022, p. 62 available in French and Dutch at: https://bit.ly/3sy9SFN.
768 Article 15 Reception Act.
769 Myria, 'Contact meeting', 21 September 2023, p. 12, available in French and Dutch at: https://bit.ly/3Za40zZ.
770 Article 33 Reception Act.
771 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 their right to a "pro-Deo" lawyer and the right to appeal.
772 Article 21 Reception Act; Royal Decree on the system and operating rules in reception centres and the modalities for checking rooms, 2 September 2018.

In practice, EU citizens applying for asylum and their family members are not accommodated by Fedasil. Fedasil argues that EU citizens are legally on the territory since they are exercising their freedom of movement, but the Federal Ombudsman has discarded this argument because it goes against the interpretation of "legal residence" by the Constitutional Court and violates provisions of the Convention on the Rights of the Child and the constitutional non-discrimination and equality principles, when it considers EU families with minor children.[773] EU citizens applying for asylum can challenge the formal refusal decision of Fedasil (known as "non-designation of a code 207") before the Labour Court.

In the current reception model, asylum seekers with a nationality which has a recognition rate above 80% are entitled to be transferred from collective asylum centres to individual places after 2 months (see Forms and levels of material reception conditions).

[773] Federal Ombudsman, *Annual Report 2013*, available at: https://bit.ly/3ZHleEy, 30-35.

# Detention of Asylum Seekers

## A. General

| Indicators: General Information on Detention | | |
|---|---|---|
| 1. | Total number of detentions in 2023: | 4,915 |
| 2. | Total number of asylum seekers detained in 2023: | N/A[774] |
| 3. | Number of asylum seekers in detention at the end of 2023: | N/A |
| 4. | Number of detention centres: | 6 |
| 5. | Total capacity of detention centres in March 2023 | 539[775] |

Asylum seekers who arrive at the border are systematically detained before being allowed to enter the territory (see Border detention).[776] Asylum seekers can also in certain specific cases be detained during their procedure and based on the Dublin Regulation (see Grounds for detention). In 2021, a total of 372 asylum seekers were detained, 132 of which based on the Dublin Regulation. In 2021, 10% of all migrants detained were asylum seekers who were detained at the border, less than 1% of all migrants detained were asylum seekers who had entered the territory. Migrants who are detained under the Dublin-III regulation are not considered asylum seekers in the statistics. They do appear as a separate category in the figures collected for repatriations. In 2021, 366 migrants were repatriated in the context of the Dublin procedure. This represented 18% of the total number of repatriations that year (1,984).[777] In 2023, 648 persons applied for asylum at the border. No further data on the total number of asylum seekers in detention was provided for 2023.

Belgium has a total of 6 detention centres, commonly referred to as "closed centres":[778] the **127bis** repatriation centre, to which the closed family units have been attached; the "**Caricole**" near Brussels Airport; and 4 "Centres for Illegal Aliens" - as the authorities define them - located in **Bruges** (CIB), in **Merksplas** near Antwerp (CIM), in **Vottem** near Liège (CIV) and in **Holsbeek** (near Leuven).[779] In addition to the Caricole building, there are also some smaller Centres for Inadmissible Passengers (INAD centres)

774 No data about this was provided for 2023. In 2021, 372 asylum seekers were detained and 83 persons were released from detention after introducing an asylum application—information provided by the Immigration Office, February 2022.

775 Before the COVID-19 crisis, the total capacity of the detention centres was 635 places. Due to the sanitary measures taken in the centres, the capacity fluctuated in 2021 between 273 and 312 places. In February 2022, the detention capacity was estimated at 263 places.

776 The Immigration Office, in the context of its right to reply to the AIDA report, remarked that in the context of asylum applications at the border, every case is treated, and any detention decision taken, on an individual basis. Civil society organisations, however, observe that by far every person applying for asylum at the border is detained, and this based on a decision that contains a mostly standardised motivation. This issue has been confirmed by the Committee Against Torture (CAT): *"Although the State party explained that minors and their families are not detained at the border, the Committee remains concerned that almost all other applicants for international protection are detained, under article 74/5 of the Aliens Act, and that this practice is accepted by the Constitutional Court, which considers it necessary for effective border control (decision of 25 February 2021). However, the Committee notes that article 74/5 of the Aliens Act is intended to transpose into national law Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, which allows for the detention of applicants only when it proves necessary and on the basis of an individual assessment of each case, if other less coercive measures cannot be applied effectively. The Committee also recalls that the European Court of Human Rights considered the practice of automatic detention at borders in the case Thimothawes v. Belgium and ruled that the routine detention of asylum seekers without an individual assessment of their specific needs was problematic (arts. 11 and 16).*" See CAT, Concluding observations on the fourth periodic report of Belgium, 25 August 2021, available in English at https://tinyurl.com/bdd43ky8, §29. It is also confirmed by the Belgian Refugee Council Nansen: '*NANSEN remarque que la mesure de détention ne contient pas de motivation concernant la vulnérabilité dans des cas spécifiques. De plus, aucune évaluation individuelle systématique n'a lieu avant de procéder à la détention ou à la prolongation de la détention, pour déterminer si les principes de proportionnalité et de nécessité sont respectés'*: Nansen, *Vulnerabilities in detention : motivation of detention titles,* November 2020, available in French at https://tinyurl.com/37fvm5up.

777 DVZ, Terugkeer, available in Dutch at: https://rb.gy/p63lrc.

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

779 In February 2022, the capacity in the detention centres is 40 in the 127bis repatriation centre, 45 in Caricole, 50 in Bruges, 69 in Merksplas, 35 in Vottem, and 24 in Holsbeek.

in the five regional airports that are Schengen border posts. Unlike the open reception centres, the detention centres fall under the authority of the Immigration Office.

The government decided on 14 May 2017 to maximise the number of places in existing detention facilities through what was baptised the "Master Plan". In 2019, the open reception centre (**Holsbeek**) has thus been turned into a closed centre for 50 women; in practice, the capacity is limited to 28 women. The government coalition, that was inaugurated on 1 October 2020, has confirmed the construction of additional places. With the construction of two additional detention centres in Zandvliet (144 places) and Jumet (200 places), the construction of a new centre in Jabbeke (112 places) as replacement for the centre in Bruges[780] and the creation of a new quick-departure centre in Steenokkerzeel,[781] the total detention capacity in Belgium will amount to 1,145 places in 2030.[782] The building works for the departure centre in Steenokkerzeel have not started yet as of spring 2024 and the planning regarding the realisation of the three centres in Zandvliet, Jumet and Jabbeke remains unclear.

Nevertheless, nearly seven years after the announcement of the so called "Master Plan", it is still not clear whether and when these centres will be created. Just as the creation of the 2 new centres, the replacement of Bruges seems to be blocked by local administrative and urbanistic obstacles. In the meantime, the government has announced that a budget has been made available to address the most urgent renovations.

In August 2018, the government opened five family units in the **127bis** repatriation centre, which in principle makes it possible to detain children (see Detention of vulnerable applicants).

## B. Legal framework of detention

### 1. Grounds for detention

**Indicators: Grounds for Detention**

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

The law contains grounds for detaining asylum seekers during the asylum procedure as set out by Article 8(3) of the recast Reception Conditions Directive.

#### 1.1. Border detention

Article 74/5 of the Aliens Act determines that a third country national who tries to enter the country without disposing of the necessary documents and applies for asylum at the border, can be detained while waiting to receive either a denial of entry, or to be granted access to the territory.

780 The Government had announced the replacement of the centre in Bruges, as the condition of the current centre is deemed 'very bad' (Chamber of Representatives, *Policy Note on asylum and migration,* 4 November 2020, available in Dutch and French, available at: https://bit.ly/3sJdgMd, 34).

781 A proposal to create a new short-stay departure centre in Steenokkerzeel (next to 127bis and Caricole) was made which, according to the government, would make removals more "humane, comfortable and safe" and promote better care for people who need to be repatriated swiftly.

782 As the Secretary of State announced on his website, 22 March 2022, available in Dutch and French, available at: https://bit.ly/35n68ht.

Although article 74/5 Aliens Act also states that a foreigner cannot be maintained for the sole reason that they have submitted an application for international protection, asylum seekers arriving at the border without travel documents are systematically detained.

The Immigration Office, in the context of their right to reply to the AIDA report, insists on the fact that in the context of asylum applications at the border, every case is treated, and any detention decision taken, on an individual basis taking into account all elements available in the administrative file. Civil society organisations, however, observe that by far every person applying for asylum at the border is detained, and this based on a decision that contains a mostly standardised motivation. This issue has been confirmed by the Committee Against Torture (CAT)[783] and by the Belgian Refugee Council Nansen.[784]

UNHCR is also concerned that the legal provisions do not sufficiently prevent arbitrary detention at the border. It regretted that, contrary to Article 74/6 of the Aliens Act on detention on the territory, Article 74/5 of the Aliens Act on detention at the border does not contain any guarantees such as the test of necessity, the obligation to consider the possibility of less coercive measures, the need for an individual assessment and an exhaustive list of reasons for detention. UNHCR therefore recommended the incorporation of the same guarantees in Article 74/6 and 74/5 of the Aliens Act. This recommendation has not been taken into account.

In 2023, 648 persons have applied for asylum at the border.[785]

### 1.2. Detention on the territory

On the basis of article 74/6(1) of the Aliens Act, an asylum seeker may be detained on the territory, where necessary, on the basis of an individualised assessment and where less coercive alternatives cannot effectively be applied:

a. In order to determine or verify their identity or nationality;
b. In order to determine the elements on which the asylum application is based, which could not be obtained without detention, in particular where there is a risk of absconding;
c. When they are detained subject to a return procedure and it can be substantiated on the basis of objective criteria that they are making an asylum application for the sole purpose of delaying or frustrating the enforcement of return;
d. When protection or national security or public order so requires.

Article 51/5 Aliens Act allows for the detention of asylum seekers during the Dublin procedure if there are indications that another EU Member State might be responsible for handling their asylum claim, but before that State has accepted their responsibility. Until the entry into force of the law in 2018, there was no objective criteria indicating a risk of absconding in case of a Dublin transfer specified in Belgian law, as

783 CAT, Concluding observations on the fourth periodic report of Belgium, 25 August 2021, available in English at https://tinyurl.com/bdd43ky8, §29: *"Although the State party explained that minors and their families are not detained at the border, the Committee remains concerned that almost all other applicants for international protection are detained, under article 74/5 of the Aliens Act, and that this practice is accepted by the Constitutional Court, which considers it necessary for effective border control (decision of 25 February 2021). However, the Committee notes that article 74/5 of the Aliens Act is intended to transpose into national law Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, which allows for the detention of applicants only when it proves necessary and on the basis of an individual assessment of each case, if other less coercive measures cannot be applied effectively. The Committee also recalls that the European Court of Human Rights considered the practice of automatic detention at borders in the case Thimothawes v. Belgium and ruled that the routine detention of asylum seekers without an individual assessment of their specific needs was problematic (arts. 11 and 16).*"

784 Nansen, *Vulnerabilities in detention : motivation of detention titles,* November 2020, available in French at https://tinyurl.com/37fvm5up: "*NANSEN remarque que la mesure de détention ne contient pas de motivation concernant la vulnérabilité dans des cas spécifiques. De plus, aucune évaluation individuelle systématique n'a lieu avant de procéder à la détention ou à la prolongation de la détention, pour déterminer si les principes de proportionnalité et de nécessité sont respectés.*"

785 Information provided by the Immigration Office, April 2024.

required by Article 2(n) of the Dublin III Regulation. As a result of the *Al Chodor* ruling of the CJEU,[786] the Immigration Office stopped issuing detention orders on the basis of a risk of absconding in the context of Dublin procedures in 2017, while detention remained possible if other grounds were met.[787]

The objective criteria for determining a "risk of absconding" are set out in Article 1(2) of the Aliens Act, in line with the *Al Chodor* ruling of the CJEU. They include situations where the applicant:

1. Has not applied for a permit after irregularly entering the country or has not made an asylum application within the 8-day deadline set out by the law;
2. Has provided false or misleading information or false documents or has resorted to fraud or other illegal means in the context of an asylum procedure or an expulsion or removal procedure;
3. Does not collaborate with the authorities competent for implementing and/or overseeing the provisions of the law;
4. Has declared his intention not to comply or has already resisted compliance with measures including return, Dublin transfer, liberty-restrictive measures or alternatives thereto;
5. Is subject to an entry ban in Belgium or another Member State;
6. Has introduced a new asylum application immediately after being issued a refusal of entry or being returned;
7. After being inquired, has concealed the fact of giving fingerprints in another Dublin State;
8. Has lodged multiple asylum applications in Belgium or one or several other Member States, which have been rejected;
9. After being inquired, has concealed the fact of lodging a prior asylum application in another Dublin State
10. Has declared – or it can be deduced from their files – that he or she has arrived in Belgium for reasons other than those for which he or she applied for asylum or for a permit;
11. Has been fined for lodging a manifestly abusive appeal before the CALL.

Civil society organisations have argued that it concerns overly broad criteria for the determination of a risk of absconding.[788] More particularly as regards the third criterion, the provision is liable to wide interpretation and abuse insofar as there is no definition of "non-cooperation" with the authorities in the Aliens Act. In practice, it has been reported that the third criterion is being applied but in combination with other criteria such as the first and seventh, especially for those applicants who conceal that they have applied for asylum in another Member state. Detention titles have also been based on a combination of the criteria in paragraphs 1, 3 and 7; or 2, 4, 8 and 10; or 2, 8 and 9, etc.

On 19 July 2019, Article 51/5/1 of the Aliens Act entered into force and implemented the relevant articles on detention of the Dublin III Regulation for applicants who did not apply for asylum in Belgium yet could be subject to a take-back decision because of a previous application that was registered in another Member State.[789]

As for persons who have not applied for asylum in Belgium, a practice of "implicit asylum applications" was applied for some time in 2019. Under this practice, the authorities consider that an application has been "implicitly" lodged by people, who refuse to file for asylum, yet proclaim to fear return. Consideration of such an implicit asylum application can result in a ban on the expulsion to the country of origin. The practice of implicit asylum applications can in fact, be considered as a worrisome procedure, e.g., in those cases where the implicit asylum application is used to open a Dublin procedure, thus enabling them to detain the person concerned for the purpose of the Dublin transfer in accordance with the Dublin Regulation. The European commissioner for Migration already expressed doubts as regards the

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

787 Information provided by the Immigration Office: Myria, *Contact meeting*, 21 June 2017, available at: http://bit.ly/2BVlncU.

788 See e.g. Vluchtelingenwerk Vlaanderen, 'Nieuw wetsontwerp betekent achteruitgang voor mensen op de vlucht', 4 July 2017, available in Dutch at: http://bit.ly/2EDO7tu.

789 Before this legal amendment, the Minister could not delegate such decisions to a staff member of the Immigration Office.

compliance of this practice with the recast Asylum Procedures Directive.[790] Other issues that are raised concern the lack of legal basis for the practice and the risk of a superficial examination of the application for international protection and the invoked fear under Article 3 ECHR.[791] This practice, that was mostly applied to the specific group of migrants in transit, was no longer applied as of 2020.

In its judgment M.A. v. Belgium of 27 October 2020, the European Court of Human Rights (ECtHR) ruled that the Belgian government had violated Articles 3 and 13 of the European Convention on Human Rights (ECHR) by insufficiently examining the individual circumstances of a Sudanese citizen in unlawful residence prior to his repatriation and by ignoring the temporary repatriation order issued by the Court of First Instance. The repatriation that led to the Belgian conviction took place on 13 October 2017. The Sudanese citizen had retracted an earlier asylum application declaring his mistrust in the Belgian authorities given that they had contacted the Sudanese authorities to conduct an identification-mission in Belgian detention centres and that he did not get representation by a lawyer. In order to prepare his repatriation, the man was interrogated in Arabic by this Sudanese identification mission during a meeting where, he declared, no lawyer, interpreter or even a civil servant from the Immigration Office was present. At a later stage, the man did engage a lawyer who filed a unilateral request to the Court of First Instance to suspend the repatriation at least until his request to be released would be judged by court. This request was granted on 12 October 2017. However, on the 13 October 2017, the man was moved to the airport anyway where he was requested by an Arabic speaking person to sign a declaration to return voluntarily and to withdraw all pending appeals, before entering the plane.[792]

When asked about the implications of this judgement for the Belgian practice, the previous Secretary of State for Asylum and Migration responded that the practice of implicit asylum applications had in the meantime already been introduced and that he would continue to support and expand the specialised Article 3 ECHR unit of the Immigration Office and ensure that every person concerned receives correct and comprehensible information about their rights and rapid access to a lawyer.[793]

In 2019, a specific questionnaire, also known as “Paposhvili” in the authorities’ jargon, has been introduced in order to apply an “article 3 ECHR check”. This questionnaire must be filled out, before any decision to detain can be taken. It is not always guaranteed that the foreigner will be able to answer the questionnaire in the best possible way, since they are not in the presence of a lawyer and interpreters may be lacking (see Legal assistance at the moment of arrest).[794]

According to the Immigration Office, mid 2021, a specific cell with 3 legal experts was created within the Immigration Office in order to verify whether the detention and/or expulsion would violate article 3 and 8 ECHR.
The specific cell is charged with the following tasks:

- analysing the national and international case law on the justification of Articles 3 and 8 of the ECHR in expulsion decisions;

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

791 Myria, Analyse van het interim-verslag van de Commissie belast met de evaluatie va het beleid inzake de vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen (Commissie Bossuyt), October 2019, available in Dutch at: https://tinyurl.com/y69nw2xe, p. 7-8; Myria, Nota over het eindverslag van de Commissie Commissie belast met de evaluatie va het beleid inzake de vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen (Commissie Bossuyt), November 2021, available in Dutch at: https://bit.ly/3wRml8G 12-13.

792 ECtHR, 27 October 2020, M.A. v. Belgium, available in French: https://bit.ly/2KJRPcw.

793 Information received by email from the cabinet of the State Secretary for Asylum and Migration

794 MOVE Coalition, Advies over een “Salduz”-wet voor vreemdelingen (parlementair document 55 2322/001), available in Dutch at: https://tinyurl.com/bdf32pzs, 7.

- review of the expulsion decisions of the foreigners detained in the detention centres. Such review is mainly based on the statements of the person concerned and the objective circumstances in the country of destination and the elements in the administrative file are taken into account;
- provide support in justifying expulsion decisions or with more general questions about Articles 3 and 8 ECHR and searching for information on the situation in a country;
- interviews with foreigners in detention centres either with a view to establishing their nationality in order to be able to assess the risk of violation of Article 3 in case of return, or with a view to obtaining additional information about the dangers invoked by the person concerned;
- organising trainings in order to raise awareness among the staff members of the Immigration Office of the importance of Articles 3 and 8 of the ECHR in their daily work. In this regard, a syllabus and training courses, which for example contain the legal requirements for the right to be heard, are available to them; and
- drawing up motivation keys to assist the services in making their decisions.

Figures provided by the Immigration Office show that in 2022, the special cell has analysed 2,250 files and has given its advice in 68 cases of which 3 concerned general questions and 65 were individual cases.[795] Driven from their experience in contacting this so-called "article 3 cell" in some individual cases, the Move coalition (a coalition of NGOs accredited to visit the detention centres) finds that the unit is not easily reachable and the decision-making process in general lacks transparency.

