EMN INFORM[1]

Establishing Identity for International Protection: Challenges and Practices

1. Introduction

This EMN Inform presents the main findings of the EMN Focussed Study "*Establishing Identity for International Protection: Challenges and Practices*" undertaken by EMN National Contact Points from 25 (Member) States[2]. It provides, for the first time, an overview of important challenges facing national authorities in their efforts to establish, in the absence of credible documentation, the identity of applicants for international protection (i.e. asylum and subsidiary protection) and for the return of rejected applicants.[3] It also draws together an overview of national practices in handling these challenges, while allowing for the identification of possible steps towards further (joint) actions.

2. Key conclusions

- (Member) States use a range of different methods to establish identity. These draw upon common tools, applied flexibly or in combination, depending on the specific situation.
- Detailed provisions in national legislation setting out methods and the step-by-step processes to establish identity can reduce cases where methods or steps are applied arbitrarily, by providing clear guidance to the responsible authorities.
- Effective cooperation with third countries is essential; this can include making optimal use of existing technologies, including databases. Collaboration with other Member States can also be effective in ensuring that relevant information is shared and kept up-to-date.
- Effective measures identified to further develop and share know-how of how to determine or attribute identity include: a specific module on identity under the European Asylum Curriculum[4]; guidelines on how to establish identity (referencing specific cases) in the absence of valid identity documents; the development of an EU-wide network of competence centres; and the sharing of expertise on identity establishment to (Member) States carrying a disproportionate share of asylum applicants.

3. Key findings

Third-country nationals who apply for international protection do not provide

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[2] Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom and Norway

[3] See also other relevant EMN Studies: "EU Programmes and Strategies fostering Assisted Return to and Reintegration in Third Countries (2009)", "Reception, Return and Integration policies for, and numbers of, Unaccompanied Minors (2009)", "Different National Practices concerning granting of non-EU Harmonised Protection Statuses (2009)". All Studies are available at the EMN website (http://www.emn.europa.eu) under "EMN Studies".

[4] The training system of the European Asylum Support Office (EASO)

documents to substantiate their identity in a significant number of cases.

Many (Member) States are confronted with a significant number of third-country nationals who do not provide documents substantiating their identity when they apply for international protection. This ranged from 25% in Latvia to over 94% in Norway and Sweden. In Lithuania, the percentage was 42%, in Spain 49%, in France 66% and in Portugal 80%. Rather than presenting (valid) identity documents, applicants tend to declare their identity. When third-country nationals do present identity documents, there are often difficulties in assessing authenticity, due to the presentation of false documents and claims of multiple identities. Moreover, there are attempts to mislead authorities and/or a lack of cooperation of the applicant, which not only impedes the assessment of an application for international protection but may also severely obstruct implementation of a return decision in cases when the asylum application is rejected.

The basis of national approaches to establish identity reflect EU legislation in most cases

Overall, the need to establish identity is laid down in national legislation. In the majority of (Member) States, national legislation primarily reflects the obligations and duties laid down in EU legislation. A few Member States have included more detailed provisions in their national legislation, elaborating on the methods to be used, setting out a step-by-step process.

Most Member States work with an operational definition of identity which includes numerous characteristics, rather than codifying a specific legal definition. The type of documents accepted may also depend to a large extent on their country of origin.

In relation to the definition of identity, most Member States have not codified a legal definition, but rather have an operational definition in place, which is used for applicants of international protection, as well as for rejected asylum applicants. The definition is open-ended, involving numerous characteristics, such as first name, surname, date of birth, and citizenship. All (Member) States accept a wide range of documents in their procedures for establishing the identity of applicants for international protection, with most (Member) States distinguishing between "core" documents (e.g. passport, ID cards) and "supporting" documents which cover other forms of identity documentation. A much narrower range of documents is normally accepted by the (presumed) countries of origin if the rejected applicants have to be returned. Most emphasise that the type of documents accepted depends considerably on the country of origin. Half of the Member States (AT, BE, BG, CY, CZ, EL, IE, LT, LV, NL, PL, SI) accept copies of documents for the purposes of establishing identity, but most only recognise these as supporting documents.

The range and application of methods are broadly common to all (Member) States.

The types of methods used in the process of establishing identity are mostly comparable and include interviews, fingerprints and photographs for comparison with national/European databases, age assessment and language analysis. Whilst some (Member) States apply primarily the same methods for applicants of international protection and rejected applicants, others apply a more limited range to rejected applicants. Moreover, whilst contacts with national authorities in the presumed country of origin are precluded from the range of methods permitted in the context of international protection procedures, they are considered

indispensable for return procedures. (Member) States also share similar approaches on how these methods are used, both in the context of international protection as well as return.

A distinction can be made between identity attribution in the context of international protection and identity determination/verification in relation to return.

On decision-making, in the context of international protection, complete certainty on all aspects of identity may not be required, when, for example, the applicant is granted a group-based form of international protection. By contrast, a greater degree of certainty is required in the context of return procedures as "identity" is more strictly defined with citizenship constituting the most integral element of it. Therefore, a distinction can be made between identity determination/verification in relation to return, and identity attribution in the context of international protection.

Member States do not recognise partial determination of identity; it is either verified or not; however, uncertainty can be accommodated through a grading system.

Some (Member) States do not assign particular weights to the results of the different methods used for establishing identity, thereby favouring a "holistic" approach, whilst others do consider certain methods more reliable (primarily fingerprint examination and interviews). Notably, the majority of Member States do not recognise partial determination of identity: Identity is considered either verified or not verified. Nevertheless, some (Member) States do have a grading system which includes different degrees of certainty in identity determination.

In the application process for international protection, a lack of documentary evidence may not be a decisive factor; however, this is the case in general in the context of return.

A deficiency of documentary evidence identifying a third-country national is not regarded as the only, decisive factor to decide on the merits of the application for international protection. This is due to the fact that (establishing) identity is considered one of several elements in the assessment of a case. Nevertheless, when the grounds for application are of an individual nature, establishing the identity of an applicant can confirm the merit of the individual grounds for seeking international protection, or the applicant's country of origin. Furthermore, the decision to grant international protection is influenced by the applicant's credibility. The establishment of identity *is,* however*,* often a decisive factor in the context of return. To implement a (forced) return, the identity of the person concerned must be either verified or documented in a way that is accepted by the perceived country of origin. Hence, absolute verification may be required to return a rejected applicant to their country of origin.

4. Further Information

You may obtain further details on this EMN Inform and/or on any other aspect of the EMN, from HOME-EMN@ec.europa.eu.

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