EMN INFORM

European Commission

Challenges and practices for establishing the identity of third-country nationals in migration procedures

1   Introduction

This Inform presents an overview of the EMN Study on "Challenges and practices for establishing the identity of third-country nationals in migration procedures". The Synthesis Report is available on the EMN website[1] and is based on National Reports from 26 (Member) States.[2] The aim of this Study is to present an overview of the challenges faced by national authorities in their efforts to reliably establish and verify the identity of third-country nationals within the context of various migration procedures – namely those related to asylum, return, legal migration channels (including both short-stay and long-stay visas and residence permits) – and of national practices to address those challenges. This study updates and supplements the 2013 EMN Study "Establishing Identity for International Protection: Challenges and Practices".[3]

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[1] https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/reports/studies_en

[2] AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, SE, SI, SK, and UK

[3] EMN, Study on Establishing Identity for International Protection: Challenges and Practices (2013), at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/establishing-identity/0_emn_id_study_synthesis_migr280_finalversion_2002013_en.pdf

2   Key points to note

★ The importance of identity management in migration procedures has **increased significantly in recent years** in light of the rise in the number of applications for international protection since 2014/2015 and of current heightened security challenges. The ability to unequivocally establish the identity of a third-country national is of **key importance in all migration procedures**.

★ The **importance of identity establishment** for the outcome of the application depends on the type of procedure. While a **valid proof of identity** is crucial for a positive decision in legal migration procedures, many (Member) States also grant international protection if identity cannot be (fully) established. In return procedures, the importance of an established identity generally depends on the **requirements of the (presumed) country of origin**. (Member) States **face challenges** related to identity establishment of third-country nationals in all migration processes; however, due to the significant rise of applicants for international protection in recent years, these have become particularly visible in asylum and return procedures. Generally, (Member) States observed an increase in the number of international protection applicants unable to provide a **valid proof** of identity.

Migration & Home Affairs

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.

⭐ **EU-wide information management systems**, such as Eurodac, the Visa Information System (VIS) and Schengen Information System (SIS) play an **increasingly important role** in the identity establishment process, by providing biographic and biometric data of third-country nationals.

⭐ Next to travel and identity documents, (Member) States use a **wide range of methods** to support the process of identity establishment. Cooperation between competent authorities on a national, bilateral and European level has been established in the form of pilot projects, shared databases, etc.

What does the Study aim to do?

The study presents an **overview of the important challenges** faced by national authorities in EU Member States and Norway in their efforts to **establish and verify the identity of third-country nationals within the context of various migration procedures** and of **national practices** to address those challenges. Moreover, the study provides an **insight into the use of information management systems** at national and European level to support identification and verification processes.

What is the scope of the study?

The Study covers (Member) States' approaches to establish the identity of third-country nationals within the migration process, looking both into identification and identity verification related tasks. This is addressed within the context of the asylum procedure, return procedure, as well as legal migration channels, i.e. applications for short-stay visas and for long-stay visas/residence permit for study, work and family purposes. Identity management issues related to naturalisation procedures are outside the scope of the Study.

What is the EU legal context for identity management?

The obligations of Member States with regard to the establishment of identity of third-country nationals are laid down in various EU directives and regulations.

For international protection and return procedures, **legislative instruments** adopted in the framework of the Common European Asylum System (CEAS) are relevant, inter alia requiring Member States to assess the identity of asylum seekers (recast Qualification Directive), and obliging applicants to cooperate with the competent authorities (recast Asylum Procedures Directive).

In the case of return, the **EU Return Directive** is relevant as it refers to the fact that third-country nationals without a regular status cannot be returned to a third country when their identity cannot be established (Articles 3 and 15). Against the background of **fostering cooperation with countries of origin** in identity establishment in the area of return, Readmission Agreements with third countries are also an important element.

As regards legal migration procedures, the **Visa Code and Family Reunification Directive** are particularly important, as these establish the procedures and conditions for issuing visa or residence permits to third-country nationals.

This legislative framework is complemented by **EU information management systems** (SIS, VIS and Eurodac), which store biographic data, biometric data or both and allow for the exchange of this data between Member States in the case of SIS and VIS. In the absence of internal border controls in the Schengen area, these are particularly relevant for identity management. In most (Member) States, relevant authorities have access to these databases.

What are the main challenges (Member) States face in relation to identity management in migration processes?

