



IOM International Organization for Migration



# **ESTABLISHING IDENTITY FOR INTERNATIONAL PROTECTION**

## **Challenges and Practices in Austria and the EU**



**Focussed Study of the  
European Migration Network**

# **Establishing Identity for International Protection: Challenges and Practices**

**National Contribution from Austria – Questionnaire**

**EMN Synthesis Report – Main Results**

The opinions presented in the study are those of the author and do not necessarily represent the position of the Austrian Federal Ministry of the Interior, the European Commission and/or the International Organization for Migration.

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# CONTENTS

EUROPEAN MIGRATION NETWORK	4
NATIONAL CONTRIBUTION FROM AUSTRIA – QUESTIONNAIRE	6
Summary	6
1. The Austrian Framework	10
1.1 <i>The challenges and scope of the issue</i>	10
1.2 <i>Statistics on the scale of the issue</i>	12
1.3 <i>Relevant EU and Austrian legislation</i>	14
1.4 <i>The institutional framework in Austria</i>	14
2. Methods for Establishing Identity	18
2.1 <i>Definition and documents required for establishing identity</i>	18
2.2 <i>Methods used in the absence of documentary evidence of identity</i>	19
3. Decision-making Process	22
3.1 <i>Status and weight of different methods to determine identity</i>	22
3.2 <i>Decisions taken by competent authorities on basis of outcomes of identity establishment</i>	22
4. Conclusions	24
EMN SYNTHESIS REPORT – MAIN RESULTS	26
ANNEX	30
Methodology	30
List of Translations	31

# EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003 by the European Commission by order of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum on a European level. Since 2008, Council Decision 2008/381/EC constitutes the legal basis of the EMN and National Contact Points (NCPs) were established in the European (EU) Member States (with the exception of Denmark and Croatia, which have observer status) plus Norway.

The EMN's role is to meet the information needs of EU institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU in these areas. The EMN also has a role in providing such information to the wider public.

The NCP for Austria is located at Research and Migration Law Department of the Country Office Austria of the International Organization for Migration (IOM) in Vienna, which was established in 1952 when Austria became one of the first members of the organisation. The main responsibility of the IOM Country Office is to analyse national migration issues and emerging trends and to develop and implement respective national projects and programmes.

The main task of the NCPs is to implement the annual work programme of the EMN including the drafting of the annual policy report and theme-specific focussed and main studies, answering Ad-Hoc Queries launched by other NCPs, carrying out visibility activities and networking in several forums. Furthermore, the NCPs in each country set up national networks consisting of organisations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data. Exceptions might occur when existing data and information is not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all EU Member States plus Norway in or-

der to achieve comparable EU-wide results. Since the comparability of the results is frequently challenging, the EMN has produced a Glossary, which assures the application of similar definitions and terminology in all national reports.

Upon completion of national reports, the European Commission with the support of a service provider drafts a synthesis report, which summarises the most significant results of the individual national reports. In addition, topic-based policy briefs, so called EMN Informs, are produced in order to present and compare selected topics in a concise manner. All national studies, synthesis reports, informs as well as the Glossary are available on the website of the EMN at [www.emn.europa.eu](http://www.emn.europa.eu).

# NATIONAL CONTRIBUTION FROM AUSTRIA – QUESTIONNAIRE

*Adel-Naim Reyhani*

## Summary

In this focussed study, challenges that Austrian authorities face in establishing the identity of (rejected) applicants for international protection in Austria, both in the asylum procedure as well as in the procedure to implement forced return, are discussed. Before elaborating on these topics, the concept of identity in both procedures is described.

For the purposes of the *asylum procedure*, the identity of an applicant is not the primary question; the main aim of the procedure is rather the assessment of the applicant's well-grounded fear of persecution. The identity assumed during asylum proceedings does not have a binding character and must not necessarily reflect the true identity of an applicant. However, as the outcome of investigations regarding applicants' identity may influence the overall decision on the asylum application, especially concerning the applicant's credibility, and furthermore be relevant for the return procedure, it is regarded an issue. In the *return procedure*, identity is defined mainly in the framework of Austria's co-operation with the respective country of origin. Thus, an Austrian definition of identity in this respect, although provided in legislation, is mostly irrelevant for the outcome of the return procedure.