## 2. Alternatives to detention

| Indicators: Alternatives to Detention | | |
|---|---|---|
| 1. | Which alternatives to detention have been laid down in the law? | ☐ Reporting duties<br>☐ Surrendering documents<br>☐ Financial guarantee<br>☐ Residence restrictions<br>☒ Other: Special centres |
| 2. | Are alternatives to detention used in practice? | ☒ Yes ☐ No |
| 3. | Number of migrants subject to alternative measures in 2023: | N/A[796] |

Articles 74/6 (detention on the territory) and 51/5 (detention under Dublin) of the Aliens Act refer to the need for less coercive alternative measures to be considered before imposing detention. These alternatives were supposed to be defined by Royal Decree, which has still not been adopted. On 2 May 2024, a law for a "proactive return policy" has been adopted by the Belgian Parliament.[797] Among other things, the bill aims at enshrining in the Aliens Act a list of the preventive measures and the less coercive measures that can be taken by the authorities in return cases.[798]

For detention at the border, the Aliens Act does not contain any reference to less coercive measures or to an individual assessment or the need to assess the necessity or proportionality of the detention measure prior to applying detention at the border. Although the Immigration Office indicates that it takes an individual decision for each person, taking into account all elements of the case, civil society organisations claim that detention of asylum seekers at the border is systematic (see Border detention).

In 2018, the Government decided to create a commission (Commissie Bossuyt) to evaluate the return policy in Belgium. The final report of the commission was proposed in the parliament in 2020. In the report,

795 Immigration Office, Annual Rapport 2022, available in Dutch at: https://tinyurl.com/mr4xaj3y.
796 In 2021, the number of migrants subject to alternative measures was 178 (information provided by the Immigration Office, February 2022).
797 Chamber of representatives, Law proposal on proactive return policy, 29 September 2023, available in Dutch and French at: https://tinyurl.com/352cu2n5.
798 Since this law was adopted right before the publication of the AIDA update of 2023, a thorough analysis of the content of this law will be added in the update of 2024.

the Commission Bossuyt also tests the various alternatives to detention that the Government has already put in place.

❖ Delay in leaving the territory

A first alternative to detention consists of the extension of the deadline for leaving the territory.[799] The purpose of this extension is to allow the person to prepare for their departure. As a result, such an extension can only be granted if it is demonstrated that steps are being taken towards voluntary return, and that departure is feasible in a near future.[800] Figures show that this measure was only requested 9 times in 2019.[801] The measure is also subject to criticism. The criteria for granting the extension are not clear and fall under the discretionary power of the minister or his delegate.[802] Another issue concerns the fact that the order to leave the territory does not mention the possibility to request an extension of the deadline for leaving the territory, this is only mentioned in the law itself.[803] This possibility to postpone departure also fails to address the issue of non-removable people.[804]

❖ Deposit

A second alternative available is the payment of a deposit. According to the government, this measure has not proved to be an effective alternative to detention given that it is difficult to determine an appropriate amount to be deposited: if it is too high, migrants often do not have the financial means to pay the deposit; if it is too low, it will not be a sufficient incentive to leave the territory. Furthermore, according to the government, such a measure would have as a consequence the extension of the deadline for leaving the territory since the administrative authorities cannot process the payment of the deposit in the normal 30-day period.[805] This measure has therefor never been applied.

❖ Reporting

A third alternative concerned a reporting duty. After receiving an invite for an interview, the families were asked to appear before the Immigration Office. The measure was discontinued after a few months of its use by the government, as it bore no results in terms of increased chances of removal. Figures provided by the government show that only 10% of the 150 families that were invited showed up for the interview. The measure was considered problematic in itself according to the government, the aim should be return, not coming to report that one is still in the country,[806] and is also no longer in practice.

❖ Home accommodation

Specifically for families with (minor) children, two types of less coercive measures were set up: home accommodation in the context of an agreement under Article 74/9(3) of the Aliens Act and return homes (also called: 'FITT'). For families with minors, it first attempted to guide families to return from their private house. In the period when the final report of the Commission Bossuyt was issued (2020), the coaching only consisted of one return interview due to limited personnel capacity. During the interview the residence file is examined, the willingness to return is assessed and any obstacles to return such as for example medical issues are discussed. The report of the Bossuyt Commission mentioned other problems that arise

799 Art. 74/14 Aliens Act.

800 CALL, case n° 175.622 of 30th of September 2016.

801 Commissie Bossuyt, Eindverslag van de Commissie voor de evaluatie van het beleid inzake vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen, September 2020, available in Dutch at: https://bit.ly/3RC5TTw, 57.

802 Myria, Nota over het eindverslag van de Commissie Commissie belast met de evaluatie va het beleid inzake de vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen (Commissie Bossuyt), November 2021, available in Dutch at: https://bit.ly/3wRml8G, 14.

803 *Ibid*.

804 In the context of the right of asylum authorities to reply to the AIDA report, the Immigration Office indicates that in principle, nobody is "non-removable": even if a forced return is not possible, people could in many cases, according to the Immigration Office, return on voluntarily and independently. MOVE has written an extensive report about the problem of non-removable persons in Belgian detention centres: MOVE, "What future for non-removable persons on Belgian soil", June 2023, available in French (and a short version in Dutch) at https://tinyurl.com/mrxekp7m.

805 Commissie Bossuyt, Eindverslag van de Commissie voor de evaluatie van het beleid inzake vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen, September 2020, available in Dutch at https://bit.ly/3X2F7Vv, 57.

806 *Ibid*., 57-58.

with the procedure, such as difficult cooperation with local governments and partners as well as the fact that the strict conditions of the agreement deter families rather than increasing their willingness to cooperate. Moreover, in practice the interview with the staff member of the Immigration Office often takes place at the town hall of the place where the private house is situated, which makes it impossible to identify possible changes in the behaviour of the families.[807] Currently, the coaching of families to return from their private homes is included in the ICAM coaching trajectories, and is applied in a more intensive way.

- ❖ Return houses

Families with minors are held in return homes, also called family units or FITT (see Return houses). In the strict sense, the return homes are considered an alternative to detention since they are considered as open facilities. In practice however, families residing in return houses are subject to freedom restrictions in a way that makes civil society organisations consider the return houses to not meet the conditions of a proper 'alternative to detention'.[808]

- ❖ Case management

The final report of the Commission Bossuyt states that the most effective alternative to detention seems to be the Individual Case Management Support (ICAM), where a return coach is appointed to provide intensive guidance on return. In 2021, 60 new civil servants were recruited for the Immigration Office to start working for the newly founded department of 'Alternatives to Detention'. They will be responsible to man local provincial ICAM-offices. After receiving an order to leave the territory a migrant will be invited to a series of interviews, where his/her file would be explained to them and a trajectory towards return or other existing procedures would be organised (depending on the individual). Attendance is mandatory and failure to cooperate with return procedures or to show up may result in detention. Since 2022, Dublin cases are, among other target-groups, the priorities of the ICAM coaches.[809]

On 2 May 2024, a law for a "proactive return policy" has been adopted by the Belgian Parliament.[810] The bill aims at enshrining in the Aliens Act, *inter alia:* 1) the duty to cooperate in the organisation of transfer, expulsion, return or removal (this comprises forced medical examination in case of refusal); 2) the case management by civil servants of the Aliens office in the context of a return or transfer procedure (ICAM procedure); 3) a listing of the preventive measures and the less coercive measures that can be taken by the authorities and 4) banning the detention of families with minor children in closed centres. Families with children can still be held in return houses, since national authorities consider it as an alternative to detention.

807 Myria, Nota over het eindverslag van de Commissie Commissie belast met de evaluatie va het beleid inzake de vrijwillige terugkeer en de gedwongen verwijdering van vreemdelingen (Commissie Bossuyt), November 2021, available in Dutch at: https://bit.ly/3wRml8G, 15.

808 Platform of children on the move (Plate-forme mineurs en exil/Platform kinderen op de vlucht), "Return houses in Belgium: a full-fledged, efficient and child-friendly alternative to detention ?", January 2021, available in French at: https://bit.ly/3qwWYqh and in Dutch at https://tinyurl.com/4yhbs3hs.

809 Information provided by the Cabinet of the Secretary of State Sammy Mahdi.

810 Chamber of representatives, Law proposal on proactive return policy, 29 September 2023, available in Dutch and French at: https://tinyurl.com/352cu2n5. As the law was adopted immediately before the publication of the AIDA update of 2023, a thorough analysis of the content of this law will only be provided in the 2024 update of the report.

### 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
   - ❖ Do unaccompanied or separated children who are awaiting or undergoing age assessment continue to be detained during this process? ☒ Yes ☐ No

2. Are asylum seeking children in families detained in practice?
   ☐ Frequently ☐ Rarely ☒ Never

Following the ECtHR's *Kanagaratnam*,[811] and *Muskhadzhiyeva* judgments,[812] the Secretary of State decided that from 1 October 2009 onwards families with children arriving at the border and not removable within 48 hours after arrival should be detained in a family unit, not in a detention centre. However, in August 2018, Belgium opened detention facilities for families with children.[813] Article 74/9(3)(4) of the Aliens Act allows for a limited detention of the families with children in case they do not respect the conditions they accepted in a mutual agreement with the Immigration Office to stay in their own house, and/or absconded from the return homes. The detention centre for families is located next to the **127bis** repatriation centre near the Brussels National Airport. The Royal Decree of 22 July 2018 (amending the Royal Decree of 2 August 2002) establishes the rules for functioning the closed family units near Brussels International airport. [814]

Between August 2018 and April 2019, a total of 9 families with 20 children were detained. While the Council of State first suspended the Royal Decree in April 2019,[815] it later only annulled some provisions of the aforementioned Royal Decree, maintaining the possibility of detaining families with children for a maximum of 4 weeks.[816] A procedure before the European Court of Human Rights has subsequently been initiated to obtain the annulment.[817] A decision by the ECtHR concerning France of 22 October 2021 raises questions as to the lawfulness of the detention duration of 4 weeks. In that decision the ECtHR decided that the detention of a baby of 4 months for 11 days, constitutes an excessive duration in the sense of Article 3 ECHR.[818] However, since the judgment of the Council of State, no families with minor children are held at the 127bis detention centre.

In two decisions of March 2022, Belgium was condemned by the Committee on the Rights of the Child for having detained children in the family units of the 127bis repatriation centre.[819] The Committee recalled that the detention of any child because of their parent's migration status contravenes the principle of the best interests of the child and that "detaining children as a measure of last resort must not be applicable in immigration proceedings". The Committee moreover reminded Belgium of its obligation to use alternatives to detention.

811 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.

812 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.

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

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

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

816 Council of State, Decision No 251051 of 24th of June 2021

817 Vluchtelingenwerk Vlaanderen acts as one of the applicants in this procedure.

818 ECtHR, M.D. et A.D. v. France, Application No. 5703518, Judgment of 22 October 2021.

819 Committee on the Rights of the Child 24 March 2022, E.B. v. Belgium, CRC/C/89/D/55/2018, available in English at https://bit.ly/3nPf1cL and Committee on the Rights of the Child 22 March 2022, K.K. and R.H. v. Belgium, CRC/C/89/D/73/2019, available in English at https://bit.ly/43bY3VT.

In September 2020, the current government had agreed to no longer detain families with children in detention centres, as a matter of principle. New, alternative measures would be developed to avoid that this measure would be abused to make return impossible. Within the framework of the "Proactive return policy" the ban of detention of families with minor children should be enshrined in the law. At the time of the drafting of this report, the bill had not been voted.

The detention of unaccompanied children is explicitly prohibited by law.[820] 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.[821] This only applies to those unaccompanied children with regard to whom no doubts were raised about the fact that they are below 18 years of age and are identified as such by the Guardianship Service (see Asylum Procedure: Identification). In 2021, 4 unaccompanied children were transferred from the Caricole detention centre to the OOC.[822] 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.[823] Within 15 calendar days, the Immigration Office has to find a durable solution for the child, which may include return after an asylum application has been refused. Otherwise access to the territory has to be formally granted.

An exception to the legal prohibition to detain unaccompanied children, is when the border control officers have doubts as to whether an unaccompanied child arriving at the border is a minor. In such a case, unaccompanied are held in detention for the duration of their age assessment procedure.[824] This can sometimes take more than a week before this is rectified. In 2019, 3 children whose age was tested during detention were considered 15 years old after the test and had thus wrongly been held in detention.[825] In 2020, two minor boys were held in detention because of doubts about their declared age. Because the Belgian authorities did not want to carry out a bone test while the boys were in confinement for sanitary reasons (COVID-19), it eventually took 22 days before they were officially declared minors and released from detention. In 2021, 10 asylum-seekers were declared to be minors. This is a *status quo* with 2020, in which 8 asylum seekers declared to be minors of which 5 were found to be effectively minors after a bone scan.[826] There is no similar provision in the law for unaccompanied children which are arrested on the territory during the age determination procedure in case of doubt about their minority. In practice, however, they are also detained in the detention centres.[827]

For unaccompanied children, the average duration of detention in 2021 was 34,9 days, an increase due entirely to the fact that one person has stayed for 235 days (which was eventually found to be an adult). Without this person, the average stay of unaccompanied children was 13 days in 2021.

No other vulnerable categories of asylum seekers are excluded from detention by law. Besides the consideration of the minority of age, no other vulnerability assessment is made before deciding on the detention of asylum seekers, especially at the border.[828] This is confirmed by the Belgian Refugee

820 Article 74/19 Aliens Act.
821 Article 40, 41, §1 Reception Act.
822 Annual Report Caricole
823 On the technicality of this legal fiction, see *inter alia* Council of State, Decisions No 102.722, 21 January 2002 and No 57831, 25 January 1996.
824 Article 41, §2 Reception Act.
825 Figures confirmed by the Immigration Office in January 2020.
826 According to the Annual Report of the Immigration Office 26 migrants declared to be minors. For 12 of these 26 migrants, doubts were expressed about their age. 20 of these 26 migrants were effectively found to be minors.
827 Information communicated to Myria during the visit to CIB on 24 May 2019 and during the visit of the centre 127bis on 27 may 2019.
828 The Immigration Office, in the context of its right to reply to the AIDA report, states that this is not correct: the police also has the necessary knowledge about vulnerabilities and a follow-up is also ensured in the detention centres; it is therefore, according to the Immigration Office, not correct to state that there no assessment of vulnerabilities whatsoever.

Council, Nansen in a report of 2020 about vulnerabilities of migrants in detention facilities.[829] The ECtHR has moreover recognized that persons in detention are vulnerable in se.[830] The issue is also recognized by the UNHCR and the Committee against Torture which both state that alternatives for detention should be provided for victims of torture, victims of serious physical, psychological or sexual violence, victims of trafficking, pregnant women, the elderly and persons with disabilities.[831] By contrast, such persons are considered vulnerable by the Reception Act to meet their specific needs.[832] One of the recommendations of the Move Coalition is to introduce a procedure for the screening of the vulnerability of the persons that will be detained and to attach appropriate consequences to a finding of vulnerability such as alternatives to detention.[833]

### 4. Duration of detention

| Indicators: Duration of Detention | |
|---|---|
| 1. What is the maximum detention period set in the law (incl. extensions): | 6 months |
| 2. In practice, how long in average are asylum seekers detained? | N/A[834] |

The law provides for a maximum of a 2-month detention period for asylum seekers.[835] Detention can be prolonged for another 2 months for reasons of national security or public order.[836] Where extended for these reasons, a one-month prolongation if possible each time. The maximum duration of detention on territory therefore cannot exceed 6 months (2+2+1+1). The detention at the border may not exceed 5 months. However, the period of detention is suspended for the time provided to appeal the decision on the asylum application.

However, when a rejected asylum seeker refuses to board a plane, the detention period can sometimes be longer than 6 or 5 months. In this situation, a practice is applied by the Immigration Office in which the detention period is reset to zero.[837] Although such a practice received criticism as to creating a situation of very long detention duration (the absolute maximum duration being 18 months, following article 15 of the Return Directive), it was confirmed by the Belgian Court of Cassation.[838] The case was afterwards brought before the ECtHR in the *Kabongo v. Belgium* case. In that case, Miss Kabongo, a national of the Democratic Republic of Congo refused to board planes to Southern Africa five times. The Immigration Office took a new decision of detention for a period of 5 months, as a result of which Miss Kabongo was

829 Nansen, 'Vulnerabilites in detention and access to the asylum procedure : report', November 2020, available in French at https://tinyurl.com/2k3dh6v5. "NANSEN emphasises that in practice vulnerability is not an obstacle to detention in closed centres. NANSEN notes that the detention measure does not contain any grounds concerning vulnerability in specific cases. In addition, no systematic individual assessment is carried out before detention or the extension of detention, to determine whether the principles of proportionality and proportionality and necessity are respected. Furthermore, it is not clear to what conditions of detention are appropriate when a person is deemed vulnerable. Finally, there does not appear to be an effective procedure for identifying vulnerability in and, as a result, many people in vulnerable situations are not identified and their specific identified and their specific needs are therefore not taken into account." (translated from French): Nansen, *Vulnerabilities in detention : motivation of detention titles,* November 2020, available in French at https://tinyurl.com/37fvm5up.

830 ECtHR, Riad and Idiab v. Belgium, Application No. 29787/03, Judgment of 24 January 2008, §99; ECtHR, S.D. v. Greece, Application No. 53541/07, Judgment of 11 June 2009, §47; ECtHR, Mahmundi v. Greece, Application No. 14902/10, 31 July 2012, §62.

831 HCR, *Principes directeurs du HCR en matière de détention, ligne directrice 9.1, CPT, fiche thématique Rétention des Migrants*, mars 2017, available at: https://bit.ly/3l6ej9z, 33 ; CPT, Fiche thématique rétention des migrants, Mars 2017, https://rm.coe.int/16806fbf13, 9.

832 Article 36 Reception Act.

833 Move Coalition, Hervorming van het Belgisch Migratiewetboek, zomer 2021, 18-19, available in Dutch at: https://rb.gy/psdhxe.

834 Average detention periods per closed centre are included in the annual activity report of the Immigration Office (for 2022: https://tinyurl.com/4k6dr3we, p. 90). The average of the detention periods in these 6 centres gives an overall average detention period of 38 days (2022). However, it should be noted that these numbers are influenced by some situations of extremely long detention durations. The median durations are not available.

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

836 *Ibid*.

837 *Gesloten centra voor vreemdelingen in België: een stand van zaken*, December 2016, available in Dutch at: https://bit.ly/3DH0nZS.

838 Belgian Court of Cassation, Application No° A.R. P.04.0363.F, nr. 173, Judgment of 31 March 2004.

detained more than 10 months. The ECtHR ruled that, considering the multiple attempts by the Immigration Office to remove Miss Kabongo from the territory and her systematic opposition to this, the practice could not be seen as a violation of Article 5 ECHR.[839]

Asylum seekers in the Dublin procedure may be detained to determine the responsible Member State and secure a transfer. In both cases detention may not exceed 6 weeks.

On 19 July 2019, Article 51/5/1 of the Aliens Act entered into force and implements the relevant articles on detention of the Dublin III Regulation for applicants who did not apply for asylum in Belgium, but who could be subject to a take-back decision because of a previous application that was registered in another Member State.[840]

Contrary to the Dublin III Regulation, the law does not mention that the detention should be as short as possible. Furthermore, when a transfer decision is being appealed through an extremely urgent necessity procedure, the detention period starts again. This means that a new period of six weeks will start after the rejection of the appeal in the extremely urgent necessity procedure.

