

# Input by civil society to the EASO Annual Report 2018

Fields marked with \* are mandatory.

## Input by civil society to the EASO Annual Report on the Situation of Asylum in the EU+ 2018

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EASO has started the production of the 2018 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). [Previous reports are available at EASO's website](#)

While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries.

We would like to kindly invite you to take part in this process, by sharing your observations on developments in asylum law, policy or practice in 2018 (and early 2019) in the areas listed on the online survey. The topics listed there reflect the structure of Chapter 4 of the EASO Annual Report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. You can fill in all or only some of the points. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2018, including improvements and new/remaining concerns. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2017 Annual Report](#). If you do not consent on EASO making your submission available, please indicate so in the relevant part of the online survey.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as

many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input completing the online survey by **Thursday, 28 February 2019**.

## Instructions

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Within each area, please highlight the following **type of information**:

- **NEW positive developments; improvements and NEW or remaining matters of concern;**
- **Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.**

*You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.*

*Prior to completing the survey, please take a moment to review the list of areas and the types of information that needs to be included in each area.*

*Please contribute your feedback online or copy and paste your answers from an editable type document*

## Questions

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**1. Access to territory and access to asylum procedure (including first arrival to territory and registration)**

- Since 22 March 2018, Belgium has introduced a new step in its asylum procedure which is now divided into 3 phases : the presentation of the asylum request to the Alien's Office (including fingerprinting, delivery of an attest of presentation of an asylum request) the registration of the asylum request (by the Alien's Office, normally 3 days - maximum 10 days later), the effective introduction of the application (by the asylum seeker, max 30 days after the presentation of the request).

- On 22 November 2018 a daily limit on access to the Aliens Office has been put into place by T. Francken, who was Secretary of State for Asylum and Migration at that time. The limitation was announced through the media, and by a Twitter Post. As a result, persons wishing to present their asylum request were deprived of their rights: the right to asylum or subsidiary protection and the right to reception. This situation has extended over a period of 2 full months. On certain days, and under certain conditions that were not always known in advance, some vulnerable persons managed to access the Aliens Office. Every day, however, families with minor children, sick persons or unaccompanied unaccompanied minors also found the door closed and were sent back overnight without any guarantee that they would be able to submit their asylum application and therefore benefit from a reception place.

- On December 4, CIRÉ, Vluchtelingenwerk Vlaanderen, the League of Human Rights, NANSEN, the Citizens' Platform for Support to Refugees, Médecins du Monde and Médecins Sans Frontières referred the matter to the Conseil d'Etat (supreme administrative jurisdiction).

- On December 20 , the Conseil d'Etat decided to immediately suspend the quota limiting the number of asylum applications accepted daily by the Aliens Office. The Council of State recalled that the right to seek asylum is a fundamental right and considers that this measure makes it "unreasonably difficult for people to have effective access to the procedure for recognising refugee status or granting subsidiary protection"

- To date, it is still not know whether this was a simple oral decision or an act that has been granted any different form than the statements made by the then Secretary of State in the press and on social networks. this is a worrying development with regard with the rule of law.

## **2. Access to information and legal assistance (including counselling and representation)**

## **4. Providing interpretation services**

## **4. Dublin procedure (including the organisational framework, practical development and suspension of transfers to selected countries, detention in the framework of Dublin procedures)**

- Objective criteria to establish a risk of absconding have been introduced in the Aliens Act with the legislative amendment of 22 March 2018. These criteria will be used also to show a significant risk of absconding in order to justify detention under the Dublin III regulation. However the criteria set out in the Aliens Act remain very general, are not very precise and encompass a significant number of situations, which in practice can lead to the detention of any person in irregular residence or any person seeking international protection. ([https://www.myria.be/files/20170629\\_Myria\\_aanbeveling\\_projet-def\\_NL.pdf](https://www.myria.be/files/20170629_Myria_aanbeveling_projet-def_NL.pdf))

- The Aliens Act specifies that the maximum detention period in order to determine the responsible member state is six weeks. The Dublin III regulation as such does not provide for such a six-week detention period. It provides that when a person is detained, the requesting state can introduce a request to take charge or take back the person within a period of one month from the time of submission of the request for international protection. The answer of the addressed state must be given within two weeks of receipt of the request. ([https://www.myria.be/files/20170629\\_Myria\\_aanbeveling\\_projet-def\\_NL.pdf](https://www.myria.be/files/20170629_Myria_aanbeveling_projet-def_NL.pdf))