## Asylum procedure

The absence of documents itself and, if documents are provided, challenges in assessing the authenticity and accuracy of these due to missing reference material, are considered to be the main issues. In general, the types of challenges in the absence of credible documentation depend on the situation in the applicant's country of origin. In many cases, determining the ethnic group of an applicant may be even more challenging and relevant

for the decision on the asylum application than determining nationality, and such investigations are time-consuming. Amongst other countries of origin, determining identity can be particularly difficult regarding citizens of the following countries: Afghanistan, Pakistan, India, Bangladesh, and most African countries.

The Asylum Act and the General Administration Procedure Act constitute the most relevant legislation for asylum procedures. The overall responsibility for processing asylum applications at first instance and determining the identity of applicants for the purposes of this procedure lies with the Federal Asylum Office, which is bound by instructions of the Federal Ministry of the Interior. The Asylum Court decides on appeals against decisions of the Federal Asylum Office. The Federal Asylum Office is supported by the Police Records Department of the Criminal Intelligence Service Austria. Besides the Eurodac<sup>1</sup> and the national AFIS<sup>2</sup> system, the Criminal Intelligence Service Austria makes use of a document information system, which can be accessed by the Federal Asylum Office through the web application ARGUS<sup>3</sup>. This system is linked with other national document information systems.

Every applicant for international protection is given a “procedural identity” during asylum proceedings, which is not necessarily reflecting the true identity of the applicant and which does not have a binding character. Such identity is composed of the name, the country of origin, the date of birth and the sex of the applicant. Respecting the principle of free consideration of evidence, every document may be accepted as contributing to the establishment of this identity. Applying this principle, the fact that the applicant is not willing to co-operate in establishing his/her true identity may have an influence on the applicant’s credibility and, as a consequence, on the outcome of the asylum procedure.

Authorities use the following methods to establish an applicant’s identity in the asylum proceedings: language analysis; age assessment; comparison of fingerprints (Eurodac); voluntary DNA analysis; interviews; co-operation with liaison officers, with Austrian representation authorities and

- 1 Eurodac is the European system for comparing fingerprints of asylum seekers and some categories of irregular migrants in accordance with the Dublin Regulation.
- 2 The AFIS is the Austrian system for the identification of fingerprints.
- 3 The ARGUS is the Austrian system for document information, compensatory measures, and controls of routes and borders.



the Country of Origin Information Unit, as well as administrative co-operation under the Dublin Regulation. Among the different methods, fingerprints and DNA analysis are considered to be the most reliable, as opposed to age assessments or photographs.

### **Return procedure**

Austrian authorities consider the rejected asylum seekers' reluctance to provide appropriate information on their identity to be one of the main challenges. If persons concerned are not willing to co-operate, establishing the identity is likely to become a very difficult task. Further difficulties vary depending on the respective country of origin; for example, in case identity is established by means of language and the national language of a country of origin is also used in other countries. Other countries of origin may refuse co-operation due to a general opposition to deportations, the socioeconomic situation in the country, personal sensitivities or political decisions.

The Aliens Police Act, readmission agreements and internal instructions from the Federal Ministry of the Interior provide the legal framework for return procedures. The aliens police offices, which are bound by instructions of the Federal Ministry of the Interior (Department II/3) and located in district commissions and the Federal Police Headquarters, are responsible for establishing the identity of rejected applicants for international protection. The Police Records Department of the Criminal Intelligence Service Austria, which is part of a forensic department, supports the aliens police authorities through providing the acquisition and real-time transition of biometric data into its systems, through processing these data in the national AFIS and the Eurodac system, and dactiloscopic verification through experts. Besides the Eurodac and the national AFIS system, the Criminal Intelligence Service Austria makes use of a document information system, which can be accessed by the aliens police offices through the web application ARGUS. This system is linked with other national document information systems. Furthermore, national and international databases for wanted persons and property are in use.

Although legal definitions of identity are provided for the aliens police procedure in general, these are of little or no relevance for forced return proceedings. Typically, main relevance lies with the country of origin's

demands concerning the applicant's identity, or provisions in readmission agreements, for example to issue a replacement travel document.