When detained at the border, asylum seekers generally spent more time in detention than other migrants in detention. Asylum seekers are admitted to the territory if the CGRS has not taken a decision within four weeks, or when the CGRS decides that further investigation is necessary.[841] However, being admitted to the territory does not automatically mean that the asylum seeker will be set free. As shown in practice, the Immigration Office takes a new detention decision based on one of the grounds set out in Article 74/6(1) of the Aliens Act, which regulates detention on the territory.[842]

While the duration of detention of asylum seekers is unknown in practice, the Immigration Office stated that the average duration of detention of all persons detained in immigration detention in 2022 varied depending on the centre (16 days in Caricole, 31 days in 127bis, 44 days in Bruges, 42 days in Merksplas, 51 days in Vottem and 39 days in Holsbeek).[843]

## 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.[844] The Criminal Procedures Act and the Aliens Act provide for a strict separation of persons illegally entering or residing on the territory and criminal offenders or suspects.[845] Asylum seekers can be detained with other third-country nationals and the same assistance is given to them as to irregular migrants in detention

839 ECtHR, Nancy Ntumba Kabongo v. Belgium, Application No. 52467/99, Judgment of 22 June 2005, p 18-20.
840 Before this legal amendment, the minister could not delegate these decisions to a staff member of the Immigration Office.
841 Article 74/5(4)(4) and (5) Aliens Act, as amended by the Law of 21 November 2017.
842 See more explanation on this practice in Nansen, Vulnerability in detention: border procedures, fast-track procedure and videoconference (2019-2020), available in French at: https://bit.ly/3lc5tqA.
843 Alien Office, Annual report 2022, p. 93, available here: https://bit.ly/3TCCTMU.
844 Article 4 Royal Decree on Closed Centres, referring to Articles 74/5 and 74/6 Aliens Act.
845 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.

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

### 1.1. Detention centres

The following table gives an overview of the detention centres and their respective capacity in March 2023:[846]

| Detention centre | Capacity |
|---|---|
| 127 bis (Steenokkerzeel) | 120 |
| Caricole | 100 |
| Centrum voor 'illegalen' Brugge (CIB) | 104 |
| Centrum voor 'illegalen' Merksplas (CIM) | 110 |
| Centrum voor 'illegalen' Vottem (CIV) | 77 |
| Centrum voor 'illegalen' Holsbeek (CIH) | 28 |
| Gesloten Gezinsunits bij 127bis | 0 |
| **Total** | 539 |

The government decided on 14 May 2017 to maximise the number of places in existing detention facilities. In 2019 the open reception centre (**Holsbeek**) has thus been turned into a detention centre for 50 women. The new government taking office on 1 October 2020 has confirmed the construction of additional places. With the construction of two additional detention centres in Zandvliet (144 places) and Jumet (200 places), the construction of a new centre in Jabbeke (112 places) as replacement for the centre in Bruges and the creation of a new quick-departure centre in Steenokkerzeel, the total detention capacity in Belgium will amount to 1,145 places in 2030 (See General).

This table gives an overview of the number of detentions/detainees per centre in the year 2023:[847]

| Detention centre | Amount of detentions |
|---|---|
| Caricole | 1,991 |
| 127 bis (Steenokkerzeel) | 825 |
| Centrum voor 'illegalen' Brugge (CIB) | 566 |
| Centrum voor 'illegalen' Merksplas (CIM) | 764 |
| Centrum voor 'illegalen' Vottem (CIV) | 499 |
| Centrum voor 'illegalen' Holsbeek (CIH) | 270 |
| **Total** | **4,915** |

In 2023, 3,822 persons were forcibly returned. It concerned 1,354 repatriations, 1,135 Dublin transfers and 1,333 refoulements at the border.[848]

### 1.2. Return houses

As regards families with children, they can be held in return houses, also called family units or FITT. The family or housing units in the return homes are individual houses or apartments where families are held during the time required to prepare their return to the country of origin, their readmission by the EU Member State responsible for processing their asylum application, or to be authorized to stay further in the territory. When those families with children are being transferred from the border, these persons are legally speaking not considered to have entered the territory.

846 Information provided by the Immigration Office in March 2023.
847 Information provided by the Immigration Office in April 2024.
848 Information provided by the Immigration Office in March 2023.

In the strict sense, the return homes are considered an alternative to detention since they are considered as open facilities. In practice however, families residing in return houses are subject to freedom restrictions (e.g. one adult must be present in the home at all times) and are, under the control of a so-called "return coach".[849] Children are able to go to school and adults can go out if they obtain permission to do so.[850] However a recent study conducted by NGO's concluded that some fundamental rights of children were not respected. The fact that children are removed from their usual living areas, do not always have access to school[851] or leisure activities is clearly contrary to the best interest of the child. Due to these and other reasons, civil society organisations do not consider the return houses to meet the conditions of a proper 'alternative to detention'.[852]

In 2022, there were 5 sites with 28 housing units with a capacity of 169 persons spread over the communes of **Zulte**, **Tielt**, **Tubize**, **Sint-Gillis-Waas** and **Beauvechain**. A total of 111 families, which amounts to 347 persons (195 children, 105 woman and 47 man) resided in the housing units throughout that year. The majority of the families detained in return houses have made applications for international protection at the border (in 2022, 91 out of the 111 families). The average duration of stay is 41 days. At least 35 families were released in 2022.[853]

In its general policy note in November 2021, the previous Secretary of State declared the intention to create more places in the return houses. The plan to double places in return houses was then repeated on a blog post of the current Secretary of State in December 2022.[854] Until now, no independent evaluation of the conditions of such facilities has been carried out, although NGOs have urged for it.[855]

As for unaccompanied children, the Observation and Orientation Centres (OOC) are not detention centres but they are "secured" and fall under the authority of Fedasil instead of that of the Immigration Office.

## 2. Conditions in detention facilities

| Indicators: Conditions in Detention Facilities | |
|---|---|
| 1. Do detainees have access to health care in practice? | ☒ Yes ☐ No |
| ❖ If yes, is it limited to emergency health care? | ☐ Yes ☒ No |
| 2. Are detention conditions satisfactory i.e. state of infrastructure? | ☐ Yes ☒ No |
| 3. Are the detention centres cleaned on a regular basis? | ☒ Yes ☐ No |
| 4. Are there sufficient showers and toilets for persons detained in general? | ☒ Yes ☐ No |
| 5. Are any sanitary towels or other provisions for hygiene provided for women? | ☒ Yes ☐ No |

The 2002 Royal Decree on Closed Centres provides for the legal regime and internal organisational guidelines. The detention centres are managed by the Immigration Office, not by Fedasil as are the open reception centres. In 2017, an informal group of several Belgian human rights organisations active in the

849 Return coaches are staff members of the Immigration Office that assist the families concerned during their stay in the family unit.

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

851 Access to school depends on several factors such as the duration of the stay in the FITT, agreement of the parents, possibility to register in a school in the middle of the school year, etc. In practice, civil society organisations observe that children above 12 years old are almost systematically deprived of access to school.

852 Platform of children on the move (Plate-forme mineurs en exil/Platform kinderen op de vlucht), "Return houses in Belgium: a full-fledged, efficient and child-friendly alternative to detention ?", January 2021, available in French at: https://bit.ly/3qwWYqh and in Dutch at https://tinyurl.com/4yhbs3hs.

853 JRS Belgium, *Monitoring report 2022*, available in English at: https://tinyurl.com/bdhzwkej.

854 Chamber of Representatives, *Policy Note on asylum and migration,* 3 November 2021, available in Dutch and French, available at: https://bit.ly/3jmBVq4; Chamber of Representatives, *Policy Note on asylum and migration,* 12 July 2022, available in Dutch and French at: https://bit.ly/3wRwimD; Nicole de Moor | Nicole de Moor: "Plannen voor terugkeercentra worden bakstenen" (nicoledm.be)

855 Plateforme mineurs en exil, *Report: Return houses in Belgium, a fully-fledged alternative to detention, effective and respectful of children's rights?*, available in French at: https://bit.ly/3HWbXmy.

field of administrative detention of migrants[856] (see Access to detention facilities), released a report on the state of detention centres for administrative detention in Belgium.[857] In 2019 the same NGO group also published a report focusing on vulnerability in detention.[858] It does not concern the detention conditions as such. Still, it addresses certain relevant topics such as the profiles of the detainees, the legality control on detention, the right to family life etc. In 2021, a formal Coalition of NGOs accredited to visit detention centres was created; it was named "Move: Beyond detention of migrants". The visitors of Move continue to visit all detention centres in Belgium weekly, which enables them to confirm that the findings in these previous reports are still relevant at the moment of writing. In 2023, JRS Belgium published a monitoring report of the detention conditions in the centres, with a specific focus on the centres of Merksplas, Brugge, Caricole and the FITT-unit that they visit every week.[859]

### 2.1. Overall conditions

The most essential basic rights of the asylum seeker are guaranteed by the Royal Decree on Closed Centres, including its amendment by the Royal Decree of 7 October 2014 which has established a complaints mechanism. The managing director of the centre has broad competences to limit or even refuse the execution of most of these rights if they deem this necessary for the public order or safety, to prevent criminal acts or to protect the health, morality or the rights of others.[860] 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.[861] The Immigration Office organises training for the security personnel at the detention centres on the use of coercion, as provided for by law.[862] Within the first year of employment, each member should get a 3-day course on the theoretical aspects and techniques of coercion, followed by a refresher course with situational practices of 3 hours every third year afterwards. These are given by an internal Immigration Office instructor. Also, training sessions on dealing with aggression and on intercultural communication are organised.

On arrival at the centre, every asylum seeker is subjected to a search.[863] The search is aimed at verifying if the asylum-seeker is in possession of objects or substances that are prohibited or dangerous to themselves, other residents, the staff or the security of the centre.[864] The search shall not exceed the time necessary for this purpose and the asylum seeker is obliged to fully cooperate.[865] The search can be done in several different ways such as by using a metal detector or other screening equipment, by thoroughly touching the body over the clothes or by having an asylum seeker undress completely in order to enable a thorough search of the clothing.[866] It is carried out by two members of the staff having the same gender as the asylum-seeker.[867] If prohibited or dangerous objects or substances are found as a result of the search, they shall be taken into custody, made available to the competent authorities or, with the consent of the asylum seeker, be destroyed.[868] After the security screening, the asylum-seeker must use the sanitary facilities, unless this is not appropriate for medical or safety reasons.[869] The person must cooperate in a medical examination, after which, if necessary, appropriate medical treatment will follow.[870]

856 Caritas, Vluchtelingenwerk Vlaanderen, Ciré and others.
857 Vluchtelingenwerk Vlaanderen et al., *Closed centres for foreigners in Belgium*, January 2017, available in Dutch available at: https://rb.gy/ogaeap.
858 Caritas, Ciré, JRS Belgium, Platforme Mineurs en Exil, Point d'appui and Vluchtelingenwerk Vlaanderen, *Vulnerabilité et Détention en Centres Fermés*, October 2019, available in French at: https://rb.gy/nl1yre.
859 JRS Belgium, *Monitoring report 2022*, available in English at: https://tinyurl.com/bdhzwkej. The Immigration Office, in the context of its right to reply to the AIDA report, indicates that its input or rectifications, given prior to publication of these reports, are not always taken into account.
860 Articles 21, 25, 31, 41, 65 Royal Decree on Closed Centres.
861 Articles 85-111/4 Royal Decree on Closed Centres.
862 Article 74/8 Aliens Act and Royal Decree on the Use of Coercion for Security Personnel.
863 Article 10 and 111/1 Royal Decree on Closed Centres.
864 Article 11 Royal Decree on Closed Centres.
865 Article 111/1 Royal Decree on Closed Centres.
866 Article 111/2 Royal Decree on Closed Centres.
867 Article 111/2 Royal Decree on Closed Centres.
868 Article 11 and 111/3 Royal Decree on Closed Centres.
869 Article 12 Royal Decree on Closed Centres.
870 Article 13 Royal Decree on Closed Centres.

For every new resident, an administrative record is opened. Every document which can be deemed useful for the identification and the processing of the administrative record shall be taken into custody for the duration of the stay in the detention centre.[871] The asylum seeker has the right to inspect these documents and is allowed to keep a copy, unless it has been established that the documents are false or forged, in which case they are handed over to the judicial authorities.[872] Upon arrival, every asylum seekers is entitled to one free national phone call of minimum ten minutes.[873]

Upon arrival, every asylum seeker receives a brochure that provides an overview of his rights and obligations during his stay in the detention centre, as well as the possibilities in the field of medical, psycho-social, psychological or religious assistance.[874] A more general brochure is also distributed informing them of the right to appeal against detention, the possibilities to make a complaint about the conditions of detention, the possibilities to obtain assistance from a non-governmental organization and to seek legal advice.[875]

The Royal Decree on Closed Centres characterises daily life in the detention centres as being collective during daytime.[876] Detention facilities have separated rooms or wings for families and single women, including at the border. In sanitary and sleeping facilities, single women and men are separated; in sanitary installations, only staff members of the same sex are present.[877] For persons who appear not to be able to adapt to the collective regime, the managing director can decide to adopt other specific measures e.g. a specific "room regime".[878] The other isolation regimes are the medical isolation and the disciplinary isolation. Migrants can be placed in disciplinary isolation in case of the following infringements: damage to goods, theft, threats, beatings, escape, sexual assault and weapon possession[879] or when a migrant commits the following infringements three times: insults to staff or fellow residents, entering restricted areas, sale-purchase between residents, possession of prohibited substances, disobedience to orders, disturbing the peace or safety and disregard of obligations.[880] In principle, the isolation can last a maximum of 24 hours, with a possibility of extension to 72 hours.[881] In case of assault of staff, the duration is immediately brought to 72 hours with a maximum extension up to 7 days.[882] It happens nonetheless that the legal regime applicable to the isolated person changes throughout isolation period (e.g. from a specific "room regime" – which isn't considered an isolation measure *sensu stricto* but means in practice that the person spends most of the day on their own – to disciplinary isolation) which ends up to a *de facto* isolation period longer than the legally prescribed duration.

Against each decision taken on the basis of the aforementioned Royal Decree, the detained person can file a complaint to the 'Commission of complaint'. The complaint is written either in one of the official Belgian national languages or in the person's mother tongue (no translation is necessary). The complaint is signed and dated by the detainee who lodges the complaint, so a third party (witness, NGO visitor or lawyer) cannot lodge it in their place. The detained migrant can file their complaint with the Secretariat of the Commission or they can also file a complaint with the director of the centre where they are detained, who will then transmit the complaint to the Secretariat. This second option is generally preferred by the detainees. The complaint must be filed within five days from the day after the day on which it can be considered established that the complainant has actual knowledge of the facts or the decision giving rise to the complaint. Most of the complaints are declared inadmissible. But if the complaint is well-founded,

871 Article 14 Royal Decree on Closed Centres.
872 Article 14 Royal Decree on Closed Centres.
873 Article 15 Royal Decree on Closed Centres.
874 Article 17 Royal Decree on Closed Centres.
875 Article 17 Royal Decree on Closed Centres.
876 Article 83 Royal Decree on Closed Centres.
877 Article 83 Royal Decree on Closed Centres.
878 Article 83/1 Royal Decree on Closed Centres.
879 Article 98, §2, 1° Royal Decree Closed Centres.
880 Article 98, §2, 3° Royal Decree Closed Centres.
881 Article 101, §1 Royal Decree Closed Centres.
882 Article 101, §2 Royal Decree Closed Centres.

the Commission can either issue a recommendation, annul the decision taken, or propose a sanction against the staff member. The lodging of a complaint does not suspend the expulsion measures or their execution. Because the whole system lacks transparency and independence, it is considered by civil society organizations to be an ineffective redress mechanism for migrants in detention.[883]

Apart from the complaint mechanism at the Commission, detainees can also file complaints at the director of the centre about various topics (e.g. food, request to change rooms, complaint about the treatment of the file, etc. These complaints discussed immediately with the person involved and an attempt is made to find a solution. The complaint is also registered and included in the monthly reporting towards the management of the centre. Other control measures include visitation rights by several national and international instances.[884]

Each centre has a service responsible for the psychological and social supervision of the asylum seeker during their stay in the detention centre and prepares rejected asylum-seekers for their possible removal.

3 meals a day are provided, special diets can be delivered on medical prescription, pork is never to be served and alcohol is prohibited.[885] The asylum seekers get the opportunity to wash themselves on a daily basis and toiletries are at their disposal free of charge.[886] The asylum seeker can have clothes delivered at their own expense, but the centre is to provide free clothing in case they do not dispose of appropriate clothing.[887]

In practice, conditions vary from one centre to another. The Government has announced the replacement of the centre in Bruges, as the condition of the current centre is deemed 'very bad' (old building, deficient air-cooling system, broken sanitary, etc.)[888] The government has announced that a budget has been made available to address the most urgent renovations. The Government aims to build a new centre in the neighbouring commune of Jabbeke to replace the centre in Bruges, but there is no clarity on the start and end dates for construction works.[889]

Other issues have been reported regarding detention centres. The rooms in medical wings are described as bare and having only one window. In some detention centres, there is a television, toilet and washbasin in the room, in some others (e.g. Bruges) the room is common to 10 people with bulk beds.[890] Isolation cells can be described as extremely bear with grey walls and a small window. The room is lined with a bed with anti-tearing sheets and an aluminium toilet. Furthermore, persons placed in isolation no longer have access to the telephone, only contact with a lawyer remains possible.

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883 CECLR (ex-Myria), *La Commission des plaintes chargée du traitement des plaintes des personnes détenues en centres fermés (2004-2007),* available in French at: https://bit.ly/3jxpGXF. See also Myria, *Committee against torture, 71e session, 4th periodical report on Belgium – 2021 : Parallel reports of National Human rights institutes Unia and Myria,* available in French at : https://tinyurl.com/3ehatt76*:* §§81-82 : "Le faible taux de plaintes introduites, le taux insignifiant de décisions qui donnent raison aux plaignants et le caractère relativement anodin des quelques plaintes qui ont été déclarées fondées, sont autant d'indices qui exigent que l'on s'interroge sur le système de plainte lui-même. Différentes critiques peuvent être faites à l'égard de la Commission des plaintes : - absence de garanties suffisantes d'indépendance et d'impartialité ; - mécanisme insuffisamment pertinent du point de vue de l'auteur de la plainte ; - absence de garanties procédurales suffisantes ; - manque de transparence."

884 See Immigration Office, *Regulatory compliance and control,* https://tinyurl.com/2p9wx79y.

885 Articles 79-80 Royal Decree on Closed Centres.

886 Article 78 Royal Decree on Closed Centres.

887 Article 76 Royal Decree on Closed Centres.

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

889 Cd&v, 'Nicole de Moor: "Plannen voor terugkeercentra worden bakstenen"', available in Dutch at: http://bit.ly/406MpsE.

890 JRS Belgium, *Monitoring report 2022*, available in English at: https://tinyurl.com/bdhzwkej.

## 2.2. Activities

In detention centres asylum seekers have access to open air spaces. In some centres they are allowed to get out in open air during daytime whenever they want. In other centres this is strictly regulated.[891] A minimum of two hours of exercise outside is provided.[892]

Assistance to religious services or non-confessional counselling is guaranteed in the detention centres and the provision of assistance by a minister of a non-officially recognised cult can be requested.[893]

The asylum seeker has an unlimited right to entertain correspondence during the day.[894] Writing paper is provided in the centre, as is assistance with reading and writing by staff members.[895] 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.[896] Asylum seekers can make calls at their own expenses during daytime to an unlimited extent.[897] In most detention centres, the residents are allowed to use their cell phone (without camera) at all times. Detainees have to pay  phone calls through their own means, or they can earn phone credit by doing chores in the centre. This often represents a challenge and forces people to rely on NGOs providing them with mobile top-ups and old phones without cameras. Computers (with internet) are accessible on a regular basis, but this varies from one centre to another.[898]

The centres are required to organise sport, cultural and recreational activities.[899] In most centres, fitness activities are offered and sporting tournaments of volleyball, soccer and basketball are organised on a regular basis. Every centre has a library at the disposal of the inhabitants, which usually provides a diverse range of books in different languages.[900] Newspapers and other publication can be purchased at their own expense.[901] They are also entitled to follow radio and television programmes.[902] In several detention centres, the rooms are equipped with a television.[903]

According to Article 74/8(4) of the Aliens Act, asylum seekers who are detained in closed centres could be allowed to perform work for remuneration. However, to date, the implementing decree laying down the conditions is still missing. In practice, certain centres provide the possibility for residents with little to no financial resources to do cleaning chores in order to obtain call credit, cigarettes, hygiene products or sweets.[904]

## 2.3. Health care and special needs

Access to health care is legally determined to “what the state of health demands” and every centre has its own medical service to provide for it with independent doctors.[905] The doctor attached to the centre can decide that a person has to be transferred to a specialised medical centre.[906] In practice, persons

891 JRS Belgium, *Monitoring report 2022*, available in English at: https://tinyurl.com/bdhzwkej.
892 Article 82 Royal Decree on Closed Centres.
893 Articles 46-50 Royal Decree on Closed Centres.
894 Articles 19 Royal Decree on Closed Centres.
895 Articles 22 and 23 Royal Decree on Closed Centres.
896 Articles 20-21/2 Royal Decree on Closed Centres.
897 Article 24 Royal Decree on Closed Centres.
898 PICUM, Working together to end immigration detention: A collection of noteworthy practices, 2024, available in English at: https://tinyurl.com/292746fp.
899 Articles 69-70 Royal Decree on Closed Centres.
900 Caricole annual report 2021.
901 Articles 71-72 Royal Decree on Closed Centres.
902 Article 72 Royal Decree on Closed Centres.
903 Annual report CIH, CIM, Vottem en Caricole
904 Annual report detention centres Caricole, Vottem, CIM.
905 Article 53 Royal Decree on Closed Centres.
906 Article 54-56 Royal Decree on Closed Centres.