Challenges related to identity establishment are particularly apparent in international protection procedures. Most (Member) States reported that applicants for international protection are **often not able to provide official travel and/or identity documents**, and even if these are provided, a further challenge lies in determining whether these are genuine. A majority of (Member) States reported that challenges in this regard were ongoing since 2013. Although not a prerequisite for an application for international protection to be considered, the establishment of identity is of crucial importance for national administration to assess the legitimacy and credibility of a claim.

In return procedures, challenges stem from a **lack of cooperation** from third-country nationals and difficulties in cooperating efficiently with authorities in the (presumed) third country of origin and exchanging biometric information with them. Determining at least the nationality is key in return procedures, in order to determine the third country to which the person concerned is returned. Here, **biometric databases** at European and national level play an increasingly important role, in addition to registration databases in third countries.

In the case of legal migration, challenges relate mostly to **forged or counterfeit identity/travel documents** in the case of visa applications, and the **authenticity of documents** when processing residence permits. A few Member States specifically noted a challenge brought about by non-machine readable passports submitted by third-country nationals, which could not be checked against the national and international databases.

What does the legislative framework for identity establishment look like at national level?

For international protection procedures, most (Member) States lay down the establishment of identity in **national legislation**, either closely reflecting the provisions set out in EU legislation, or providing more detailed national provisions as regards the specific methods and procedures to be followed. Mainly as a consequence of the **transposition** of the above-mentioned CEAS directives between 2013 and 2015, recent changes to the national legislation in Member States regarding identity establishment were made. Such changes mainly relate to the **scope of the duty of applicants for international protection** and the distribution of functions between the institutions involved in the asylum procedure.

In the case of return procedures and in line with the EU Return Directive, all (Member) States have laid down that third-country nationals without a regular status cannot be returned to a third country when their identity cannot be established.

Similar to international protection, some (Member) States **strengthened the obligation** of third-country nationals with a return decision to cooperate in identity establishment, as well as including in national legislation the collection of biometric data.

For legal migration procedures, most (Member) States have imposed general obligations on third-country nationals in national law to **provide identity documents** to be able to apply for a visa and/or a residence permit. Some (Member) States also lay down additional provisions in national law, allowing national authorities to operate a number of examinations and checks on these documents, such as verification against forged documents or comparing new documentation against previous documents stored in national databases.

What is the institutional framework for identity establishment at national level?

Institutions responsible for identity establishment can be divided into three types for international protection procedures. Firstly, offices deciding on asylum applications, secondly, police/law enforcement authorities, and thirdly, other supporting organisations. In about a third of the (Member) States, the same organisation was responsible for identity establishment in both international protection- and return procedures. In the rest, the responsibility for identification was assigned to a different organisation.

In the case of legal migration, generally (Member) States distinguish between visa procedures and residence permits, with **embassies or consulates** abroad being centrally responsible for the former. With regard to the latter, authorities responsible vary depending on the national legislation and the place of submission of the application, but applications can usually be lodged either abroad at consulates or diplomatic missions, or on the territory of the (Member) State concerned.

Both in the field of international protection and return, various changes in the national institutional frameworks have been made to **allocate responsibilities** among relevant authorities more efficiently. Such changes mainly came as a response to the significant rise in of asylum applications in many (Member) States in recent years. For example, more (Member) States are now establishing **Central Competence Centres** or equivalent entities, responsible for establishing and/or verifying identity documents. In (Member) States without such a centre or equivalent entity, access to databases and provision of such services is usually ensured by other national authorities, whereby their competences differ depending on the migration procedure.

Moreover, several Member States established specific reception facilities to allow for the screening of incoming third-country nationals at border crossing-points.

What methods and types of documents are used to establish the identity of third-country nationals?

In general, the term "identity" refers to a **set of characteristics** that unmistakably characterise a person, such as the name, date and place of birth, as well as nationality and biometric characteristics.[4] However, with the exception of about a third of the (Member) States which use an **operational definition** of identity, the majority of competent authorities do not use a legal and/or operational definition in the framework of migration procedures.

First and foremost, (Member) States use **valid travel/identity documents** to establish identity in all migration processes. In international protection applications, **other types of documents** (e.g. birth certificates and driving licences) can also be accepted (as contributing) to establish identity, and several (Member) States make exceptions to the obligation to present official travel documents.