Aliens police authorities make use of the following methods to establish an applicant's identity in the return proceedings: comparison of fingerprints, interviews, co-operation with liaison officers and co-operation with Austrian representation authorities, as well as language analysis. The success of determining identity in the return procedure highly depends on the respective country of origin and its willingness to co-operate with the competent Austrian authority.

# 1. The Austrian Framework

## 1.1 The challenges and scope of the issue

*Is the issue of establishing identity in the absence of credible documentation considered an issue within the framework of the procedure for international protection and the forced return of a rejected applicant to their (presumed) country of origin?*

Establishing identity in the absence of credible documentation is considered an issue for the procedure following an application for international protection as well as for the forced return of rejected applicants.

In *asylum proceedings*, the following challenges are considered to be especially relevant when establishing the identity of an applicant: even if documentation is provided, it is difficult to assess the authenticity and accuracy of documents due to missing reference material. Concerning some countries of origin, it can occur that an authentic document has inaccurate information. In general, the types of challenges in establishing the identity of an applicant depend on the situation in the specific country of origin. For example, determining the age of an Afghan or Pakistan national can be challenging, as the date of birth does not have a high relevance in these societies. And, determining the ethnic group of an applicant may be even more challenging and more relevant for the outcome of the asylum procedure than determining nationality, as, for example, the reasons for persecution may be directly linked to the ethnic group. For the purpose of determining the ethnic group, investigations may be time-consuming.

In *return procedures*, the rejected asylum seekers' reluctance to provide appropriate information on their person is one of the main challenges for authorities in the absence of credible documentation. Some would even provide wrong information on their identity to delay proceedings and prevent deportation. If rejected asylum seekers are not ready to contribute to proceedings, establishing identity oftentimes becomes a very difficult task. Furthermore, difficulties arise as a result of the negative attitude of some country of origin embassies towards forced return. Reasons for refusing deportations may be a general opposition to deportations, the socioeconomic situation in the country, personal sensitivities or political decisions. Additionally, difficulties in the return procedure exist regarding countries of origin, where the national language is also spoken in other countries. In these

cases (in the absence of documents), it is challenging for the authorities of the country of origin to confirm the nationality of a rejected applicant.

***The volume of cases where no credible documentation is available to substantiate an applicant's identity is considered to be large and/or growing.***

Relevant data are not available. However, according to interviewees, the number of cases where no credible documentation is available is constantly high in *asylum proceedings*, and this is seen as a challenge.

The number of such cases may be even higher in *return proceedings*, as rejected applicants who had documents in the asylum procedure may not provide these in the return procedure.

***The measures used to establish an applicant's identity in the absence of credible documentation are resource-intensive.***

In the *asylum procedure*, this aspect is not considered to be of major importance, as appropriate resources are provided as a standard feature at the beginning of the procedure following an application for international protection.

Measures used to establish an applicant's identity in *return proceedings* can be resource-intensive. However, the aliens police would not refrain from using such measures if these are found to be promising in contributing to the establishment of the identity of a rejected applicant

***The measures used to establish identity are not always successful.***

In *asylum and return proceedings*, the success of measures is dependent on the actual situation in the country of origin. Thus, a general statement cannot be made.

***Decision-making on applications for international protection is difficult due to the fact that measures used to establish identity are not always successful.***

In *asylum procedures*, the fundamental principle of free consideration of evidence must be applied in every case. As a consequence, the competent officer or judge must decide, if the applicants statements are credible or not. If the applicant's identity cannot be established because he/she is not willing to co-operate or tries to hide his/her identity, this may have a negative

effect on his/her credibility. However, although decision making is influenced by the question of identity, unsuccessful methods are not considered to be a relevant challenge for decision-making in general.

***A significant proportion of rejected applicants for international protection cannot be returned to their country of origin due to the fact that measures used to establish identity are not always successful.***

In *return procedures*, this factor is considered to be highly dependent on the respective country of origin, as stated above.

### ***Other (Member) State specific factors***

Although the difficulty of establishing identity in the *asylum procedure* also depends on the individual case, determining identity may be – amongst others and according to the interviewees’ experiences – particularly difficult for citizens of the following countries of origin: Afghanistan, Pakistan, most African countries, India, Bangladesh.