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.[907] At the same time, the quality of the health care available depends a lot on the medical infrastructure and individual doctor in the centre.

When the medical doctor finds a person not suited for detention or forced removal because it could damage their mental or physical health, the managing director of the centre has to transfer these observations to the Director-General of the Immigration Office, who has to decide on the suspension of the detention or removal measure or ask for the opinion of the medical doctor of another centre, and in case of a dissenting opinion for that of a third one.[908] After every failed attempt of removal when forced was used, the doctor has to examine the person concerned.[909] The person is not automatically provided with a medical report after examination. There have been no reports of the way this is applied in practice to date. No other procedures to identify other vulnerable individuals in detention is provided for by law.

If the person wishes so, they can request an external doctor to examine them in the detention centre at his/her own costs.[910] This does not happen very frequently in practice as there are few voluntary doctors to come to the centres (some of them being geographically isolated) and the detained persons do not usually have the financial means to pay for it.

Following Belgium's conviction by the ECtHR in its *Paposhvili* judgment,[911] a new 'special needs' procedure was introduced in practice specifically for persons placed in detention prior to their return. However, the procedure is still not laid down in an official decision.[912] The ‘special needs’ procedure foresees that, for each newcomer to a detention centre, the centre's doctor fills out a medical certificate stating whether or not the person concerned suffers from an illness that could subject them to a risk of inhuman or degrading treatment in the context of return (which is contrary to Article 3 of the ECHR), or if additional medical examinations have to be carried out to determine this. If such a risk is identified by the doctor, a second examination will be conducted. The medical certificate is binding for the central service of the Immigration Office (MedCOI) which must ensure that the recommended treatments are available and accessible in the country of return. If this is the case, return will be carried out. If this is not the case, the person concerned can appeal to the 'special needs' programme or be released. The ‘special needs’-programme offers individual assistance to vulnerable persons who return to their country of origin. Within this framework, their stay in a detention centre can be adapted to their needs, assistance can be provided for their return and, if necessary, assistance can be provided for the reintegration in their country of origin.[913] In 2022, 72 persons benefited from the special needs programme.[914]

The provision of medical assistance varies from centre to centre. It has been reported that in some centres, medical care is only for the purpose of repatriation and there is no budget for serious interventions. Transfer to the hospital for urgent medical treatment is rather exceptional. In some centres people complain about the fact that they only get painkillers and sleeping pills. A lack of adequate medical assistance for detainees with mental issues has also been reported.[915]

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907 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.

908 Article 61 Royal Decree on Closed Centres.

909 Article 61/1 Royal Decree on Closed Centres.

910 Article 53 Royal Decree on Closed Centres.

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

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

913 Myriadoc, *Terugkeer, detentie en verwijdering van Vreemdelingen in België*, November 2017, available in Dutch: https://bit.ly/3l5zW9V.

914 13 in Merksplas, 4 in Brugge and 3 in Holsbeek.

915 Ciré, *Vulnerabilité et detention en centre fermé*, October 2019, available in French at: https://rb.gy/nl1yre. The Immigration Office, in the context of its right to reply to the AIDA report, indicates that the doctors operating in closed centres are independent. Urgent medical care is always offered. Each centre has a psychologist.

During their visits in the centres of Merksplas, Brugge and Vottem between 10 April and 14 May 2020, Myria observed that the medical facilities were not always adequate to deal with the COVID-19-crisis (a fortiori when isolation-cells were used to organise medical isolation), and that internal procedures varied between the different centres.[916]

Finally, the Royal Decree of 9 April 2007 on OOC regulates the functioning of the OOC for unaccompanied children. Specific measures are adopted to protect and accompany the children. During their stay of maximum 15 days, their contacts are subject to special surveillance.[917] During the first 7 days of their stay, they are not allowed to have any contact with the outside world other than with their lawyer and their guardian.[918] The modalities of the visits, outside activities, telephone conversation and correspondence are strictly determined in the house rules.[919] When a child is absent for more than 24 hours or where vulnerable children (i.e. under 13 years of age, children with psychological problems or victims of human trafficking) are absent without informing the staff, the police and the guardian or the Guardianship Service are alerted.[920]

### 3. Access to detention facilities

**Indicators: Access to Detention Facilities**

1. Is access to detention centres allowed to
   - ❖ Lawyers: ☒ Yes ☐ Limited ☐ No
   - ❖ NGOs: ☐ Yes ☒ Limited ☐ No
   - ❖ UNHCR: ☒ Yes ☐ Limited ☐ No
   - ❖ Family members: ☐ Yes ☒ Limited ☐ No

Lawyers always have access to their client in detention.[921] Access is granted to UNHCR, the Children's Rights Commissioner, Myria and some supranational human rights institutions.[922] NGOs need to get the approval from the Immigration Office's managing director in advance to get access to the detention centres.[923] In general, an individualised accreditation is issued for specific persons who conduct these visits for an NGO, as is the case for specific employees and volunteers of Vluchtelingenwerk Vlaanderen, the Jesuit Refugee Service, Caritas International, Point d'Appui and Nansen, who previously formed an informal coalition to work on topics related to administrative detention of migrants. Since January 2021, this informal 'Transit group' is succeeded by an official coalition known by the name Move (www.movecoalition.be). Currently, the members of the steering Committee of Move are Vluchtelingenwerk Vlaanderen, JRS Belgium, Caritas International Belgium and Ciré. The coalition's goals are pursued in collaboration with other NGOs working in the field of migration, such as Nansen or Point d'Appui. The members of Move build on almost 20 years of experience in the field of immigration detention and possess vast expertise in the four specific pillars of the coalition:

- ❖ visits and monitoring of detention centres, in order to provide psychosocial support, neutral information and legal aid to detainees. The visitors observe the conditions in the detention centres;

916 Myria, Bezoeken van Myria aan de gesloten centra van Merksplas, Brugge en Vottem tussen 10 april en 14 mei 2020 in het kader van de COVID-19-pandemie, available in Dutch at: https://bit.ly/2Ye1J9y, 12. The Immigration Office, in the context of its right to reply to the AIDA report, indicates that the information to which this report refers does not necessarily correspond to the objective information at the disposal of the Immigration Office and shared in this context, but not included in the report. According to the Immigration Office, an audit by CELEVAL (risk-evaluation in asylum centres, trans-migrants, homeless persons and closed centres d.d. 5 May 2020, revealed that the approach adopted in the centres was good and should be continued. The Immigration Office indicates that it has always applied the rules imposed or recommended for collective residential institutions.

917 Articles 7 and 10 Royal Decree on OOC.

918 Article 10 Royal Decree on OOC.

919 Article 10 Royal Decree on OOC.

920 Articles 10 and 11 Royal Decree on OOC.

921 Article 64 Royal Decree on Closed Centres.

922 Article 44 Royal Decree on Closed Centres.

923 Article 45 Royal Decree on Closed Centres.

- ❖ quality legal expertise offered to visitors and other legal practitioners, in order to increase access to legal defense for the detainees;
- ❖ field observations and recommendations for concrete changes are carried out under the political pillar; to better pursue its objectives, the coalition also maintains close contact with politicians;
- ❖ a media and communication pillar, that works on fundamentally questioning detention for migratory reasons in the public space.

Members of Parliament and of the judicial and executive powers can visit specific detainees if they are identified beforehand and if they can indicate to the managing director of the centre that such a visit is part of the execution of their office.[924] 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.[925]

The asylum seeker is entitled to visits from their direct relatives and family members for at least 1 hour a day, if they can provide a proof of their relation.[926] 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.[927] All visits, except for the so called 'undisturbed' (intimate) ones, in case of serious illness and those by the lawyer, diplomats or representatives of public authorities, take place in the visitors' room in the 'discreet' presence of staff members, who are present in the room but do not listen.[928] After limitations imposed due to the pandemic, visits resumed normally since March 2022.[929]

## 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? | N/A | |

When asylum seekers are detained, they are informed in writing of the detention decision, its reasons and the possibility to lodge an appeal.[930] Civil society organisations criticize the fact that detention decisions are mostly motivated in a standardised, non-individualised way,[931] the motives being mostly limited to general considerations such as "having tried to enter the territory without the necessary documents (at the border)", or "risk of absconding (in Dublin cases)". Translation of the detention decision in the language of the asylum seeker is not provided for by law, but in some centres a social interpreter is arranged by the centre's social assistant on request by the detainee.[932]

National legislation does provide for judicial review of the lawfulness of detention. Unlike in case of a suspect in criminal cases, an asylum seeker who is detained is not automatically brought before a judge to determine the lawfulness of their detention, but they can lodge a request to be released with the Council Chamber (*Raadkamer* | *Chambre du Conseil*) of the Criminal Court every month.[933] The Council Chamber has to decide within 5 working days, and if this time limit is not respected, the asylum seeker has to be released from detention.[934] An appeal can be lodged against the decision of the Council Chamber before

924 Articles 33, 42 and 43 Royal Decree on Closed Centres.
925 Articles 37 and 40 Royal Decree on Closed Centres.
926 Article 34 Royal Decree on Closed Centres.
927 Article 36 Royal Decree on Closed Centres.
928 Articles 29-30 Royal Decree on Closed Centres.
929 JRS Belgium, *Monitoring report 2022*, available in English at: https://tinyurl.com/bdhzwkej.
930 Article 17 Royal Decree on Closed Centres.
931 Nansen, *Vulnerabilities in detention : motivation of detention titles,* November 2020, available in French at https://tinyurl.com/37fvm5up.
932 The Immigration Office, in the context of its right to reply to the AIDA report, indicates that detention decisions are always both materially and legally motivated, and translated in a language the detainee understands.
933 Article 71 Aliens Act.
934 Article 72 Aliens Act.

the Indictment Chamber at the Court of Appeal (*Chambre des mises en accusation* | *Kamer van Inbeschuldigingstelling*) within 24 hours. Against this final decision, a purely judicial appeal can be introduced before the Court of Cassation.

It is only when the Immigration Office decides to prolong the detention for another month after the applicant has spent already 4 months in detention, that an automatic review by the Council Chamber of the Criminal Court takes place.[935]

The scope of judicial review of detention remains very limited. Only the legality of the detention can be examined, not its appropriateness nor its proportionality.[936] This means that only the accuracy of the factual motives of the detention order can be scrutinised i.e., whether the reasons for detention are based on manifest misinterpretations or factual errors or not. Through such a restriction, the Aliens Act prevents an effective judicial control of the conditions of necessity and proportionality it imposes itself.[937] The logic behind this is that the competence to decide on the removal of the foreigner, and as such on the appropriate measures to execute such a decision, lays with the Immigration Office and the CALL, not with the criminal courts. However, judicial review by the CALL of a "*refoulement* decision" issued when applying for asylum at the border will only be done once its execution becomes imminent, which is only the case once the asylum application has been refused (see below).

The scope of the judicial review on the legality of detention measures is almost arbitrary and the Court of Cassation is ambiguous about the interpretation of such legality in its own jurisprudence, by including assessments of conformity of detention with the Return Directive or the ECHR, following the ECtHR's ruling in *Saadi v. United Kingdom*.[938] The Council or Indictment Chambers have even sometimes considered the principle of proportionality as part of the legality of a decision, but in most cases, they limit their review to the legal basis for the decision, without ever considering any of the provisions of the Reception Conditions Directive. The fact that the person detained is an asylum seeker or a particularly vulnerable person is generally not taken into consideration as an argument to limit the use of detention.[939] The law that entered into force on 22 March 2018 states that an asylum seeker can be detained if no other less coercive alternative measures can be applied and if it is deemed necessary based on an individual assessment, in line with the CJEU position expressed in its earliest case law, as a result of which an overly strict interpretation of the Belgian legal framework constitutes a violation of EU law.[940] These less coercive measures have not yet been listed by way of Royal Decree. This recent reform remains to be evaluated in practice.

The procedure before the courts is determined in the Law on the Provisional Custody that applies in criminal law proceedings.[941] In practice, the time limits set in the law are respected, unless an appeal at the Court of Cassation is introduced against a judgment ordering release by the Court of Appeal. Since this cassation appeal suspends the detention period and it is not commonly treated within a reasonable time, the detention period can exceed the legal maximum and result in the asylum seeker remaining in detention for prolonged periods. This practice has repeatedly been marked as a violation of Article 5(4) ECHR by the ECtHR.[942]

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935 Article 74 Aliens Act.

936 Article 72 Aliens Act.

937 Move Coalition, Hervorming van het Migratiewetboek, Zomer 2021, 24 available in Dutch at https://rb.gy/psdhxe

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

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

940 Move Coalition, Hervorming van het Migratiewetboek, Zomer 2021, 24 available in Dutch at: https://rb.gy/psdhxe.

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

942 ECtHR, *Firoz Muneer v. Belgium*; *M.D. v. Belgium*; ECtHR, *Makdoudi v. Belgium*, Application No 12848/15, Judgment of 18 februari 2020; ECtHR, *Muhammad Saqawat v. Belgium,* Application No 54962/18, Judgement of 30 June 2020; Myria and FIRM, Communication au Comité des Ministres du Conseil de l'Europe, au sujet

The European Court of Human Rights examined the legality of the detention and the effectiveness of the remedy provided against the deprivation of liberty and found a violation of the Convention on these points. As such, the Court opposed the case law of the Court of Cassation, which held for many years that an appeal against a decision depriving a person of their liberty is without foundation when, after it has been lodged, the foreign national has been detained based on another separate detention title.[943] Jurisprudence of the Court of Cassation has slightly been amended since a decision of 27 September 2022 where the Court found that the procedure had to be continued, even though the person had in the meanwhile been released.[944]

The policy note of the government, however, formulates the intention to amend this: "*In addition, we are working to provide an effective remedy, whereby both the legality and the expediency of the detention can be reviewed by the courts."*[945] The government is currently making efforts to reform the Migration Code.[946] Recommendation by the Move Coalition on the judicial review of the detention order concern the introduction of automatic judicial review, assignment of territorial jurisdiction to the Council Chamber of the district in which the detention centre is located in order to facilitate the designation of a legal aid lawyer, the applicability of the procedure states in the Law on the Provisional Custody, and specialisation of the judges entrusted with the review of the detention order.[947]

While in detention, the CGRS prioritises the examination of the asylum application, although no strict time limit is foreseen.[948] The appeal against a decision by the CGRS refusing international protection must be lodged within 10 days after the first instance decision.[949] The Court of Alien Law Litigation (CALL) has already criticised the use of this fast-tracked procedure and annulled the decision of the asylum authorities in a case of an asylum applicant at the border because of the threat to his rights of defence and the principle of equality of arms.[950]

If a person is detained on the basis of a return decision, this person cannot be removed from the territory during the period in which an urgent appeal to suspend is possible before the CALL.[951] Such an appeal can be lodged within 10 (or 5 in case of a subsequent return decision) days after the return decision. Such a suspension is possible if the execution of the return decision is imminent (which is the case when the person subjected to this decision is detained), the grief is sufficiently serious and if the execution of the return decision would lead to serious harm that is difficult to repair. This suspensive appeal acts as an accessory to the appeal to annul said return decision. If the CALL proclaims the urgent suspension of this administrative decision, as a rule, the detention decision will lose its legal basis and the person concerned will have to be released.

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de l'execution des arrêts *Makdoudi c. Belgique* et *Saqawat c. Belgique*, available in French at: http://bit.ly/3jB92WW.

943 ECtHR, *Muhammad Saqawat v. Belgium*, Application No 54962/18, Judgement of 30 June 2020.

944 Court of Cassation, 27September 2022, P.22.1122.N.

945 Chamber of Representatives, *Policy Note on asylum and migration,* 4 November 2020, available in Dutch and French at*:* https://bit.ly/3sJdgMd, 35.

946 The "concept note" for the Migration Code reform was approved within the Government in February 2022. The concept note outlines the overall architecture for the Migration Code on the proposal of State Secretary for Asylum and Migration. In January 2024, the proposal for Migration Code was presented to the press by the Secretary of State. The proposal is currently being discussed by the government.

947 Move Coalition, Hervorming van het Migratiewetboek, Zomer 2021, available in Dutch at: https://rb.gy/psdhxe, 26-27.

948 Article 57/6(2) Aliens Act.

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

950 CALL, case n° 284.595 of 10th of February 2023.

951 Article 39/82 Aliens Act.

### 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 |
| 3. Can lawyers/legal counsels contact their clients easily and meet them? | ☒ Yes | ☐ No |
| 4. Are meetings held in private/confidentiality? | ☒ Yes | ☐ No |
| 5. Can lawyers/legal counsels request being accompanied by an interpreter? | ☒ Yes | ☐ No |

The law provides for access to free legal assistance for the purpose of judicial review of the detention order. Free legal assistance is provided for in the Judicial Code under the same conditions as for other asylum-related procedures. A rebuttable presumption applies whereby the person detained is considered to not have financial means to pay for legal assistance (see section on Regular Procedure: Legal Assistance). The Royal Decree on Closed Centres also explicitly guarantees legal assistance for every resident of a detention centre and free and uninterrupted contact between them and their lawyer.[952]

In the detention centres in Vottem and Bruges, a legal permanence of specialised lawyers used to be 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.[953] The Move coalition coordinates a system of regular visitors that monitors migrants entering detention, provides them with free first line advice and refers them to an NGO for more specialised assistance if necessary.[954]

In practice, asylum seekers are often referred to inexperienced lawyers. Even if some bar associations, like the Brussels one, use lists of lawyers that have explicitly expressed interest in assisting detained asylum seekers, the lawyers on these lists do not have to meet 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.[955] Move Coalition and its partners therefore propose the use of an appointment list of lawyers that are entrusted with legal aid in the detention centres, who will be subject to an assessment at the start that tests their knowledge of immigration law and afterwards to an annual/semi-annual assessment organised by the bar associations.[956] Due to recent changes in the way Pro Deo lawyers are remunerated, a decline in the number of beneficiaries of legal assistance by experienced lawyers had been noticed. There is currently a structural shortage of qualified legal aid.

952 Articles 62 and 63 Royal Decree on Closed centres.

953 UNHCR Belgium, *Legal assistance of applicants for international protection in Belgium*, September 2019, available in Dutch at: https://bit.ly/38NjQWZ and in French at https://tinyurl.com/45vupyve, 25 and 43.