- Administrative practice of daily issuance of detention decisions in violation of the national legal framework for the purpose of implementing the Dublin Regulation risk of arbitrary detention. NANSEN has witnessed the development of a worrying administrative practice. Under a normal Dublin procedure, the regular detention decision for the purpose of a Dublin transfer is the Annex 26c. The Belgian Alien's Office cannot make use of Annex 26c when they are faced with non asylum seekers. Hence, they have created new types of decision, without any legal basis in national law : the Annex Septics Light. This is an administrative decision in which only the detention is decided, pending the determination of the determination of the State responsible under Dublin. The Council for Alien Law Litigation (CALL) already ruled that this is an illegal practice (see for example RVV no. 210383, 1 October 2018). To facilitate this, the police already take fingerprints but do NOT take EURODAC hit so that the Dublin procedure is not yet triggered. Because the Dublin procedure has not yet been triggered, the Septics Light can be taken, and the migrant concerned is put in detention. The Alien's Office will then check the EURODAC-hit themselves to make an X1 decision (which can be signed as there is more time). An X1 decision is merely a detention order for the purpose of a Dublin transfer and not an order to leave the territory. This type decision has been established with no legal basis whatsoever.

## **5. Specific procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)**

- With the legislative amendment entered into force on 22 March 2018 the border procedure was introduced in the Belgian Aliens Law.

-In practice, the application of the border procedure seems to be the automatic consequence of the decision by the Aliens Office to detain all asylum seekers at the border. This means that for every person who claims asylum at the border, the border procedure is being applied. The Commissioner General for Refugees and Stateless Persons (CGRS) evaluates the application of the border procedure only when the first instance personal interview is conducted, because only then the CGRS has a view on the complete file. In a number of cases, after the personal interview was conducted by the CGRS, the asylum seeker was granted access to the territory. However in most cases the CGRS continues the border procedure after the interview. The application of the border procedure is usually justified by the fact that the asylum-seeker does not have the necessary entry documents, has used false documents or has destroyed his travel documents. (NANSEN NOTE - 2018/01 Demandeurs d'asile à la frontière : procédure à la frontière et détention, <https://www.nansen-refugee.be/wp-content/uploads/2018/12/demandeurs-asile-frontiere-procedure-frontiere-detention.pdf> )

## **6. Reception of applicants for international protection (including information on reception capacities – rise/fall/stable, material reception conditions, i.e. housing, food and clothing and**

**financial support, contingency planning in reception, access to labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

**7. Detention of applicants for international protection (including detention capacity – rise/fall /stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)**

-Persons who apply for international protection at the border are automatically detained without an individual examination of the situation of the asylum seeker which shows that detention is necessary. (NANSEN NOTE - 2018/01 Demandeurs d'asile à la frontière : procédure à la frontière et détention, <https://www.nansen-refugee.be/wp-content/uploads/2018/12/demandeurs-asile-frontiere-procedure-frontiere-detention.pdf>)

-In August 2018, the Belgian State started to detain families with children for immigration purposes in the newly constructed family units on the site of the closed centre 127bis. The best interest of the child and its specific vulnerability is not being taken into account before the detention measure is taken. (NANSEN NOTE 2018/2 La détention de familles de migrants avec enfants mineurs, <https://nansen-refugee.be/2018/08/22/nansen-note-2-la-detention-des-enfants-migrants/>)

- Since September 2018, a specific detention policy has been developed aimed at dissuading the so called 'migrants in transit' from coming to Belgium. In practice, NANSEN observes that persons (in several cases it concerns persons with a prima facie protection need and a vulnerable profile) without a thorough examination of their specific profile and a possible violation of Article 3 ECHR are detained for a few days, are subsequently released and afterwards end up in detention again, creating a detention carousel (NANSEN, CIRE, Vluchtelingenwerk Vlaanderen, CIRE "Migrants en transit en Belgique : vers une approche plus humaine")

**8. Procedures at First Instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, international protection status determination, decision making, timeframes, case management, including backlog management)**

**9. Procedures at Second Instance (including organisation of the process, hearings, written procedures, timeframes, case management, including backlog management)**