In general, countries of origin and their co-operation regarding the *implementation of return* can be divided into three categories: those who are willing to co-operate (and have necessary structures), those who are not willing to co-operate and those who are willing, but do not have necessary structures (for example registers of citizens) to co-operate. According to the interviewees’ experiences, these countries are among those who are not willing to co-operate: Turkey, Pakistan, Morocco, Algeria, and Tunisia. Among those who are principally willing, but where other challenges are present, are India and China.

## **1.2 Statistics on the scale of the issue**

***Please provide, to the extent possible, the following statistics (with their source) along with, if necessary, an explanatory note to interpret them if, for example, the statistics provided are partial, had to be estimated (e.g. on the basis of available statistics that differs from the below, or of first-hand research) or if they reflect any particular trends (e.g. a change in policy, improved methods of establishing identity, a change in the country of origin of applicants or of rejected applicants, etc.)***

	2007	2008	2009	2010	2011	Availability/Source
Total number of applicants for international protection	11,921	12,841	15,821	11,012	14,416	Federal Ministry of the Interior, Asylum Statistics, available at <a href="http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik">http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik</a> (accessed on 11 September 2012).
Number of applicants for whom identity was not documented at the time of application						Not available.
Number of applicants for whom identity was wholly or partially established during the asylum process thereby allowing the relevant authorities to reach a particular decision on international application (e.g. grant, refuse, defer)						Not available.
Total number of positive decisions	5,197	3,753	3,247	2,977	3,572	Federal Ministry of the Interior, Asylum Statistics, available at <a href="http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik">http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik</a> (accessed on 11 September 2012).
Total number of positive decisions for applicants whose identity was not documented at the time of application						Not available.
Total number of positive decisions for applicants whose identity was considered sufficiently established by the decision-making authorities						Not available.
Total number of negative decisions	6,646	7,968	13,531	13,290	11,553	Federal Ministry of the Interior, Asylum Statistics, available at <a href="http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik">http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik</a> (accessed on 11 September 2012).
Total number of negative decisions for applicants whose identity was not documented at the time of application						Not available.
Total number of negative decisions for applicants whose identity was not considered by sufficiently established by the decision-making authorities						Not available.
Total number of (forced) returns undertaken of all rejected applicants						Not available.
Number of (forced) returns of rejected applicants whose identity had to be established at the time of return						Not available.
Number of (forced) returns of rejected applicants whose return could not be executed as their identity was not considered to be sufficiently established by the authorities of the (presumed) country of origin						Not available.

### **1.3 Relevant EU and Austrian legislation**

#### ***Is the process to be used to determine identity within the procedure for international protection laid down in legislation?***

Concerning the establishment of identity in the *asylum proceedings*, the Asylum Act provides the main regulations. Art. 19 para 1 Asylum Act provides for the duty of police officers in the First Reception Centres to investigate the identity of applicants during the first interview following the application for international protection. The General Administration Procedure Act contains procedural provisions relevant also to international protection, which must be applied subsidiary to provisions of the Asylum Act. Art. 45 para 2 of this law lays down the principle of free consideration of evidence.

#### ***Is the process to be used to determine identity within the procedure for the forced return of rejected applicants laid down in legislation?***

The main purpose of determining the identity of a *rejected applicant for international protection* is the actual return of the person concerned to the country of origin, while co-operation with the respective country of origin is the key factor for successful implementation of forced return. Art. 46 Aliens Police Act entails the principal duty of authorities to deport a person against whom a return decision, an expulsion or an exclusion order is enforceable. This provision constitutes the basis for the practice of the aliens police to consult the respective embassy to obtain a travel document. If applicable, readmission agreements determine respective return procedures. Furthermore, the aliens police are bound by work instructions of the Federal Ministry of the Interior. These internal instructions entail detailed statements on return procedures.

### **1.4 The institutional framework in Austria**

#### ***Which national authorities have the operational responsibility for establishing the identity of applicants for international protection?***

The overall responsibility for determining identity in the first instance<sup>4</sup> of *asylum proceedings* lies with the Federal Asylum Office, which is bound by instructions of the Federal Ministry of the Interior. The Asylum Court decides on appeals against decisions of the Federal Asylum Office. In this function, the court may also deal with the applicant's identity.