954 The Immigration Office, in the context of its right to reply to the AIDA report, indicates that in detention centres where no first line legal assistance service is organised, detainees can get a pro bono lawyer assigned upon request. The Immigration Office is currently in the process of organising this. It is sometimes noticed in the centres that some detainees have more than one lawyer assigned. Because of the fact that some detention centres have contacts with bar associations and others do not, there is unequal access to legal assistance for detainees in different centres. Although civil society organisations demand the organisation of first line legal assistance services in each detention centre, the Immigration Office emphasises that it supports this idea but that it does not have the competence to set this up, this being a responsibility of the bar associations.

955 See all the findings in UNHCR, *Accompagnement juridique des demandeurs de protection international en Belgique*, September 2019, available in French at: https://bit.ly/3wRmwB2.

956 Note pour un amélioration de l'aide juridique accessible aux justiciables dans les centres de détention pour personnes migrantes, Brussels 3 May 2022.

Findings of the UNHCR in a 2019 report on access to legal aid for asylum-seekers pointed to difficulties experienced by asylum seekers in detention in accessing quality legal aid.[957] In some centres, only 40% of the detained migrants report to have had access to a lawyer (appointed by the bar or a private lawyer).[958] The quality of legal aid varies among the detention centres. Partnerships have been established between directors of certain detention centres and the bar associations of the judicial district in which the centre is located, leading to inequalities in the concrete implementation of the constitutional right to legal aid. For example in the centres of Vottem and Bruges, there is currently a first-line legal aid service organised by the Legal Aid Commission, however this is not the case in the other detention centres. The Move Coalition therefore recommends that the Royal Decree on Closed Centres shall include the obligation for the staff of the detention centres to ensure that every newly detained migrant from the first day of detention enjoys the effective assistance of a lawyer by providing information on the right to legal aid and by contacting the agency for legal aid.[959] It also recommends that the Royal Decree shall include the obligation for the directors of the detention centres to establish a first-line assistance service in their institution, to be held twice a week at fixed times.[960]

**Legal assistance at the moment of arrest**

Unlike in criminal matters, there is currently no legal safeguard that requires a lawyer to be present at the audition after arrest of asylum-seekers that can possibly be detained. On 16 November 2021, a legislative proposal has been submitted to embed the right to legal assistance of a lawyer for asylum seekers which can possibly be detained. The presence of a lawyer at this stage of the procedure is necessary, *inter alia* because of the right to be heard. Respect for this right can be ensured by the presence of a lawyer since he can provide the asylum seeker with timely information on his family and socio-professional situation, as well as element concerning his physical and mental health and about the possible violation of human rights in case of return to his country of origin or transit.[961] It remains to be seen whether this will be adopted.

## E. Differential treatment of specific nationalities in detention

No distinctions are made between different nationalities in detention.

957 UNHCR Belgium, *Legal assistance of applicants for international protection in Belgium,* September 2019, available in Dutch at: https://bit.ly/38NjQWZ and in French at https://tinyurl.com/45vupyve.

958 Jaarverslag 2022 127bis.

959 Move Coalition, Hervorming van het Belgisch Migratiewetboek – Zomer 2021, available in Dutch at: https://bit.ly/40qJZpK, 31.

960 Move Coalition, Hervorming van het Belgisch Migratiewetboek – Zomer 2021, available in Dutch at: https://bit.ly/40qJZpK, 32.

961 Move, Advies over een “Salduz”-wet voor vreemdelingen (parlementair document 55 2322/001), 7, available in Dutch at http://bit.ly/3YqXB3b.

# Content of International Protection

## A. Status and residence

### 1. Residence permit

**Indicators: Residence Permit**

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

The recognition of the **refugee status** initially gives access to a "limited right to residence" of 5 years.[962] After these five years, counting from the day a person has requested international protection, the right to residence becomes unlimited unless the CGRS takes a cessation or revocation decision on the status according to Article 55/3 or 55/3/1 of the Aliens Act. Upon recognition as a refugee by either the CGRS or the CALL, refugees receive a refugee certificate from the CGRS. They should present themselves with this document to their local commune, which will register them in the Aliens Register on the date of their recognition as a refugee. The commune will first issue an electronic "A card" valid for 5 years from the moment of the asylum application.[963] After these 5 years, the beneficiary should again turn to the commune between the 45th and 30th day before its expiration date, in order to request an electronic B card, which gives access to an unlimited right to residence. When the commune cannot issue the B-card in a timely manner, a paper called "Annex 15" temporarily covering the right to residence is issued by the commune.

Beneficiaries of **subsidiary protection** initially receive a residence right for one year. Unless the Immigration Office is convinced that the situation motivating the status has changed (upon which the CGRS is asked for an examination) or the CGRS starts a re-examination of the situation *ex-officio*, the residence right will be renewed after the first year and then again after two years. Five years after the asylum application, the subsidiary protection status holder receives an unlimited right to residence, unless the CGRS would apply cessation or revocation of the status according to Article 55/5 or 55/5/1 of the Aliens Act.[964] Similarly to refugees, persons granted subsidiary protection need to go to the local commune with either a certificate of the CGRS confirming the right to subsidiary protection, or – differently from persons with refugee status - with the decision of the CALL granting subsidiary protection. The commune will register them in the Aliens Register on the date of their recognition and will first issue an electronic "A card" valid for one year, renewable twice for a period of two years. Renewal of this card has to be demanded at the commune between the 45th and 30th day before its expiration date. When the commune cannot prolong the card in a timely manner, a paper called "Annex 15" temporarily covering the right to residence is issued by the commune. This document is named an "Annex 15". After 5 years, the beneficiary receives an electronic B card, which gives access to an unlimited right to residence.[965]

### 2. Civil registration

#### 2.1 Civil birth registration and status of children

A child born in Belgium needs to be registered at the commune of the place of birth within 15 days, regardless of the residence status of the parents. In some places a civil officer will come to the hospital to facilitate registration. In other places the parents will need to go to the commune.

962 Article 49 Aliens Act.
963 Article 76 Aliens Decree.
964 Article 49/2(2)(3) Aliens Act.
965 Article 77 Aliens Decree.

A child whose descent with both parents is established follows the residence status of the parent with the strongest residence status. The child will be registered in the same national register and will receive a residence title with the same period of validity.

Children born in Belgium after recognition of parents as **refugees** will not automatically be granted refugee status. The parents have to ask for their children born in Belgium to be granted refugee status:

- If both parents have been recognised as refugees in Belgium, the request needs to be sent to the "Helpdesk Recognised Refugees and Stateless Persons" of the CGRS;
- If one of the parents is not a recognised refugee in Belgium, the request needs to be addressed to the Immigration Office by e-mail.

If paternity has not been legally established and the mother wants to ask for her child, born in Belgium, to be granted the refugee status, she needs to apply via the "Helpdesk Recognised Refugees and Stateless Persons" and must submit a recent copy of the child's birth certificate.[966]

Children born in Belgium after the parents have been granted **subsidiary protection** must be entered by the municipality in the register of foreign nationals, provided they present their birth certificates. Children who arrived in Belgium after the parents were granted subsidiary protection status must be declared to the Immigration Office, if no family reunification procedure has been initiated.

Children that accompany their parents during the asylum procedure will be registered on the "Annex 25 or 26" (proof of lodging of an asylum application) of the mother. If they are solely accompanied by their father, they will be registered on the Annex of the father. If the asylum application is lodged in the name of the child, it receives its own Annex.

When a child is born during the asylum procedure in Belgium, they need to be added to the "Annex 26" of one of the parents. The child needs to be registered at the commune of the place of birth, upon which the commune will add the name of the child to the annexe 26. The commune will forward the birth certificate to the Immigration Office, which will modify the waiting registry and inform the CGRS and/or the CALL.

### 2.2 Civil registration of marriage

A beneficiary of international protection can get married in Belgium if, when getting married, one of the spouses holds Belgian nationality or has legal residence in Belgium. Same-sex marriage is possible as long as one of the partners is Belgian or has been habitually resident in Belgium for more than three months.

The marriage can be solemnised by the registrar of the commune where one of the future spouses is a resident. If neither spouse has residence in Belgium or if the habitual residence of one of the spouses does not correspond to the place of residence, the marriage can be solemnised in the commune of habitual residence.

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

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

966 For more information, see CGRS, 'You are recognised as a refugee in Belgium. Your rights and obligations', January 2018, available at: http://bit.ly/2BjIRbd.

an "act of notoriety" (*acte de notoriété*) can substitute a birth certificate.[967] This can be requested from the justice of the peace (Civil Court) of the beneficiary's place of residence.

**Recognised refugees** can contact the CGRS for the issuance documents that they can no longer obtain from the authorities of their country of origin: birth certificates; marriage certificates if both spouses are in Belgium; divorce certificates; certificates of widowhood; refugee certificates; certificates of renunciation of refugee status.

### 3. Long-term residence

| Indicators: Long-Term Residence | |
|---|---|
| 1. Number of long-term residence permits issued to beneficiaries in 2023: | N/A |

The criteria and conditions for obtaining long-term resident status are laid down in Chapter IV of the Aliens Act, which refers to the Long-Term Residence Directive.[968] Some modalities can be found in the Aliens Decree.

Refugees and subsidiary protection beneficiaries are included in the scope of the Long-Term Residence Directive since 2011 and thus circumvent the first condition of being a third-country national. Other conditions to be cumulatively fulfilled are that the person concerned has to have:

- Stayed legally and continuously within Belgium for 5 years immediately prior to the submission of the relevant application;
- Stable and regular resources which are sufficient to maintain themselves and the members of their family, without recourse to the social assistance system of the Member State concerned. For 2023 the required amount is set at 1,007 € per month, plus 336 € per dependent person.[969]
- 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 of subsidiary protection. Only if this period exceeds 18 months, the whole period will be considered. 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 other forms of international protection. However, even though referred to in Article 15-bis(1)(3), in current Belgian legislation there is no third category of international protection. Also excluded from long-term residence status are persons considered a threat to public policy and public security.

The request to obtain the status of long-term resident (the so-called "Annex 16") is lodged at the municipal authorities of the applicant's place of residence.[970] The municipal authorities confirm this by issuing a certificate of receipt ("Annex 16bis").[971] The municipal authorities afterwards transfer the request to the Immigration Office, which takes a decision within 5 months. In the event of a positive decision, or the absence of a decision after 5 months, the applicant will be included in the civil register and receive an electronic L-card with a validity of 10 years and the mention "EU – long-term resident".[972] In addition to this, the mention "international protection granted by Belgium on [date]" is written on the residence permit for long-term residents.[973] The duration of validity of long-term residence status is unlimited, contrary to the residence card D itself.[974]

967 Article 5 Belgian Nationality Code.
968 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.
969 More info available at: http://bit.ly/2jAyqvU.
970 Article 29(1) Aliens Decree.
971 Article 29(2) Aliens Decree.
972 More info about the L-card available: at: http://bit.ly/40U6XW7.
973 Article 30(2) Aliens Decree.
974 Article 18(1) Aliens Act.

In the event of a refusal, the municipal authorities will notify the applicant with a so-called Annex 17.[975] Against this decision an appeal procedure is available. The possibilities for appeal are listed on the refusal document and are listed in Article 39/82 and 39/2(2) of the Aliens Act.

Article 18(3) of the Aliens Act holds the exception that in case the protection status a beneficiary of international protection is revoked on the basis of Article 55/3/1(2) or 55/5/1(2) Aliens Act, the Minister or their delegate hold the right to revoke the long-term residence status. Should this be the intent of the Minister or their delegate, several things such as the family bonds, the duration of stay in Belgium and the family, cultural and social ties to the country of origin have to be taken into account.

## 4. Naturalisation

| Indicators: Naturalisation | |
|---|---|
| 1. What is the waiting period for obtaining citizenship? | 5 years |
| 2. Number of aliens having acquired the Belgian nationality in 2023: | 54,813[976] |

There are multiple systems for receiving the Belgian nationality available for aliens. The main system is named "declaration of nationality", whereas an exceptional system named "naturalisation" is also available for certain categories of aliens. Apart from those to mechanisms of 'acquiring the Belgian nationality' (*verkrijging van de Belgische nationaliteit/acquisition de la nationalité belge*) there is a third mechanism of 'granting the Belgian nationality' (*toekenning van de Belgische nationaliteit/attribution de la nationlité belge)*, which is the result of an almost automatic procedure mostly used for minors who receive citizenship by descent, after adoption or because they were born in Belgium.

On 31 December 2022, some changes were made to the Code of Belgian nationality. Some significant changes are the following:

- The formulation of article 10 is altered in the sense that a child born in Belgium who does not have another nationality, automatically has the Belgian nationality without first having to be recognised as stateless;
- A Central Authority for nationality is constituted within the Federal Public Service (FPS) Justice. If a local officer of a municipality has doubts about the application of the Code of Belgian nationality, it can ask for a non-binding advice of this Central Authority, that gives advice within 6 months (delay which can be prolonged with another 6 months).

Legal discussions exist on the application of article 10 on Palestinian children born in Belgium. According to one vision, children from Palestinian parents born in Belgium have the Palestinian nationality, whereas others claim it is impossible for them to receive Palestinian nationality because Palestinian legislation on this matter is non-existent.[977] Legal case-law on this matter is inconsistent, and a ruling of the Court of Cassation is expected. On the basis of the second point of view, article 10 has indeed been applied to children from Palestinians born in Belgium. In 2023, the Immigration Office has sent 55 letters to local administrations who had granted the Belgian nationality in such cases, stating that these children have the Palestinian nationality and asking to change the nationality granted to these children. The federal Ombudsman has intervened, stating that the Immigration Office is not legally competent to instruct local administrations on the matter of nationality, this competence being reserved to the Central Authority for nationality or the public prosecutor.[978] In a reaction, the Secretary of State has stated that the letters do not instruct local administrations in these cases, but only provides information and advice, local

975 Article 30(1) Aliens Decree.

976 Source: Statbel, 'Non-Belgians who became Belgians 2019-2023 per month, region and principal nationalities', https://tinyurl.com/5b7ynvb2.

977 For an extensive overview of this legal discussion, see: 'Zijn in België geboren kinderen van Palestijnse origine Belg? Gemeenten en rechtbanken zijn bevoegd, niet DVZ', 21 november 2023 (modified 1 February 2024), available in Dutch via https://bit.ly/3UdHXJa.

978 Federal Ombudsman, 'Advice 2023/06 to the Immigration Office: respect the legal compétences regarding nationality', available in French at: https://bit.ly/3xlASwU.

administrations remaining exclusively competent to take the final decision.[979] However, the federal Ombudsman finds that the Immigration Office has composed these advisory letters in the same way as its (binding) instructions to local administrations in other matters concerning asylum and migration, and thus created confusion and chaos among local administrations, some communes having decided to ignore the letter whereas others have withdrawn the Belgian nationality of the persons involved. The Ombudsman advises the Immigration Office to stop sending these letters and to contact local administrations having received such a letter, to inform them that it does not dispose of any advisory competence in this matter and the received letter should not be considered.[980]

In 2022, 48,482 aliens have acquired Belgian citizenship.[981] This represents an increase of 24% compared to 2021 (during which 39,448 aliens acquired Belgian citizenship) and is one of the one of the first steep peaks since 2000-2002.[982] Provisional data on 2023 indicate that this trend continues, with Belgian citizenship being granted to 46,414 persons between January and October 2023.[983]

### 4.1 Naturalisation *stricto sensu*

Naturalisation in the narrow sense is a concessionary measure granted by the House of Representatives which is only available under the cumulative conditions laid down in the Code of Belgian Nationality:[984]

- 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.[985] Legal stay implies a right to residence of unlimited duration.[986]

The second possibility to become a Belgian citizen by naturalisation in the narrow sense trough 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.[987]

The amount of 'naturalisations' as a means of receiving the Belgian nationality is steadily decreasing: it represented 0.6 % of all changes of nationality in 2022, compared to 23.2% in 2013. [988]

979 Chamber of representatives, Commission of Internal Affairs, Security, Migration and Administrative matters, 10 January 2024, available at: https://bit.ly/3TU3pm1, 14.
980 Federal Ombudsman, 'Advice 2023/06 to the Immigration Office: respect the legal compétences regarding nationality', available in French at: https://bit.ly/3xlASwU.
981 Data from Statbel, available at: https://bit.ly/3TA7QkI and https://bit.ly/4axysda.
982 Myria, *La migration en chiffres et en droits : le rapport migration 2023 sous forme de cahiers – Nationalité*, available in French and Dutch at: https://bit.ly/3TAs2mC, table p.8.
983 Data from Statbel, available at: https://bit.ly/4axysda.
984 Article 19 Code of Belgian Nationality and Circular of 8 March 2013, published on 14 March 2013.
985 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.
986 Article 7bis(2)(1) Code of Belgian Nationality.
987 Article 19(2) Code of Belgian Nationality.
988 Myria, *La migration en chiffres et en droits : le rapport migration 2023 sous forme de cahiers – Nationalité*, available in French and Dutch at : https://bit.ly/3UJ92mm, table p.10.

## 4.2 Declaration of nationality

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

- 5 years of legal stay and integration;[989]
- 10 years of legal stay.[990]

**5 years of legal stay and integration**

The first option requires 5 years of uninterrupted legal stay and proof of integration. In order to acquire Belgian citizenship trough 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.[991] Since July 2018, the duration of the asylum procedure leading to the recognition of refugee status (for recognised refugees) is once again considered when calculating the length of legal residence (5 or 10 years) preceding the declaration of nationality.

The Code of Belgian Nationality provides for several options in order to prove social integration, such as having completed vocational training of 400 hours, having followed successfully an integration course, having been employed or working as an entrepreneur for 5 years or having obtained a degree. The language requirement is automatically fulfilled if integration is proved. Documents that prove sufficient knowledge of the national languages are listed in Article 1 of the Royal Decree 2013.[992] In a judgment of the Court of Appeal in Ghent, the court decided that if one of the listed documents is provided, the actual knowledge of the languages is irrelevant.[993] *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.[994] Specific details on the documents available to prove social integration, knowledge of languages and economic participation are provided for in the March 2013 Circular.[995]

**10 years of legal stay**

Article 12bis(1)(5) of the Code of Belgian Nationality refers to people who have legally stayed in Belgium for 10 years without a significant interruption. The first requirement is to have stayed in Belgium for 10 years and to have a right of residence of unlimited duration. The language requirement is explicitly

989 Article 12-bis(1)(2) Code of Belgian Nationality.
990 Article 12-bis(2)(5) Code of Belgian Nationality.
991 Article 7-bis(2)(1) Code of Belgian Nationality.
992 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.
993 Court of Appeal Ghent, 2014/AR/1095, 24 December 2015.
994 Circular of 8 March 2013 concerning certain aspects of the law of 4 December 2012 on changes to the Code of Belgian nationality in order to render the acquisition Belgian nationality migration-neutral, 14 March 2013, 2013009118, para IV A(1)(1.2)(3)(b.2).
995 Circular of 8 March 2013, para IV A(1)(1.2).

mentioned as well. The new condition for this option is the fact that an applicant has to prove participation to life in the receiving society. There is no strict legal definition for 'receiving society' but the Circular of 2013 specifies that "receiving society" cannot be interpreted as meaning the society of people of the same origin as the applicant.[996] The circular also specifies that participation to life in the receiving society can be proven by any means. Some indications mentioned in the circular are school attendance, vocational training and participation in associations.