**10. Availability and use of Country of Origin Information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**

**11. Vulnerable applicants (including definition, special reception facilities, identification mechanisms/referral, applicable procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children).**

In practice, NANSEN observes that vulnerability is not an obstacle to detention in Belgium. NANSEN notes that the detention measure does not include a reasoning on vulnerability in specific cases and that there is no systematic individual assessment within the framework of the principles of proportionality and necessity before deciding to detain or when extending detention. Furthermore, it is not clear to what extent detention conditions are adjusted when a person is found to be vulnerable. Finally, there seems to be no effective identification procedure of vulnerability in place in detention. Hence a large number of persons in a vulnerable situation are not identified in detention and their specific needs are not being addressed. ("Final report, Beschermingsstandaarden in detentie - Bevindingen 2018" discussed with the authorities and with key partners, not on line, available upon request)

**12. Content of protection – situation of beneficiaries of protection (including access to social security, social assistance, healthcare, housing and other basic services; Integration into the labour market; Measures to enhance language skills; Measures to improve attainment in schooling and/or the education system and/or vocational training)**

**13. Return of former applicants for international protection**

The government has appointed an evaluation Committee for the return policy. It met for the first time on 9 March 2018. NANSEN shared its main concerns with this Committee namely that:

- Notwithstanding Article 74/5 §1 §2 introduced into the Act of 15 December 1980 by the Act of 12 March 2018, which provides that "No alien may be detained solely on the ground that he has applied for international protection", the first paragraph of this article still authorises the detention of an alien who attempts to enter the State without fulfilling the conditions set out in Article 2 and who has submitted an application for international protection at the border. This provision maintains and confirms the practice of systematic detention of asylum seekers at the border.
- For asylum seekers deprived of their liberty, the structural weakening of Belgian civil society and the constant erosion of the legal aid system are causing, inter alia, difficulties in accessing quality legal aid. The structural lack of access to quality legal assistance in detention centres is a long-standing problem, which has been identified on several occasions by UNHCR, as well as by Belgian bar associations and other non-governmental organisations.

Many other civil society actors have expressed their own concerns regarding this Committee and its methods of working. Some have been invited to a hearten session. The Committee official report evaluating Belgian Return Policy is still pending. (Letter to the Committee at your disposal upon request)

**14. Resettlement and humanitarian admission programmes including EU Joint Resettlement Programmes; national resettlement programme (UNHCR); National Humanitarian Admission Programme; Private sponsorship programme/scheme and Ad-hoc special programmes)**

**15. Relocation (any relevant developments concerning persons transferred under the EU relocation programme and relocation activities organised under national schemes/on bilateral basis)**

**\* 16. Other relevant developments**

*1 character(s) minimum*

Please see the contribution of other national civil society partners for other relevant developments.

**\* 17. Please provide links to references and sources and/or upload the related material in pdf format using the following box**

https://www.nansen-refugee.be/wp-content/uploads/2018/12/demandeurs-asile-frontiere-procedure-frontiere-detention.pdf  
https://nansen-refugee.be/2018/08/22/nansen-note-2-la-detention-des-enfants-migrants/  
https://www.myria.be/files/20170629\_Myria\_aanbeveling\_projef-def\_NL.pdf

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30c4badd-c25c-47cd-892f-08d9a526ab9a/Migrants-en-transit-en-belgique.pdf  
8fb0a158-b692-41fb-87a3-1831426e3892/NANSEN-NOTE-2018-2-D\_tention-des-familles-migrantes-avec-enfants.pdf  
d1a635f2-4ee6-4b9d-b28f-8a3b20486b39/NANSEN\_NOTE\_2018-01\_-  
\_Demandeurs\_d\_asile\_a\_la\_frontie\_re\_proce\_dure\_a\_la\_frontie\_re\_et\_de\_tention.pdf

## Consent for making the input publicly available

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\* Do you consent on making your input available on the EASO website?

- Yes  
 No

## Case law

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Please include relevant case law and/or submit cases to [EASO Portal IDS on Caselaw](#)

## Contact details

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\* Name of the contributing stakeholder

Julie Lejeune

Contact person, Role

\* Email

\* I accept the provisions of EASO [Legal and Privacy Statements](#)

## Contact

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