Besides the Eurodac and the national AFIS system, the Police Records Department of the Criminal Intelligence Service Austria makes use of a document information system, which can be accessed by the Federal Asylum Office. This system is linked with other national document information systems.

***Which national authorities have the operational responsibility for establishing the identity of applicants for international protection who have to (be) forcibly return(ed) to their (presumed) country of origin?***

The aliens police offices, which are bound by instructions of the Federal Ministry of the Interior (Department II/3) and located in district commissions and the Federal Police Headquarter, are responsible for establishing the identity of rejected applicants for international protection in the *return procedure*.

The Police Records Department of the Criminal Intelligence Service Austria, which is part of a forensic department, supports the aliens police authorities through providing the acquisition and real-time transition of biometric data into its systems, through processing these data in the national AFIS and the Eurodac system, and through dactiloscopic verification through experts. Besides the Eurodac and the national AFIS system, the Criminal Intelligence Service Austria makes use of a document information system, which can be accessed by the aliens police offices through the web application ARGUS. This system is linked with other national document information systems. Furthermore, national and international databases for wanted persons and property are in use.

4 The asylum procedure in Austria is divided into two phases involving different actors and institutions at different levels. Phase one corresponds to an admission procedure clarifying the competence of Austria with regard to Regulation 343/2003 (Dublin Regulation) and the principle of international protection in a safe third country. In the second phase, if Austria is found to be competent for the case, an assessment of the application for international protection with regard to the Geneva Convention and Art. 3 and 8 ECHR is carried out. (EMN 2009: 26).



***Does your (Member) State have a central competence centre for issues related to the determination of identity and/or verification of documents?***

The Police Records Department of the Criminal Intelligence Service Austria may be understood as such a centre, although the main responsibility for establishing identity lies with other authorities.

***What issues does the centre cover: issues relating to the determination of identity; issues relating to the verification of documents?***

The Criminal Intelligence Service Austria covers issues relating to the determination of identity and the verification of documents in respect of the *procedure for international protection as well as in respect of the procedure for executing the return of rejected applicants.*

***Has the centre developed its own database/reference base for genuine and false documents?***

Yes

***Does it make use of the database iFADO (iPRADO)<sup>5</sup> for checking false ID documents?***

No.

***Does it make use of the EDISON<sup>6</sup> system?***

No.

***Do its tasks involve advisory services?***

Yes.

***Do its tasks involve development of methods?***

No.

***Do its tasks involve training of frontline officers?***

Yes.

5 PRADO, Public register of authentic identity and travel documents online.

6 EDISON, Travel Documents System.

***Do its tasks involve support with difficult cases?***

No.

***Does it have a forensic document unit?***

Yes.

***Are the officials responsible for determining the identity of applicants for international protection authorised to access EU databases holding identity information about third-country nationals (e.g. EURODAC, SIS II, VIS, etc.)?***

Yes, to Eurodac and SIS II, but not to the VIS.

***Are the officials responsible for determining the identity of applicants for international protection authorised to liaise directly with the officials who do have access to these databases?***

To obtain access to the information provided by the VIS, officials responsible may get in contact with Austrian representation authorities.

## 2. Methods for Establishing Identity

### 2.1 Definition and documents required for establishing identity

***What definition (if any) of identity is used with regard to applicants for international protection and for the return process.***

In *asylum proceedings*, every applicant for international protection is given an identity primarily for the purpose of this procedure. This so called “procedural identity” is not necessarily reflecting the true identity of the applicant, but rather an administrative requirement. However, the Federal Asylum Office (as well as the Asylum Court), may – following an individual appraisal of evidence and as part of the findings in the written decision on the asylum case – find that a specific identity is to be assumed. This, however, does not have any binding character regarding the identity of that person in other proceedings. The procedural identity is composed of the name, the date of birth, the sex, and the country of origin.