**Procedure**

The details of the procedure are laid down in Article 15 of the Code of Belgian Nationality. For each of these possibilities a registration fee of 150 € has to be paid. Proof of payment of the registration fee is an essential condition for the treatment of a file. After completing the payment, the applicant has to make the actual declaration at the municipal services of his/her current place of residence. The municipality might ask for the payment of another fee (stamp duties), the amount of which differs per municipality. The civil servant will issue a document proving that the applicant has made the declaration. Within 30 days of the making of the declaration, the civil servant has to check the file for incompleteness and if so, the civil servant flags the missing documents and gives the applicant 2 months' time to complete the file. If the file is complete, the civil servant issues a certificate of receipt within 35 days of the declaration. If the file was previously incomplete, the civil servant only has 15 days to issue the certificate of receipt after the 2 months of extra time given to the applicant. In the event that the file would still be incomplete, the civil servant issues a document within 15 days stating that the application is inadmissible.

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

- **The prosecutor does not respond:** In the case where the court does not issue a certificate of receipt it is expected that the file did not arrive at the court, which leads to an automatic dismissal of the declaration of nationality. The applicant can appeal this by sending a registered letter to the civil servant asking that the file be resent to the court of first instance.

- **The prosecutor issues a certificate of receipt but does not issue an opinion:** The declaration is automatically accepted. The civil servant will notify the applicant and register the applicant. The applicant is a Belgian citizen from the day of registration.

- **The prosecutor does not stand against the declaration:** If the prosecutor does not stand against the declaration the civil servant notifies and registers the applicant. The applicant is a Belgian citizen from the day of registration.

- **The prosecutor stands against the declaration:** If the prosecutor stands against the declaration, it issues a registered letter to the civil servant and the applicant. The applicant can appeal this decision by sending a registered letter to the civil servant asking that the file be resent to the court of first instance.

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

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

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

Both appeal possibilities come with an additional registration fee, that amounts to 100€ since 2015.[997]

### 5. Cessation and review of protection status[998]

**Indicators: Cessation**

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

The grounds for **cessation of refugee status** are laid down in Article 55/3 of the Aliens Act. The article refers to the situations in Article 1C of the 1951 Convention.

If a refugee falls under Article 1C(5) or 1C(6), the authorities have to check whether the change in circumstances in connection with which the refugee has been recognised is sufficiently significant and of a non-temporary nature. During the 5-year period of temporary residence granted to recognised refugees, the Immigration Office can ask the CGRS to cease refugee status on the basis of actions that fall under Article 1C of the Refugee Convention.[999] The CGRS can also decide this *ex officio*. There is no time limit in this situation. The possibility of cessation of the refugee status was included in the Aliens Act after a legislative amendment in 2016.[1000] In its decision to end the residence title following a cessation decision, the Aliens Act requires the authorities to take the level of integration in society into account.[1001]

In October 2017, a specific unit was created as part of the Immigration Office focusing on requests towards the CGRS to end the international protection status and to follow-up on the cases where the status was put to an end. In practice the Immigration Office will inform the CGRS of any elements it has at its disposal (e.g. on travels to the country of origin), based on which the latter will effectively take a decision ending the status or not. This applies both to withdrawal and cessation decisions.

Travelling back to the country of origin can lead to the cessation of the refugee status. The government strongly focuses on the control of refugees who travel to their country of origin. For this purpose, it has created a procedure to detect such travellers together with the Federal Police at the airport. Belgium has also concluded agreements with a number of neighbouring countries, such as the Netherlands and Germany, in order to exchange information about the travel behaviours of refugees to their country of origin.[1002] In July 2019, the European Migration Network published an extensive study on beneficiaries of international protection travelling to their country of origin and the challenges, policies and practices

997 Law of 28 April 2015 changing registration, mortgage and registrar fees in order to reform registrar rights, 26 May 2015, 2015003178.
998 For a detailed overview; see P. Baeyens en M. Claes 'Uitsluiting, weigering, opheffing en intrekking van de internationale beschermingsstatus, met focus op gevaar voor de samenleving en de nationale veiligheid', Tijdschrift Vreemdelingenrecht, 2018, Nr. 2.
999 Article 49(1) Aliens Act.
1000 Article 49(2) Aliens Act.
1001 Article 11(3)(1) Aliens Act.
1002 Commissie voor de Binnenlandse Zaken, de Algemene Zaken en het Openbaar Ambt, Integraal verslag, 5 December 2017, 13 , CRIV 54 COM 774.

that apply in this context in Belgium".[1003] A main finding was that the UNHCR Handbook is being used, but there are no formal internal guidelines with criteria. Determination is done on a case-by-case basis. However, there is internal supervision and support by the central legal service of the CGRS on such cases. The study gives an overview of the main considerations and criteria the CGRS uses to decide: amongst others, this is the length of the stay, the frequency of the traveling, the time span between the travel and the granting of the protection status and the circumstances during the stay.

Moreover, contacting the authorities of the country of origin – e.g. consulates, embassies, or other official representations of the country of origin - as a refugee can lead to the cessation of the refugee status. This is not explicitly foreseen in law (similarly to the fact of traveling to the country of origin), but in practice it can be considered as a change in personal circumstances and/or that the applicant(s) decided to re-avail themselves of protection under the authorities of the country of origin.[1004] It can be visits in person or other forms of contact, with the purpose of requesting the issuance or extension of their passports or other official documents. In practice, cessation decisions in Belgium in this regard are often based on contacts with the authorities of the country of origin in combination with travels to the country of origin. In its report EMN Belgium found no case law on ending status for the sole reason of contacting the authorities of the country of origin. [1005]

The **cessation of the subsidiary protection** is regulated in Article 55/5 of the Aliens Act and applies to situations where the circumstances - on which subsidiary protection was based - cease to exist or have changed in such a way that protection is no longer needed. As ruled by the CALL, the authorities have to check whether the change in circumstances is "sufficiently significant" and of a "non-temporary" nature – otherwise the decision of the CGRS will be declared void. [1006]

In relation to individual conduct, the CGRS has stated that, in principle, cessation is not inferred from the sole fact that a beneficiary contacts their embassy, when subsidiary protection is granted on the basis of Article 15(c) of the recast Qualification Directive.[1007] However, in the case of subsidiary protection, travelling or even returning to the country of origin may also lead to the cessation of the protection status, as it could imply that the circumstances and the overall situation have evolved positively there. A return to the country of origin can also indicate that there are flight alternatives and therefore lead to the removal of the subsidiary protection status. In fact, in 2017 the CALL confirmed the cessation of the subsidiary protection of an Afghan national who turned back to Kabul for two months right after having received its status. The fact that he turned back demonstrated that there were flight opportunities that were safe and that the overall circumstances, on which the protection was granted, changed.[1008]

As is the case for the cessation of the refugee status, the Immigration Office can ask the CGRS for a cessation of the subsidiary protection status during the 5-year period of temporary residence.[1009] The CGRS can also decide on the cessation of a subsidiary protection status *ex officio,* in which case there is no time limit. This situation is not applicable when a beneficiary of subsidiary protection can put forward compelling reasons originating from previously incurred harm to refuse protection from the country of which the beneficiary used to possess the nationality. The Aliens Act requires that the authorities take the level of integration in society into account when taking the decision to end the residence title.[1010]

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1003 EMN, Beneficiaries of international protection travelling to their country of origin challenges, policies and practices in Belgium, July 2019, available at: https://bit.ly/2JD4UAq.

1004 See also Article of the 1951 Convention.

1005 EMN, Beneficiaries of international protection travelling to their country of origin challenges, policies and practices in Belgium, July 2019, available at: https://bit.ly/2NIHhbP, 34.

1006 CALL, 24 February 2017, No 182.917; CALL, 13 September 2017, No 191.961; CALL 13 September 2017, No 191.956.

1007 Myria, *Contact meeting*, 22 November 2017, para 23.

1008 CALL, 27 October 2017, No 194.465.

1009 Article 49/2(3) Aliens Act.

1010 Article 11(3)(1) Aliens Act.

The CGRS always informs the beneficiary of the reasons for reinvestigating the granting of the status but will not necessarily hear the refugee or beneficiary of subsidiary protection during the procedure. The CGRS does however have the possibility to ask the person concerned to formulate their arguments to retain the status in writing or orally.[1011]

A 2016 amendment changed the wording of the Aliens Act, thereby allowing the Immigration Office to end the right to residence of a person whose protection status is ceased. The Aliens Act requires that when the protection status is ceased on the grounds of Article 55/3 or 55/5 Aliens Act, the authorities take the level of integration in society into account.[1012] Furthermore, in the event of a cessation on the aforementioned grounds, the Immigration Office has to assess the proportionality of an expulsion measure. This requires the Immigration Office to take the duration of residence in Belgium, the existence of family, cultural and social ties with the country of origin and the nature and stability of the family into account.

So far there has not been any policy of systematically applying cessation for certain nationalities because the situation in the country of origin would have changed in a durable manner. In practice this only happens for individual reasons, such as return to the country of origin or acquisition of another nationality. Usually, cessation is triggered upon request of the Secretary of State or the Immigration Office.[1013]

In 2023, the CGRS decided on the cessation or withdrawal of the protection status in 71 cases[1014], compared to 120 cases in 2022.

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

## 6. Withdrawal of protection status

**Indicators: Withdrawal**

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

Revocation of **refugee status** is provided for in Article 49(2) of the Aliens Act in conjunction with Article 55/3/1 of the Aliens Act. The articles state that during the first 10 years of residence the Immigration Office can ask the CGRS to revoke refugee status when the person concerned should have been excluded from refugee status or when refugee status was obtained on a fraudulent basis.[1015] The exclusion clause refers to Articles 1 D, E and F of the 1951 Convention.[1016]

Revocation on grounds of fraud can be based on wrongfully displayed facts, withheld facts, false declarations, fraudulent documents or personal behaviour that proves that the applicant no longer fears persecution. In case of withdrawal based on fraud, the CALL confirmed that the facts that have been misrepresented or withheld or false must be strictly interpreted - meaning that they must have been

1011 Article 35/2 Royal Decree on CGRS Procedure.
1012 Article 11(3)(1) Aliens Act.
1013 Myria, *Contact meeting*, 20 September 2017, para 22.
1014 CGRS, Asylum statistics – Survey 2023, available in English, Dutch and French at: https://bit.ly/4atYCxe.
1015 Article 55/3/1(2) Aliens Act.
1016 Article 55/2 Aliens Act.

decisive for the granting of refugee status. In other words, it is only if the protection would not have been granted without the fraud that it can be withdrawn.[1017]

There is an active exchange of information between the various government agencies. For example, the exchange of information about an application for family reunification of family members in the country of origin may lead to a withdrawal of the refugee status of an LGBTI person, if after a re-examination it is established that it is no longer possible to consider the applicant's statements on their sexual orientation credible. The protection status can also be withdrawn after receiving new elements, as was the case in 2019 for a couple that had presented an Iraqi passport to the municipality (in the context of a procedure to acquire Belgian nationality) which had not been presented to the CGRS and contained elements contrary to the claims made during the asylum procedure. Moreover, the stamps in the passport showed that the couple had travelled back to Iraq for almost two months. Based on these new elements, and the lack of credible explanations by the couple, the CGRS could conclude they came from another region than the one that they had claimed, and therefore the need for protection had wrongly been examined in regard to the other region. The CALL thus confirmed both the lack of a protection need and the withdrawal of the subsidiary protection status which had been granted based on false declarations.[1018]

**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.[1019] This ground for revocation was added in 2015 and is not limited in time.[1020] The CGRS has clarified that the first limb – danger to society – can only lead to revocation following a conviction judgment, whereas the "national security" ground may be satisfied without such a judgment.[1021]

The Immigration Office sends the CGRS every element that could justify a revocation of the refugee status on the basis of Article 55/3/1 Aliens Act. The CGRS will take a decision within 60 days and inform the Immigration Office of the outcome. However, this time limit is not enforceable and not respected in practice. In the event of a revocation of refugee status on the grounds of Article 55/3/1(1) or 55/3/1(2)(2) of the Aliens Act, the CGRS will also issue an opinion on the compatibility of an expulsion measure with Articles 48/3 and 48/4.

**Subsidiary protection** can be revoked on the grounds listed in Article 49/2 and 55/5/1 of the Aliens Act. The GCRS can revoke the subsidiary protection status during the first 10 years of residence when the beneficiary has merely left their 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.[1022] This ground for revocation was only included in 2015 and is not limited in time.[1023]

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.[1024] The subsidiary protection status can also be revoked any time when the beneficiary is considered to be a threat for society or national security.[1025] 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

1017 CALL, 11 March 2016, No 163942.
1018 CALL, 27 February 2019, Decision No 217584.
1019 Article 55/3/1(1) in conjunction with Article 49(2) Aliens Act.
1020 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.
1021 Myria, *Contact meeting*, 20 September 2017, para 24.
1022 Article 55/5/1(1) Aliens Act.
1023 Article 10 Law of 10 August 2015.
1024 The crimes listed in Article 55/4(1) Aliens Act are also known as the 'exclusion clause' 1F of the 1951 Refugee Convention.
1025 Article 55/4(2) Aliens Act.

displayed facts, withheld facts, false declarations, fraudulent documents or personal behaviour that proves that the applicant no longer fears persecution.[1026] Revocation on the grounds of a fraudulent basis can be asked by the Immigration Office during the first 10 years after the asylum application; however, there is no time limit for revocation *ex officio* by the CGRS.

The Immigration Office sends the CGRS every element that could justify a revocation of refugee status on the basis of Article 55/5/1 Aliens Act. This also applies when it is feared that the beneficiary is a threat for society or national security. The CGRS will take a decision within 60 days and informs the Immigration Office and the person concerned of the outcome. However, this time limit is not enforceable and not respected in practice.[1027] If subsidiary protection status is revoked on the basis of exclusion clauses or the committing of a crime punishable with a prison sentence in Belgium, the CGRS issues an advice on the compatibility of an expulsion measure with Articles 48/3 and 48/4.

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

The CALL has considered crimes ranging from supporting terrorist activities, piracy, murder, attempted manslaughter, rape, to theft with violence or threat as a particularly serious crime. Even crimes that were committed years ago can prove a danger to society according to the CALL. In the context of demonstrating if the danger is still present, the steps taken to rehabilitation and reintegration often do not detract from the observation that the fact that a person was convicted of a particularly serious crime is sufficient to demonstrate the danger to society. The risk of recidivism plays a role in the assessment of the CALL in certain cases, but it does not seem to be a necessary element.

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

In 2023, the CGRS decided on the cessation or withdrawal of the protection status in 71 cases,[1028] compared to 120 cases in 2022.

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

1026 Article 55/5/1(2)(2) Aliens Act.
1027 EMN, Beneficiaries of international protection travelling to their country of origin challenges, policies and practices in Belgium, July 2019, available at: https://bit.ly/2NIHhbP, 66.
1028 CGRS, Asylum statistics – Survey 2023, available in English, Dutch and French at: https://bit.ly/4atYCxe.

## 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
2. Does the law set a maximum time limit for submitting a family reunification application? To be exempt from material conditions ☒ Yes ☐ No
   - ❖ If yes, what is the time limit? 12 months
3. Does the law set a minimum income requirement? ☒ Yes ☐ No

Certain family members of beneficiaries of international protection enjoy the right to join the beneficiary in Belgium trough family reunification.[1029] The legal basis for family reunification is Article 10 Aliens Act.

In 2022, 5,552 applications for family reunification with a beneficiary of international protection in Belgium were introduced, covering 30% of all visa applications for family reunification. 4,963 decisions concerning applications for family reunification with a beneficiary of international protection in Belgium were taken, 66% of which were granted and 34% refused.[1030] These data were not yet available for the year 2023 at the time of writing (April 2024).

| Year | Requests | | | Decisions | | |
|---|---|---|---|---|---|---|
| | Refugee status | Subsidiary protection | Total | Approved | Rejected | Total |
| 2019 | 3,667 | 968 | 4,635 | 2,653 | 2,070 | 4,723 |
| 2020 | 2,265 | 371 | 2,636 | 2,008 | 1,428 | 3,436 |
| 2021 | 3,755 | 1.049 | 4,804 | 2,977 | 1,766 | 4,743 |
| 2022 | 4,978 | 574 | 5,552 | 3,269 | 4,694 | 4,963 |

Source: Immigration Office, Activity report 2022.[1031]

In 2022, visa for family reunification with beneficiaries of international protection were mostly granted to Palestinian (1,304), Syrian (705), Turkish (297), Afghan (182) and Burundian (172) applicants. The number of Palestinian beneficiaries doubled for the second year running, and by 2022 they represented 40% of this category.[1032]

In 2018, UNHCR and the Federal Migration Centre (Myria) published a report illustrating the main obstacles that beneficiaries of international protection face in the context of family reunification, including:

- ❖ obstacles encountered in submitting a visa application;
- ❖ the narrow definition of the family members of a beneficiary of international protection and the long and uncertain procedure for humanitarian visas;
- ❖ the strict conditions for family reunification where the application could not be submitted within one year of recognition or granting of international protection status;
- ❖ the complexity of proving family ties and regular recourse to DNA testing;
- ❖ the difficulty of financing the costs of family reunification; and finally, family reunification in the event of a humanitarian crisis.

1029 More practical information can be found in: Myria, *Le regroupement familial des bénéficiaires de protection internationale en Belgique*, September 2019, available in French at: https://bit.ly/2TFM9T1.
1030 Immigration Office, *Activity report 2022*, available in French: https://bit.ly/3TCCTMU, 8.
1031 Ibidem.
1032 Myria, *Year report migration 2023, Right to family life,* available in French at: https://bit.ly/43AmAVk.

In a report of 2022, Myria established that the procedure of family reunification for refugee families is very complex and difficult, due to both the living circumstances of the applicants and to the Belgian procedure.[1033] Issues with the Belgian procedure concern *inter alia*:

- the deadlines during which beneficiaries are exempt from certain material conditions, which are too short to be able to constitute a complete file for family reunification including all necessary documents in time;
- the application procedure, demanding that family members apply for family reunification at the Belgian diplomatic post in the country of origin;
- the lack of legislative framework on several aspects such as incomplete applications, the identity documents that can be considered etc.;
- the lack of information, advise and professional support for the application procedure.

In a new report issued in 2023, Myria stresses the specific issue of the high financial cost of the family reunification procedure.[1034] Moreover, the UN Refugee Agency (UNHCR) has provided recommendations to improve family reunification rights in Belgium:[1035]

- extension of family reunification to certain family members, taking into account the actual composition of the family unit and dependency links;
- facilitating proof of family ties (in cases when official documents are not available);
- exempt refugees from the obligation to fulfil the conditions relating to stable, regular and sufficient means of subsistence, appropriate accommodation and health insurance cover, regardless of the date on which the application for family reunification was submitted;
- ensuring the availability of clear and adapted information and advice for the beneficiary of international protection on family reunification procedure.