In return procedures, the type of documents used to establish identity is highly dependent on the **requirements of the (presumed) country of origin**. All countries of origin accept a valid passport or other travel documents, while other types of documents (school or training certificates, birth certificates, etc.) are generally a **contributing factor** to the identity establishment process.

As regards legal migration, third-country nationals are required to submit valid travel document/identity documents and **biometric data** when applying for a visa or residence permit in all (Member) States. About half of the (Member) States also accept other types of documents as contributing to establishing identity, whereby marriage/birth certificates could be used to prove family links, but not as proof of identity. No (Member) State accepts **copies of identity documents** when third-country nationals lodge an application within one of the legal migration procedures.

Many (Member) States have **national guidelines** in place for controlling the identity of persons and identity documents, intended for the competent authorities responsible for the various migration procedures. Most (Member) States also collect **statistics** on the number of false/forged ID-documents detected.

In the absence of documentary evidence of identity, (Member) States employ a **wide range of methods**, such as language analysis and interviews to determine the probable country/region of origin and DNA analysis. Recently, the role of **social media** also increased in establishing identity, and some national authorities have started **confiscating** smartphones and other digital devices. **Interviews** with applicants for international protection are conducted as an obligatory or standard practice in all (Member) States, and may also be conducted in the framework of return procedures. In legal migration procedures, most (Member) States take **fingerprints** for comparison with European databases for short-stay visa applications, while fingerprints are usually not taken for this purpose in the context of residence permit applications.

How are different methods combined to establish the identity of third-country nationals, and their outcomes used to make a decision?

The **status and weight** of different methods and documents to determine identity differs widely across (Member) States. In international protection procedures, Member States place varying degrees of significance on the outcome of the identity establishment procedure, with many granting protection status without a fully proven identity. A third of (Member) States rely primarily on **documentary evidence** to establish identity of international protection applicants. For **verification**, various methods are used, such as interviews and fingerprint scans.

In return procedures, the establishment of identity is a **decisive factor** in all (Member) States, as this is needed to draw up the necessary travel documents with the country of origin. Here, the nationality of the returnee is of particular importance in order to obtain the necessary travel documents from the third country.

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[4] Dictionary for Civil Registration and Identification, at https://publications.iadb.org/bitstream/handle/11319/3679/Dictionary%20for%20Civil%20Registration%20%20and%20Identification%202015.pdf?sequence=7

With the exception of **Cyprus** and **Portugal**, the national immigration and/or asylum authorities of all (Member) States make the results of their work to establish identity available to those preparing the return process. Receiving third countries are usually involved in identity establishment and/or verification, however, the extent to which this is the case highly depends on the third country.

In legal migration procedures, a **positive decision** is generally only granted when identity is proven. To do so, all (Member) States rely on travel documents, although some, also accept other means of identity verification in exceptional circumstances.

(Member) States generally require **consistency** between the different methods to establish identity in all procedures, although some exceptions apply in international protection- and return procedures. Some (Member) States use a **grading structure or spectrum** to denote the degree of identity determination.

Despite the significant increase in the number of applicants for international protection in recent years, only a few (Member) States noted that this had an **impact** on the decision-making process.

Which personal data is collected in the framework of migration procedures and which data-sharing arrangements are in place?

National authorities usually collect and store **biographic and biometric data** of applicants in all migration procedures.

Memoranda of Understanding and other types of agreements are in place in about half of the (Member) States to support the sharing of data between different entities, in particular with international organisations, as well as other agencies and departments within the Member State. In contrast to this, **Austria**, **Finland**, **Germany** and **Ireland** primarily regulate the sharing of personal data between different entities though legislation. A third of (Member) States reported on recent changes related to the **processing of personal data**, mainly with a view to further automating the collection and comparison of biometric data. In addition, **pilot projects** were put in place to foster the cooperation among national authorities and between authorities of different Member States, as well as extending the scope and improving the **interoperability** of various (national) databases.

What measures related to identity establishment are currently debated in (Member) States?

While many (Member) States have not reported on **major debates** in relation to the processing of personal data within the framework of migration-related procedures and databases used to establish identity, a third of the (Member) States highlighted a number of key issues subject to debate. These concerned topics such as the **analysis of data carriers**, taking fingerprints and facial images of asylum seekers, age assessment procedures, as well as maintaining a balance between **security and the right to privacy and data protection**.

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