Art. 34 para 2 Aliens Police Act defines the term identity for the aliens police procedure in general, stating that the name, the date of birth, the citizenship as well as the address are encompassed. However, when establishing the identity of a *rejected applicant*, the countries of origins’ demands and provisions in readmission agreements are of primary relevance in the return procedure. Similar to Austrian legislation, most countries of origin request the establishment of citizenship, name, date of birth, and, in some cases, also the exact address.

***What types of documents and other information do authorities in your (Member) State accept as (contributing to) establishing the identity for applicants of international protection?***

In general, and respecting the above-mentioned principle of free consideration of evidence, every document may be accepted as contributing to the establishment of the procedural identity in *asylum proceedings*.

***What types of documents are accepted by national authorities in the (presumed) countries of origin if those applicants for international protection have to be returned, because they have received a negative decision, exhausted or abandoned the procedure?***

Concerning the *return proceedings*, all countries of origin accept passports and replacement travel documents issued by them. Very few countries

accept EU Laissez-Passer. In some countries, specific ID documents may be accepted – for e.g. the ID document “Nüfus Cüzdanı” may be accepted in Turkey even without a replacement travel document. Some countries of origin may accept the copy of the birth certificate, while others do not even accept an original. Co-operation with Kosovo in the field of readmission is considered to be particularly effective and easy.

## **2.2 Methods used in the absence of documentary evidence of identity**

*For each method listed, please indicate whether the method is obligatory (e.g. enshrined in law); whether it is part of standard practice (e.g. used in most cases but not enshrined in law); or whether it is optional (e.g. not enshrined in law and used in some cases only).*

### ***I) Language analysis to determine probable country and/or region of origin?***

*Asylum procedure*

Yes, optional.

*Return procedure*

Yes, optional (due to limited acceptance by countries of origin).

### ***II) Age assessment to determine probable age***

*Asylum procedure*

Yes, optional.

*Return procedure*

No. Age assessment is foreseen in the Austrian Aliens Police Act; however, it plays no role in return proceedings.

### ***III) Fingerprints for comparison with national and European databases***

National database

*Asylum procedure*

Yes, part of standard practice.

*Return procedure*

Yes, part of standard practice.

European databases

*Asylum procedure*

Yes, part of standard practice.

*Return procedure*

Yes, part of standard practice.

***IV) Photograph for comparison databases***

National database

*Asylum procedure*

No.

*Return procedure*

No.

European databases

*Asylum procedure*

No.

*Return procedure*

No.

***V) Iris scans for comparison databases***

National database

*Asylum procedure*

No.

*Return procedure*

No.

European databases

*Asylum procedure*

No.

*Return procedure*

No.

***VI) DNA analysis***

*Asylum procedure*

Yes, optional, if requested by and the applicant.

*Return procedure*

No. DNA analysis is foreseen in the Aliens Police Act; however, it plays no role in return proceedings.

**VII) Interviews to determine probable country and or region of origin**

*Asylum procedure*

Yes, obligatory.

*Return procedure*

Yes, part of standard practice.

**VIII) Other**

*Asylum procedure*

Liaison officers, co-operation with Austrian representation authorities and the Country of Origin Information Unit, administrative co-operation under the Dublin Regulation.

*Return procedure*

Liaison officers, co-operation with Austrian representation authorities, interviews with representatives of the country of origin's and the applicant.

***If possible, outline briefly the rationale behind the method(s) indicated above used in your (Member) State, e.g. why some method(s) been used in preference to others, is there a hierarchy or order of methods followed, any research conducted providing evidence of the method's reliability.***

In the *asylum procedure*, fingerprints and DNA analysis are considered to have high reliability, as opposed to age assessments or photographs in comparison with other databases. Interviews must be given high relevance when determining the identity of an applicant for international protection, as provided in Art. 19 Asylum Act. However, for example if doubts regarding the age of an applicant arise, and the results of an age assessment are to be invalidated, this is then only possible through an expert report of similar or higher quality, and not through statements of the applicants in an interview or in a written form.

In the *return procedure*, interviews, both with the applicant and representatives of the respective country of origin, have a central role. Age assessment is not considered to be a relevant method, as opposed to fingerprints, which are standard practice. If, in an individual case, a method is regarded as particularly promising, it will be carried out regardless of considerations on resources.