Overall, these concerns revolve around the ability of the international protection beneficiaries to realise their full right to family reunification properly. The success of an application for family reunification with a beneficiary of international protection depends entirely on whether the family receives professional support. This is especially the case for reunification with unaccompanied minors. Due to a lack of sufficient organisations and lawyers who can offer this professional support, many families are unable to realise their right to family reunification.[1036]

**Focus on specific countries**

*Afghanistan*

In the 2022 report, Myria indicates the specific issues that are encountered by Afghan family members since the take-over of power by the Taliban. Whereas the need for protection of these family members is often high, it has become almost impossible to gather the necessary documents and travel to the Belgian diplomatic post in Islamabad, Pakistan. Myria has published a specific report, highlighting obstacles and formulating recommendations on this topic.[1037]

1033 Myria, *Avis : Faciliter et soutenir les demandes de regroupement familial de réfugiés*, April 2022, available in Dutch and French at : https://bit.ly/3m97Bk2.
1034 Myria, *Year report migration 2023, Right to family life,* available in French at: https://bit.ly/43AmAVk.
1035 UNHCR, Réunification familiale, available in French at: https://bit.ly/4crRseG, accessed in February 2024.
1036 See also: Myria, *Year report migration 2022 – Right to a family life,* available in French and Dutch at: https://bit.ly/3MohPI5.
1037 Myria, 'Takeover of power by the Taliban in Afghanistan: absence of facilitation measures for applications for visa for family members', April 2022, available in French and Dutch at: http://bit.ly/3ma0OGM

❖ Prioritisation of demands and visa application from distance

The Immigration Office processes visa applications from Palestinians in Gaza as a priority but not more leniently than usual.[1038] Applicants must prove (as best they can) that they meet all the ordinary conditions. Due to the Afrin judgement, family members of recognised refugees or persons with subsidiary protection can present their family reunification visa via e-mail. In addition, the ministry of Foreign Affairs communicated in December 2023 that this also applies to extended family reunification using humanitarian visa. This concerns family members who have no right to official family reunification, but are still related in the 1st degree. In the case of adult children, they need to be younger than 25 years old. In February 2024, the Brussels Court of First Instance forced the Belgian state to accept an application for a humanitarian visa by email.[1039] It stated that the requirement for the family members in Gaza to introduce the application in persons, could lead to a violation of the right to family life enshrined in article 8 of the ECHR.[1040]

❖ Evacuation list[1041]

In mid-December 2023, the National Crisis Centre (*Nationaal Crisiscentrum*) listed the persons who can register on the evacuation list. These are Belgian citizens residing in Gaza, and their nuclear family members and refugees recognised by Belgium and their nuclear family members. For both groups, the nuclear family includes: the spouse or legal partner, and minor children. All persons who wish to be evacuated must possess a valid Belgian residence permit, or valid visa for Belgium. On a case-by-case basis, without a prior decision on a valid visa, the following persons can request to be registered on the evacuation list: the adult dependent children of a recognised refugee or a Belgian citizen, the parents and minor siblings of a Belgian child or an unaccompanied minor in Belgium who has been recognised as a refugee.[1042] These requests to be registered on the waiting list are treated by the crisis centre of the Foreign Affairs Ministry. Registration on this list, does not guarantee an actual evacuation. In practice, the Belgian authorities will communicate the registered evacuees to the Egyptian and Israeli authorities. Only after they have given their agreement, evacuation can take place. The potential evacuees have to present themselves at the Egyptian side of the border with Gaza, after which the Belgian authorities will conduct an evacuation within 72 hours.

**An alternative method of submitting applications for family reunification**

In the Afrin judgement from 18 April 2023, the CJEU ruled on the obligation for family members to present themselves in person when applying for a family reunification visa.[1043] This ruling opens new prospects for family reunification, including beneficiaries of international protection and their families. The CJEU compelled Belgian authorities to provide alternative methods of submitting applications for family reunification in case of the impossibility of going to a Belgian diplomatic post to submit the visa application. The CJEU stated that it is essential for Member States to showcase the necessary flexibility to enable concerned persons to submit their application for family reunification on schedule by facilitating the submission of that application and by permitting the use of remote means of communication. The Office

1038 Agentschap Integratie en Inburgering, 'Gaza: assistance and evacuation? Legal stay and rights of persons from Palestine territories' consulted on 25 March 2024, available in Dutch at https://tinyurl.com/2x329r6n.

1039 Francophone Brussels Court of First Instance, 2023/323/C, 2 February 2024, available in French at: https://tinyurl.com/2arxsswu.

1040 For a legal analysis of this judgement see: 'LC Brussels: Mandatory remote registration application for humanitarian visa for family members in Gaza of recognized refugees', 21 February 2024, available in Dutch at: https://tinyurl.com/yeh35fjb.

1041 For more information on the evacuation list, see: Myria, 'Gaza: Belgian assistance and evacuations & introducing a visa application', consulted on 25 March 2024, available in French at: https://tinyurl.com/37syzvdp.

1042 Agentschap Integratie en Inburgering, 'Gaza: assistance and evacuation? Legal stay and rights of persons from Palestine territories' consulted on 25 March 2024, available in Dutch at https://tinyurl.com/2x329r6n.

1043 CJUE, 18 avril 2023, *Afrin*, C-1/23. Available in French at: https://tinyurl.com/2u8mxeuw.

des étrangers has already acknowledged this new case law.[1044] Now, family members of recognised refugees can send an email to the competent embassy explaining why they are unable to introduce their visa application in person. The embassy will decide whether the criteria that justify an introduction from distance are met. The Immigration Office nor the competent embassy provide any information on these criteria.

### 1.1. Eligible family members

Four categories of persons may join a beneficiary in Belgium.

- A spouse, equalled partner,[1045] or registered partner;
- An underage and unmarried child;
- A child of age with a disability;
- A parent of an unaccompanied child with protection status.

To reunite with a spouse or equalled partner, certain conditions must be fulfilled.[1046] 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 spouses can join the beneficiary.[1047] In practice an investigation to whether the marriage or equalled registered partnership is a marriage of convenience is often carried out. However, this does not suspend the family reunification procedure. If the investigation shows there is a marriage of convenience, the Immigration Office can revoke the right to residence.[1048]

The conditions for a registered partner are largely similar but require proof of a "stable and lasting" relationship.[1049] 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 must be unmarried and not be in a lasting relationship with another person. Couples in a long and stable relationship but who are unmarried or did not have their relationship registered, do not qualify for family reunification. This poses *inter alia* problems for same-sex couples, who are often unable to marry or register their relationship in their country of origin. Consequently, the same-sex partner of a beneficiary of international protection in Belgium often does not qualify for family reunification and needs to apply for a humanitarian visa, which is not a right, but a favour granted by the Belgian government and the procedure for which is very complex.[1050]

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

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1044 Immigration Office, 'Visa D application (family reunification)', consulted on 25 March 2024, available at: https://tinyurl.com/2amkmrad.

1045 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.

1046 Article 10(1)(4) Aliens Act.

1047 Children from a polygamous marriage are not excluded if they meet the general conditions: Constitutional Court, Decision No 95/2008, 26 June 2008.

1048 Articles 11(2) and 12-bis Aliens Act.

1049 Article 10(1)(5) Aliens Act.

1050 On this and other categories of family members who don't fall within the scope of the "family concept" of the Belgian family reunification procedure: Vluchtelingenwerk Vlaanderen, *Family reunification for people on the move: obstacles and recommendations*, June 2022, available in Dutch at: https://bit.ly/3N0EiaN.

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

If the beneficiary of international protection is an unaccompanied child, the beneficiary's parents can enter Belgium through the family reunification mechanism.[1051] Since the CJEU ruling *A and S v Staatssecretaris van Veiligheid en Justitie* family reunification is still possible even if the unaccompanied minor turned 18 during the asylum procedure.[1052] In this case, the Immigration Office requires that the application is introduced within 3 months after the applicant received the protection status. On the basis of a recent CJUE ruling of August 2022 (C-279/20), it is established that a similar system should be applicable to children wishing to join their parents residing in Belgium as a beneficiary of international protection: the minority of the child needs to be determined on the moment of the application for international protection of the parent.[1053] Although the CJUE rulings concerned beneficiaries of the refugee status, the Immigration Office also applies this jurisprudence to beneficiaries of subsidiary protection and people with a residence permit on the basis of medical regularisation.[1054] For children who turned 18 during the asylum procedure of their parent in Belgium, the Council of State recently ruled that the application for family reunification needs to be introduced within 12 months after the parent has obtained the protection status, instead of the previously applied 3 months.[1055] The Immigration Office has adapted its practice on the basis of this ruling.

To establish family ties, Belgian law foresees a cascade system.[1056] 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 must be "real and objective", meaning contrary to the applicants' own will, such as Belgium not recognising the country concerned, an inability to enter into contact with the authorities or a specific situation in the country of origin such as not functioning authorities or authorities that no longer exist. If this inability is established, the Immigration Office can take other valid proof into account.[1057] In the absence of other valid proof, the Belgian authorities may conduct interviews or any other inquiry deemed necessary, such as a DNA test.[1058] In practice the Immigration Office makes little use of this cascade system and will often require expensive DNA-testing.[1059]

### 1.2. Deadlines and material conditions

Beneficiaries of international protection are exempt from certain conditions such as adequate housing, health insurance and sufficient, stable, and regular means of subsistence. However, if the application for family reunification is submitted more than 1 year after recognition of the status, these conditions will have to be fulfilled. This does not apply to parents of unaccompanied children wishing to join them in Belgium.[1060]

In its recommendations of 2022, the Federal Migration Centre (Myria) indicated that the term of 1 year is in many cases too short due to the specific problems faced by the family of beneficiaries of international protection (e.g. unsafe situation in the country of origin which cause difficulties to travel to the diplomatic post or gather necessary documents, loss of contact with family members in the context of armed conflict,

1051 Article 10(1)(7) Aliens Act.
1052 CJEU, Case C-550/16, A and S v Staatssecretaris van Veiligheid en Justitie, 12 April 2018.
1053 CJUE, Case C-279/20, Bundesrepublik Deutschland t. XC, 1 August 2022.
1054 Myria, *Contact meeting*, 16 May 2018, available at: www.myria.be, para. 6-9; for the rulings of 2022 confirmed on the website of the Agentschap Integratie en Inburgering: http://bit.ly/3nMsGkK.
1055 Council of State 23 December 22, nr. 255.380. More information available in Dutch at: https://bit.ly/3nMsGkK.
1056 Circular of 17 June 2009 containing certain specifics as well as amending and abrogating provisions regarding family reunification, Belgian Official Gazette, 2 July 2009.
1057 Article 12-bis(5) Aliens Act.
1058 Article 12-bis(6) Aliens Act.
1059 UNHCR and Myria, 'Gezinshereniging van begunstigden van internationale bescherming in België: vaststellingen en aanbevelingen', June 2018, available in Dutch at: www.myria.be, 19.
1060 Constitutional Court, Decision No 95/2008 of 26 June 2008.

etc.). Myria recommends to permanently exempt beneficiaries of international protection from these material conditions, to allow the effective realisation of their right to family reunification.[1061]

### 1.3. Family reunification procedure

The normal procedure requires the applicant to apply for family reunification at the Belgian embassy or consulate in the country where the applicant resides. In practice, family members of recognised refugees and subsidiary protection beneficiaries can alternatively submit the application form in any Belgian embassy which is authorised to apply for long-term visa applications. At the Belgian embassy, they have to apply for a D visa for family reunification and provide certain documents to complete the file.

All applicants require a valid travel document (national passport or equivalent), a visa application form (including proof of payment of the handling fee of €180[1062]), a birth certificate, a copy of the beneficiary's residence permit in Belgium, a copy of the decision granting protection status, a medical certificate no more than 6 months old and an extract from the criminal record.

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

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

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

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

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

In its year report of 2022, Myria has stressed the difficulties people might encounter to travel to Belgium within the validity period of the visa for family reunification (e.g., closed or insecure borders, difficulties in obtaining travel documents…). In the absence of a European or Belgian legal framework determining the consequences of the expiration of the validity period, it is unclear whether the validity period can be prolonged and in which circumstances, or whether a new visa application needs to be lodged. Myria stresses the need of a clear legal framework in this regard, allowing for a flexible approach by the Belgian asylum instances.[1063]

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1061 Myria, *Avis : Faciliter et soutenir les demandes de regroupement familial de réfugiés*, April 2022, available in Dutch and French at : https://bit.ly/3m97Bk2 and Myria, *Year report migration 2022 – Right to a family life,* available in French and Dutch at: https://bit.ly/3MohPI5.

1062 See: https://dofi.ibz.be/en/themes/faq/visa-fees.

1063 Myria, *Year report migration 2022 – Right to a family life,* available in French and Dutch at: https://bit.ly/3MohPI5, 12-18.

## 2. Status and rights of family members

After arrival in Belgium, the applicant has to register in the municipality of their residence within 8 days.[1064] 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.[1065] The person will have to request a new card every year between the 45th and 30th day before the expiry date of the residence permit.

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

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

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

If an applicant no longer lives with the person on which family reunification was based due to domestic violence the Immigration Office cannot end the right to residence. Rape, deliberate assault and battery and attempts to poison all fall under this exception as well.[1066] Proof of domestic violence suffices, a conviction is not required. Psychological violence also suffices, but the Immigration Office requires more proof for this type of violence.

The fact that a parent and a child who has become of age don't live together anymore, cannot in itself constitute a reason to end the residence permit of the parent or the child: the reality of a 'family life' between a parent and a (adult) child does not necessarily require that they live together. The Immigration Office needs to investigate the existence of affective ties or at least the intention to have or re-establish contacts. This follows from the recent CJUE rulings of 1 August 2022 (joint cases C-273/20 & C-355/20 and C-279/20). The Immigration Office has confirmed that it considers affective ties in case parent and child do not live together.[1067]

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

If the person still fulfils the conditions for family reunification after 5 years, the right to residence becomes unlimited in duration. The person concerned has to apply for an electronic B card at the municipality during the duration of his electronic A card. If the applicant still fulfils the conditions, they receive a definitive,

1064 Circular of 21 June 2007 on amendments to the rules regarding residence by foreigners after the entry into force of the Law of 15 September 2006, Belgian Official Gazette, 4 July 2007.
1065 Article 13(3) Aliens Act.
1066 Articles 375, 398-400, 402, 403 and 405 Penal Code.
1067 Website of the Agentschap Integratie en Inburgering: http://bit.ly/3nMsGkK

unconditional and unlimited right to residence. The municipality will issue an electronic B card valid for 5 years.

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

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

This procedure is slightly different for parents of an unaccompanied child. Article 13 of the Aliens Act contains the modalities for obtaining an unlimited right to residence after 5 years. Added to the usual condition of continuously satisfying the conditions for family reunification, the applicant will also have to prove that hey stable and sufficient resources. If after 5 years the applicant does not have stable and sufficient resources, they can ask that the limited duration (the electronic A card) is extended, but only for as long as the child is a minor. When the child become of age, the Immigration Office will investigate the personal situation of the applicant and may still prolong the duration of the right to residence.[1068] However, the practice of ending the residence of a parent of a beneficiary of international protection that has become of age seems to be contrary to be contrary to the recent rulings of the CJUE of 1 August 2022 (joint cases C-273/20 & C-355/20 and C-279/20).

Resources are considered sufficient when they are 120% of the living wage of the category 'person with a dependent family'.[1069] Currently this amounts to € 1.969,00 per month. The Constitutional Court ruled that as soon as the threshold is reached, the Immigration Office is not allowed to further investigate the exact amount of resources.[1070] The resources also have to be stable, meaning interim jobs, trial work and temporary jobs are often refused. Even if the applicant is unable to prove stable and sufficient resources, the Immigration Office is not allowed to automatically refuse the unlimited right to residence but is required to first make an analysis of the needs of the family.[1071] Based on said analysis, the Immigration Office can adjust the threshold.

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries of international protection are allowed to freely move within Belgium. Their freedom of movement is not restricted in any way. In October 2016, the Reference Point Migration-Integration released statistics showing that recognised refugees or beneficiaries of international protection often move after their recognition.[1072] Preferred destinations are major cities such as Antwerp, Brussels or Ghent, whereas Wallonia in general and smaller towns in Flanders are not among the first choices.[1073]

1068 Circular of 13 December 2013 on the application of the articles of the Aliens Act. These were interpreted by the Constitutional Court in Decision No 121/2013 of 26 September 2013.
1069 Article 10(5) Aliens Act.
1070 Constitutional Court, Decision No 121/2013, 26 September 2013.
1071 Article 12-bis(2) Aliens Act.
1072 Reference Point Migration-Integration, *Monitoring movements*, October 2016, available in Dutch at: http://bit.ly/2kWCIdt.
1073 De Standaard, 'Vluchtelingen vluchten weg uit Wallonië', 3 November 2016, available in Dutch at: http://bit.ly/2jx04dh.

## 2. Travel documents

Belgium issues travel documents for both refugees and beneficiaries of subsidiary protection.[1074] The duration of validity of both documents is 2 years.[1075] However, beneficiaries of subsidiary protection have to fulfil more stringent criteria to obtain such a travel document.

**Refugee status**

To travel abroad, a refugee needs a valid electronic card for foreign nationals and a "refugee travel document", also known as "blue passport".[1076] Every member of the family who is a recognised refugee in Belgium must carry their own "blue passport".

This "blue passport" has to be obtained from the commune where the refugee is officially registered. Documents needed to obtain a "blue passport" include:

- Identity card;
- One identity photo;
- If there are one or more children under the age of 18, a family declaration form which can be obtained from the municipal office;
- For persons living in the Brussels-Capital Region, a certificate of family composition, which must be requested at the municipal office).

**Subsidiary protection**

The overall principle has always been that the beneficiary of subsidiary protection could not automatically obtain travel documents from the CGRS. Instead, they should contact the relevant national authorities. As regards the risks of putting their protection status into question because they contacted their national authorities, the CGRS confirmed that they had obtained the protection under article 15 (c) of the Qualification Directive and were therefore allowed to contact their national authorities to obtain travel documents.[1077]

Travel documents for beneficiaries of subsidiary protection are issued only if beneficiaries are unable to obtain one from their national authorities.[1078] The document is called "travel document for foreigners". The travel document needs to be requested at the provincial passport service of the province of the municipality where the person is registered. A special travel document will be issued on condition that identity and nationality are established and a certificate of impossibility to obtain a national passport or travel document is submitted.

A certificate of impossibility is not necessary if the person belongs to one of the categories of foreign nationals who cannot obtain a national passport or travel document according to the Belgian Ministry of Foreign Affairs: Tibetans and persons of Palestinian origin do not have to submit such a certificate.[1079]

1074 Article 57(3) Consular Code.
1075 Circular on travel documents for non-Belgians, 7 September 2016.
1076 CGRS, 'You are recognised as a refugee in Belgium', January 2018, available at: http://bit.ly/2BjIRbd.
1077 Myria, *Contact Meeting,* 19 September 2018, available in Dutch at: https://bit.ly/2MvKKc8, para 15-16.
1078 CGRS, 'You are eligible for subsidiary protection in Belgium', November 2017, available at: http://bit.ly/2n2fFBj.
1079 For more information: Foreign Affairs Office, 'Titre de voyage pour réfugié, apatride ou étranger', available in French at: https://bit.ly/2UzuQQW.

## D. Housing

**Indicators: Housing**

1. For how long are beneficiaries entitled to stay in reception centres?
   2 months, which can be extended to 4 months

2. Number of beneficiaries staying in reception centres as of 31 December 2023: 3,352[1080]

When a person who is staying in a reception centre receives a decision granting a protection status, they start the transitional period. During this time they have the option to:

- Move to an LRI for a maximum of 2 more months, where they will get assistance in finding a place to live, and generally in transitioning to financial assistance if needed. These 2 months can be prolonged for one month, or in exceptional cases to 4 months; or
- Leave the shelter, for example to stay with family or friends. In this case Fedasil will provide them with food cheques worth € 240 per child and € 560 per adult. This covers the purchase of food for two months, the time limit within which the PCSW has to decide on the granting of financial assistance.

This is specified in internal instructions of Fedasil (see End of the right to reception).[1081]

In case the asylum seeker receives a decision granting a protection status while they are already staying in an LRI or an individual place of an NGO, the 2-month transitional period takes place in this type of accommodation. Due to a lack of LRI places however, transitioning to housing is often done from collective reception centres.

In practice, the period of up to four months is usually too short to move on to housing. It is common that recognised refugees stay in the reception centre longer than that period, especially if they are vulnerable. This practice varies from centre to centre and can also depend on the organisation providing reception.