### 3. Decision-making Process

#### 3.1 Status and weight of different methods to determine identity

*On the basis of the information gathered by the methods outlined in Section 2, how then is a decision on identification made, e.g. are some methods given more weight on their reliability than others; does there need to be consistency between the results from some of the methods used?*

Concerning a hierarchy of methods in the *asylum proceedings*, see 2.2. As mentioned above, the fundamental principle of free consideration of evidence must be applied in every case. As a consequence, the competent officer must decide if the applicants statements are credible or not and apply one or more of the methods listed above.

*Is a “grading” structure or spectrum used to denote the degree of identity determination (e.g. from “undocumented,” over “sufficiently substantiated” or “has the benefit of doubt” to “fully documented and verified”)?*

In *asylum proceedings*, a procedural identity is assumed in every case. However, and this can be understood as a stronger form of determination, in some cases the identity of an applicant can be determined as part of the findings in the written decision on the application for international protection, following an individual appraisal of evidence.

#### 3.2 Decisions taken by competent authorities on basis of outcomes of identity establishment

*What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially) to inform the overall decision taken?*

In *asylum procedures*, the fundamental principle of free consideration of evidence must be applied in every case. As a consequence, the competent officer or judge must decide in the individual case, if the applicant’s statements are credible or not. If the applicant’s identity cannot be established because he/she is not willing to co-operate or tries to hide his/her identity, this may have a negative effect on his/her credibility. The credibility of the applicant will, typically, play a major role for the outcome of the asylum procedure.

***What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially) to inform the overall decision taken?***

The outcome of the *return procedure* is mainly dependent on the decision of the respective country of origin to accept a rejected applicant for international protection or not. For this purpose, Austrian aliens police authorities aim at determining the identity of the person concerned through various methods, as listed above.

***Are the results of the work to establish identity during the international protection process available for work to prepare for forced return?***

Aliens police authorities will generally use the identity determined in the asylum procedure as a first indicator for the *return proceedings*.



## 4. Conclusions

Although statistics on the establishment of identity in Austrian asylum or return proceedings do not exist, it can be concluded, based on the experience of authorities, that establishing identity is both an issue and a challenge in the Austrian asylum procedure and the return procedure.

Concerning the procedure following an application for international protection, it may be difficult to assess the authenticity and accuracy of documents provided due to missing reference material. In general, challenges depend on the respective country of origin. In many cases, determining the ethnic group of an applicant may be even more challenging and more relevant than determining nationality, and such investigations are considered to be time-consuming. Determining identity may, among others, be particularly difficult regarding citizens of the following countries of origin: Afghanistan, Pakistan, India, Bangladesh, and most African countries.

In return procedures, authorities regard the rejected asylum seekers' reluctance to provide appropriate information on their identity as one of the main challenges. If persons concerned are not willing to co-operate, establishing the identity is likely to become a very difficult task. Further difficulties vary, depending on the respective country of origin; for example, if the national language of a country of origin is also spoken in other countries.

In asylum proceedings, the Federal Asylum Office or the Asylum Court, as decision-making authorities, assume a procedural identity only for the purposes of that procedure. If the applicant's identity cannot be established – applying the principle of free consideration of evidence – because he/she is not willing to co-operate or tries to hide his/her identity, this may have a negative fact on his/her credibility. Thus, determining identity may have relevance for the outcome of asylum proceedings within the framework of the applicant's general credibility.

Although legal definitions of identity are provided for the aliens police procedure in general, these are of little relevance in the context of return; main relevance in this field lies with the country of origin's demands regarding the rejected applicant's identity, as well as with provisions in readmission agreements. The success of determining identity in the return procedure, consequently, highly depends on the respective country of origin and

its willingness to co-operate with the competent Austrian authority, namely the aliens police within the Federal Ministry of the Interior.

The competent authorities are, in both procedures, supported by the Police Records Department of the Criminal Intelligence Service Austria, which may be understood as a central competence centre in the area of determining identity.

Authorities in both procedures make use of various methods to establish an applicant's identity. In the asylum procedure, fingerprints and voluntary DNA analysis are considered to have high reliability, as opposed to age assessments or photographs in comparison with other databases. However, and although interviews must be given high relevance when determining the identity of an applicant for international protection, authorities give more weight to age assessments.

In the return procedure, interviews, both with the applicant and representatives of the respective country of origin, play a central role. Age assessment is not considered to be a relevant method in return proceedings, as opposed to finger prints, which are standard practice. Authorities have stated that, in an individual return case, methods that are regarded as particularly promising are carried out without considering (financial) resources.

## EMN SYNTHESIS REPORT – MAIN RESULTS

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. 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.

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.

Different types of organisations are responsible for the operational establishment of identity, both for applicants for international protection and for rejected applicants. These include offices in charge of deciding on asylum applications; police/law enforcement authorities; and units in charge of analysing intelligence and/or identifying forgery. (Member) States also differ with regard to the roles and responsibilities assigned to these organisations. In some, the organisation responsible for establishing identity of applicants for international protection also decides on the outcome of asylum applications, whereas in others it is distinct and independent. In a few, the situation is mixed with involvement of more than one organisation, or responsibility is shared between the office which decides on the asylum applications and other organisations. In most, the process of establishing identity is part of the procedure for deciding on applications for international protection, but responsibilities are clearly separated in nine Member States (ES, FI, IT, LT, LU, LV, PL, SI.). Only a small number of (Member)

States (CZ, FI, NO) have developed central competence centres with advisory/support functions independent of the organisation in charge of establishing identity.

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 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.

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.

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 levels in the identity determination.

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.

The concluding remarks present findings from this Study that could inform the development of a (Member) State’s capacity to deal with situations where applicants arrive without any valid identification documents. First, detailed provisions in national legislation elaborating on the methods and the step-by-step processes could provide guidance to the authorities responsible for establishing identity and therefore reduce cases where methods or steps are applied arbitrarily. Secondly, (Member) States can use different methods to establish identity flexibly or in combination, depending on the specific situation. Thirdly, in relation to the identity of rejected applicants, better cooperation with third countries is essential (e.g. via the Global Approach to Migration and Mobility), as well as making optimal use of existing technologies, including databases, by enhancing their functionality and ensuring better collaboration with other Member States to en-

sure that relevant information is made available and kept up-to-date. Finally, several measures are presented to further develop and share know-how of how to determine or attribute identity. These include: the creation of a separate module on identity under the European Asylum Curriculum - the training system of the European Asylum Support Office (EASO); development of guidelines on how to establish identity (in specific cases) when valid identity documents are missing; development of an EU-wide network of competence centres; the export of expertise on identity establishment to (Member) States carrying a high burden in the European asylum system.

# ANNEX

## Methodology

The Austrian contribution to the questionnaire was compiled by Adelnaim Reyhani and co-ordinated by Mária Temesvári, both from the Research and Migration Law Department of the IOM Country Office Vienna, which is the National Contact Point Austria within the European Migration Network. Due to a lack of literature on the topic and the technical character of the study, the main information sources were two interviews, carried out with four experts and practitioners from the Federal Ministry of the Interior (and the Federal Asylum Office). If not cited otherwise, all information provided in the Austrian contribution is based on these interviews.

The first interview, which addressed the asylum procedure, was carried out with Gerald Dreveny, Federal Ministry of the Interior (Department III/5) as well as Reinhard Seitz and Gernot Pretterebner, Federal Asylum Office. The second interview, focussing on the return procedure, was carried out with Eva Pflieger, Federal Ministry of the Interior (Department II/3).

The Synthesis Report to this Focussed Study was compiled by the Service Provider of the EMN (ICF-GHK-COWI), summarising the main findings of national contributions.

## List of Translations

<b>English term</b>	<b>German term</b>
Aliens Police Act	Fremdenpolizeigesetz
Asylum Act	Asylgesetz
Asylum Court	Asylgerichtshof
Criminal Intelligence Service Austria	Bundeskriminalamt
Federal Asylum Office	Bundesasylamt
Federal Ministry of the Interior	Bundesministerium für Inneres
Federal Police Headquarter	Sicherheitsdirektion
First Reception Centre	Erstaufnahmestelle
General Administrative Procedure Act	Allgemeines Verwaltungsverfahrensgesetz
Police Records Department	Zentraler Erkennungsdienst





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FEDERAL MINISTRY OF THE INTERIOR

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