To make this transition easier for youngsters between 18- and 21-year-old, Fedasil has started pilot projects with the aim, among other things, to increase their autonomy. These projects run until the end of 2024 and will after evaluation be rolled out across the different centres.[1082]

Since several years, the outflow of recognised refugees from reception centres is hindered by a shortage in housing supply. According to an article written by Fedasil, by the end of 2023 at least 3,352 recognised refugees were stuck in federal reception centres due to a shortage of housing in Flanders, Brussels and Wallonia.[1083]

Several civil society organisations describe the current situation as a 'housing crisis'. There is a not only a shortage in social housing, but there is also a general shortage of qualitative and affordable housing for vulnerable groups. Discrimination also plays an important role in the difficulties that beneficiaries of international protection experience in finding affordable housing.[1084] Finding affordable and adequate

1080 Information provided by Fedasil on 14 March 2024.
1081 Fedasil, Instructions on the transition from material reception to financial assistance: measures for residents of collective centres and the accompaniment in transition in the individual structures, 14 April 2020, available in Dutch at: https://tinyurl.com/3rr6j65r.
1082 Information provided by Fedasil on 10 October 2023.
1083 Information provided by Fedasil on 14 March 2024 and Fedasil,'Looking for housing', 18 December 2023, available in Dutch at: https://tinyurl.com/3ypfyexm.
1084 To find more information on the housing issue (and recommendations) please see: 'Vluchtelingenwerk Vlaanderen, 'Mensen voorop: de weg naar een echt asielbeleid. Voorstellen voor de verkiezingen 2019: Vlaams-Federaal-Europees, November 2018, available in Dutch at: https://bit.ly/2MNTL0o, 30.

housing is even more problematic for beneficiaries of international protection that are reunited with their family.[1085] To illustrate the extent of this housing crisis in Flanders:

- In July 2023, approximately 176,000 families were on the waiting list for social housing in Flanders[1086].[1087]
- 47% of private housing is of insufficient quality.[1088]
- More than 1/3 of the income of 52% of private tenants is dedicated to cover rent expenses.[1089]

The European Committee of Social Rights (ECSR), that monitors whether the provisions of the European Social Charter are observed, expressed particularly critical opinions regarding some elements of the housing policy of Belgium, among other countries. In 2021, 38 Flemish organisations, united in a coalition called the "Woonzaak" that advocates for a fair and just housing policy in Flanders,[1090] started a procedure before the ECSR against the Flemish housing policy. This procedure can lead to a condemnation, which is not binding in itself, but can have a positive impact on national legislation, as was the case in France. The complaint was declared admissible on 13 July 2022. A decision is expected in 2024.[1091]

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

On top of the housing crisis, a new allocation system in social renting applies from 2023. For 80% of allocations, a 'local tie' will be required. This means you will be given priority if you have lived continuously in the housing company's municipality or operating area for at least 5 of the past 10 years. For newcomers, this implies entering the (social) housing market with unequal opportunities. The Council of State was very critical of this new allocation system. It pointed out that a priority scheme with long-term residence ties could be a serious obstacle to free movement and freedom of establishment within the European Union.[1092]

From the start of 2024, new conditions for social renting apply in Flanders, including meeting conditions for Dutch language proficiency and being registered at the employment service if the applicant is not yet working.[1093]

## 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.[1094] They are equally exempt from a professional card.[1095] 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.

1085 Vluchtelingenwerk Vlaanderen en Orbit VZW, *Beleidsnota Gezinshereniging en Wonen*, August 2019, available in Dutch at: https://bit.ly/2Rev4ht.
1086 Website of the Flemish regional minister for housing, available in Dutch at: https://bit.ly/3vw9fAQ.
1087 Annual Report Flemish Parliament 2021-2022, available in Dutch at: http://bit.ly/404wewe.
1088 Vanderstraeten L. & Ryckewaert M., *Grote Woononderzoek 2013. Deel 3. Technische woningkwaliteit*, Steunpunt Wonen, March 2015, available in Dutch at: https://bit.ly/40GZFFF.
1089 Heylen K. & Vanderstraeten L., *Wonen in Vlaanderen anno 2018*, Steunpunt Wonen, 2019, available in Dutch at: https://bit.ly/3MdjhNg.
1090 De Woonzaak: https://www.woonzaak.be/.
1091 More information: https://bit.ly/3hYERou.
1092 Huurdersplatform, *Lokale binding sinds geboorte*, March 2022, available in Dutch at: http://bit.ly/3maMyNY
1093 Website of Flanders regional administration: conditions for social renting. Available in Dutch at: https://bit.ly/49cVDbC.
1094 Article 2(5) Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 on the employment of foreign nationals, 26 June 1999, 1999012496, 24162.
1095 Article 1(4) Royal Decree on the professional card.

No labour market test or sector limitation are applied. These rules apply to work as an employee or as an entrepreneur.

Until 2018, beneficiaries of subsidiary protection were required a work permit C if they wanted to work as an employee during their first 5 years of limited right to residence. However, since 3 January 2019 - and following a (late) transposition of the Single Permit Directive - the procedure for obtaining working permits has changed and the work permit C has been abolished. Those who were previously eligible for a work permit C have *de jure* a right to work, based on their temporary residence permit. As a transitional provision, work permit C's that have been delivered remain valid until their expiration date.

Beneficiaries of subsidiary protection need a professional card if they wish to work as an entrepreneur. Apart from possessing an electronic A-card to prove the right to residence, some other conditions have to be fulfilled related to the activity the beneficiary wishes to pursue.[1096] The activity has to be compatible with the reason of stay in Belgium, not in a saturated sector and may not disrupt public order. The documents required are:

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

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

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

Asylum seekers, recognised refugees and beneficiaries of subsidiary protection can have their diploma obtained in other countries recognised by specific authorities in Belgium: Flanders: NARIC in Flanders and Equivalences CFWB in the French community.

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

In July 2019, the European Migration Network (EMN) published a study on the social-economic trajectories of beneficiaries of international protection in Belgium.[1097] The researchers compared the cohorts of persons granted a protection status in the periods 2001-2006 and 2007-2009 with persons granted a protection status in the period 2010-2014, to evaluate their respective participation to the labour market. Five years after they received protection status, 37% of the persons granted international protection in 2001-2006 and 2007-2009 were effectively working, compared to only 29% for those granted

1096 Article 1 Royal Decree of 2 August 1985 implementing the Law of 19 February 1965 on entrepreneurial activities of foreigners, 24 September 1985, 1985018112, 13668.

1097 EMN, *Socio-economic trajectories of beneficiaries of international protection*, 4 July 2019, available at: https://bit.ly/2x8vZbI.

protection between 2010 and 2014. Where this could be verified, especially for the first two categories of persons, the labour market participation continued to increase. For example: 10 years after their recognition, approximately 50% of the persons granted international protection in the period 2001-2006 were effectively employed. The proportion of persons who have worked at least once was much higher, as 81% of them worked at least during a quarter of a year. This means that the majority of them had a formal job during their stay, after their recognition, and despite the vulnerability inherent to their group. Initial and subsequent periods of employment often last less than a year, indicating short working periods and a high degree of instability. Therefore, a sustainable integration in the labour market still needs to be improved according to the study.

**Good practices**

DUO for a JOB[1098] organises intergenerational and intercultural mentoring to facilitate access to the job market for young jobseekers. Practically this means a relationship where an experienced person, “the mentor”, shares their knowledge and expertise with a young person, “the mentee”, to allow them to develop their skills and autonomy and to enable them to identify and achieve professional objectives. This relationship (“the duo”) is based on exchanging, learning and permanent and reciprocal trust. The mentees are often (but not only) people with a refugee or migrant background.

**Integration process for beneficiaries of international protection**

In Belgium, a civic integration trajectory is in place for newcomers. Policies relating to integration and the trajectory are designed and implemented at the regional level. Therefore, regional differences in the integration legislation exist, for example in the fee charged for the process or the target groups of integration. This section will focus on the legislation in Flanders and, although to a limited extent, on the Brussels-Capital Region. It will not include specifics on civic integration in Wallonia, where compulsory and free integration courses have existed since 2016.

In 2021, a new Flemish decree altering the 2013 decree on Flemish integration and civic integration policy was announced and implemented.[1099] Civic integration is intended for foreign nationals of 18 years and older who come to settle in Flanders or in the Brussels region for the first time.[1100] All persons belonging to the civic integration target group are entitled to the programme, but for some – such as recognised refugees and persons having received subsidiary protection – it is mandatory.

The new decree stipulates that, from 1 January 2022, applicants for international protection will no longer be able to follow the trajectory until they are officially recognised a protection status. To mitigate the impact of this decision, Fedasil now tries to provide some guidance to applicants while they are waiting for the decision on their application. A limited integration process can already be initiated to ensure they are well prepared for the life that will follow after a recognition decision. To intensify this guidance, Fedasil has set up a new 'Future Orientation' service, bringing together the existing services 'Voluntary return', 'Resettlement' and a new 'Participation in in society' cell. This should allow Fedasil to develop new counselling pathways and implement a more coherent policy, in close cooperation with other services but also with many external stakeholders, such as cities and municipalities.[1101]

The civic integration programme consists of:

- a course on social orientation, about life, work, norms and values in Belgium (in a language that the student understands)
- Dutch language courses

1098 See: https://www.duoforajob.be/en/homepage/.
1099 Decree of 9 July 2021, amending the decree of 7 June 2013 on the Flemish integration and civic integration policy.
1100 For a detailed overview of the target group of the civic integration program, see in Dutch: https://bit.ly/3uyhckk.
1101 Fedasil, *Integrated managementplan 2021-2026*, 30 September 2021, available in Dutch/French at: http://bit.ly/3m7QHSG.

- individual guidance in the search for work, studies, and assistance with credential evaluation
- a network and participation trajectory

The content of the civic integration trajectory is included in a civic integration contract, which needs to be signed in order to start the process. Those who pass both the social orientation course and the Dutch language course will receive a certificate of integration. After receiving the certificate, the persons requested to take part in the trajectory are further assisted in their search for work or a diploma. In Flanders, the Flemish Agency of Integration and Civic Integration and two urban agencies, one in Antwerp (Atlas) and one in Ghent (IN-Gent), offer civic integration trajectories.

With the new decree, a third pillar has been added to the first (social orientation) and second (Dutch language courses). This third pillar entails those non-working participants of working age will be obliged to register with the VDAB/Actiris (employment services) within 60 days after signing the integration contract. This is a new provision that aims at accelerating the possibility for newcomers to access the labour market, and as such being able to contribute to public expenses. Furthermore, a fourth pillar was added through the new decree, namely: the participation in a network trajectory of 40 hours. This pillar aims at extending the newcomer´s social network, as to increase their chances of integration in the local society. This fourth pillar was implemented on the 1st of January of 2023.[1102]

Another change introduced by the decree, was the fact that it will be compulsory to pay two fees to access the social orientation course, a first of 90 euros for the course, paid only once, and a fee of 90 euros for the social orientation test. The latter must be paid each time a test is taken (again). Moreover, the two certifying language tests NT2 also require a reimbursement of 90 euros each. This means that the total cost of the integration process will now amount to 360 euros per person. Exceptions were provided for people with limited resources, but not for those for whom the integration course is mandatory, such as recognised refugees and persons having received subsidiary protection.

However, on 20 July 2023, the Constitutional Court annulled some articles in the NT2 regulations that created financial inequalities between compulsory and voluntary participants in civic integration programmes.[1103] The Court ruled that there are no valid reasons to treat these two groups differently when it comes to registration fees. As a result of the ruling, compulsory participants in civic integration are now eligible for the existing full and partial exemption from registration fees for these courses. For the social orientation course, the same provisions for persons integrating who are entitled were included in the relevant regulations in the interests of consistency. So, from the logic of coherence, these grounds for exemption will also be applied to persons integrating compulsorily within the framework of social orientation. Certain categories of compulsory participants in civic integration will thus, like entitled participants in civic integration, be able to be exempted from paying for social orientation.

On 1 June 2022, the integration obligation for newcomers in the Brussels-Capital Region was implemented. The Brussels integration policy imposes an integration obligation on foreigners with certain residence statuses who register as "newcomers" in one of the 19 Brussels municipalities from 1 June 2022. It is directed towards beneficiaries of international protection and not asylum seekers.

If the newcomer does not fulfil his obligation, he can be sanctioned. The municipality will first send a reminder. If the newcomer then still fails to fulfil his obligation within 2 months, the file will be transferred

1102 Decree of the Flemish Government 7 October 2022 to determine the entry into force of the participation and networking trajectory and the fees for the training package social orientation within the framework of the integration pathway and to amend the Decree of the Flemish Government of 29 January 2016 implementing the Decree of 7 June 2013 on the Flemish integration and civic integration policy.

1103 Constitutional Court, ruling 115 (20th July 2023) on the appeal for annulment of the Flemish decree of 24 June 2022 amending of the decree of 15 June 2007 on adult education and amending the decree of 7 June 2013 on the Flemish integration and civic integration policy in function of the redrawn integration policy. Available in Dutch at: https://bit.ly/43E1QMu.

to the region's enforcement officer. The latter can impose an administrative fine of € 100 to a maximum of € 2,500. The newcomer can lodge an appeal with the Council of State within 60 days.[1104]

It is important to note that beneficiaries of temporary protection have access to a voluntary integration trajectory that differs from the mandatory trajectory for recognised refugees and persons having received subsidiary protection. For a complete overview, see report on temporary protection.

### 2. Access to education

The access to education for child beneficiaries is equal to that of child asylum-seekers. This means that children immediately have the right to go to school and are obliged to receive schooling from 6 years old until their 18th birthday. Early childhood education starts at the age of 2.5 year. Children have to be enrolled in a school within 60 following their registration in the Aliens Register. Classes with adapted course packages and teaching methods, the so-called "bridging classes" (in the French speaking Community schools: DASPA) and "reception classes" (in the Flemish Community schools: OKAN), are organised for children of newly arrived migrants, a category which includes children of beneficiaries of international protection. Those children are later integrated in regular classes once they are considered ready for it.

In practice, the capacity of some local schools is not always sufficient to absorb all non-Dutch speaking children entitled to education. During the school year of 2022-2023, hundreds of non-Dutch speaking children were on a waiting list to get access to the Flemish OKAN-classes. On the basis of numbers provided by some cities, approximately 550 students were on a waiting list and don't have access to education.[1105] These numbers concern all non-Dutch speaking students and not only children of beneficiaries of international protection. The problems with access to education continued throughout 2023 and at the start of 2024, especially in the context of primary schools. This is due to the arrival of a larger number of migrant children aged around 8 years old. During the current school year (2023-2024), there are sufficient places in Flemish OKAN classes, as far as is known. However, an efficient monitoring system of places in reception education is lacking. As a result, there is insufficient insight into the capacity of OKAN education in Flanders.

## F. Social welfare

Beneficiaries of international protection have access to social welfare under the same conditions as nationals from the moment the protection status awarded to them becomes final. In practice they have such access immediately after the issuance of the protection status. They can apply for social welfare with the attestation confirming their status, which they receive form the CGRS. The PCSW has 30 days to take a decision.

Before the beneficiaries of international protection can effectively receive the social welfare, they need to have left the reception centre or other shelter in which they have been residing. Therefore, the application for social welfare can be made while still in the shelter, but it will only be granted from the moment the beneficiaries have left the shelter.

Further conditions for receiving social welfare are:

1. Habitual residence in a commune in Belgium;
2. Being an adult;
3. Being prepared to work;

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1104 Decree of 5 May 2022 amending the Decree of 19 July 2018 of the GGC college of Brussels implementing the Ordinance of the GGC of 11 May 2017 on the integration pathway for newcomers

1105 Vrt Nws, 'Hundres of foreign speaking youngsters might wait until September to go to school', 3 April 2023, available in Dutch at: http://bit.ly/3zBBNHn.

4. Having insufficient means of subsistence and having no possibility to claim means of subsistence elsewhere or being able to obtain means of subsistence independently; and
5. Exhaustion of other social rights held in Belgium or abroad.

Since 2016, there are no longer any differences between refugees and subsidiary protection beneficiaries as regards social welfare.

If the beneficiary is an unaccompanied child, a different form of welfare can be awarded by the PCSW. In this case the claim for social welfare needs to be made by the guardian of the child.

The PCSW of the commune of habitual residence of the beneficiary is the authority responsible for social welfare. The term "habitual residence" refers to the place where the person's material and personal interests are concentrated. This is a question of fact which is assessed by the PCSW.

Beneficiaries can freely move across the Belgian territory, therefore changing communes simply entails transfer of responsibilities to the PCSW of the new commune for social welfare. The new PCSW will nonetheless check again if the beneficiary meets all the conditions to obtain social welfare.

The requirement of "habitual residence" in a commune means that leaving the country for more than 7 days requires prior notification to the PCSW, otherwise the PCSW can suspend social welfare. If the beneficiary duly informs the PCSW and stays away no longer than 4 weeks in total per year, social welfare will not be suspended; it will be paid even when they are abroad. The PCSW can also allow an exception to this rule and even pay during the beneficiary's stay abroad for more than 4 weeks. Examples in which this exception was granted include studies abroad to obtain a diploma or supporting a severely ill family member abroad.

In practice, the deadline of 2 months for leaving the shelter and finding a house after the grant of a protection status is overall too short (see Housing). If these 2 months have passed and no extension has been granted, beneficiaries have to leave the shelter even if they have not found a place to stay.

## G. Health care

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

There are two ways to get health insurance in Belgium as a refugee or beneficiary of subsidiary protection. A beneficiary can either sign up as an entitled person or as a dependent person. As an entitled person they can register either in the capacity as an employee or entrepreneur or on the basis of the right to residence.[1106] As an employee, the beneficiary needs proof of social security submission filled in by the employer, a written declaration of the employer mentioning the social security number (an employment contract for instance) and proof of payment of social security. As an entrepreneur the only document required is a certificate of enrolment with the social insurance fund for self-employed entrepreneurs.

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

[1106] Article 32 Law of 14 July 1994 on insurance for medical care and benefits, 27 August 1994, 1994071451, 21524.

Dependent persons of an entitled persons include the spouse, (grand)child, (grand)parent and cohabitant.[1107] To be registered as a spouse both the marriage certificate and proof of living together have to be provided.[1108] 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.[1109] 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.[1110]

1107 Article 123 Royal Decree of 3 July 1996 implementing the Law of 14 July 1994 on insurance for medical care and benefits, 1996022344, 20285.
1108 Article 124(3) Royal Decree 1996.
1109 Article 123(3) Royal Decree 1996.
1110 Circular Letter of 14 March 2014 on the minimum conditions for a social investigation in the light of the Law of 26 May 2002 on the right to societal integration and in the light of societal integration by PCSWs which is paid back by the State according to provisions in the Law of 2 April 1965, 4 July 2014, 2014011203, 51594.

# ANNEX I – Transposition of the CEAS into national legislation

**Directives and other CEAS measures transposed into national legislation**

| Directive | Deadline for transposition | Date of transposition | Official title of corresponding act | Web Link |
|---|---|---|---|---|
| **Directive 2011/95/EU** Recast Qualification Directive | 21 December 2013 | 1 September 2013<br><br>3 September 2015<br><br>21 November 2017 | Law of 8 May 2013 amending the Aliens Act<br><br>Law of 10 August 2015 amending the Aliens Act<br><br>Law of 21 November 2017 amending the Aliens Act | <br><br><br><br>http://bit.ly/1GmsxXT (FR) |
| **Directive 2013/32/EU** Recast Asylum Procedures Directive | 20 July 2015 | 21 November 2017<br>17 December 2017 | Law of 21 November 2017 amending the Aliens Act<br>Law of 17 December 2017 amending the Aliens Act | http://bit.ly/2FEqrZU (FR)<br>http://bit.ly/1GmsxXT (FR) |
| **Directive 2013/33/EU** Recast Reception Conditions Directive | 20 July 2015 | 21 November 2017 | Law of 21 November 2017 amending the Aliens Act | http://bit.ly/1GmsxXT (FR) |