

EMN FOCUSED STUDY 2012

Establishing Identity for International Protection: Challenges and Practices

National Contribution from Austria

Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled EMN Focussed Study. The EMN NCP AT has provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of Austria. If not cited otherwise, all information provided is based on two interviews carried out with representatives of the Federal Ministry of the Interior and the Federal Asylum Office.¹

Top-line 'Factsheet'

(National Contribution)

National Contribution

Overview of the National Contribution – drawing out key facts and figures from across all sections of the Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.

In this focussed study, challenges 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

¹ Gerald Dreveny, Federal Ministry of the Interior; Reinhard Seitz and Gernot Pretterebner, Federal Asylum Office; Eva Pflieger, Federal Ministry of the Interior.

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 Eurodac² and the national AFIS³ 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 ARGUS⁴. 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. Also in the framework of the same 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 make use of 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 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:

The rejected asylum seekers’ reluctance to provide appropriate information on their identity is considered 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

⁴ The ARGUS is the Austrian system for document information, compensatory measures, and controls of routes and borders.

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 dactyloscopic 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.

Section 1

The National Framework

(National Contribution: Maximum 6 pages, excluding statistics)

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:

a) international protection?; and

b) the forced return of a rejected applicant to their (presumed) country of origin?

If Yes, briefly outline for either or both of the two cases above, the main issues, challenges and difficulties within your (Member) State (e.g. no identification documents, false documents, multiple identities, applicants from certain third countries)

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.

If Yes, please also indicate which of the following factors listed below contribute to the issues. Please support your answers with reference to statistics (e.g. those presented under Question 1.2 below), research or any other sources of information (e.g. media debates, case-law, policy documents, practitioners' views).

- ***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.***

This factor is considered to be highly dependent on the respective country of origin, as stated above.

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

List the countries of (claimed) origin for which establishing identity is particularly difficult, (i) when considering asylum applications; (ii) for implementing return

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.) If statistics are not available, please try to indicate an order of magnitude. Where available, statistics from Eurostat should be used and presented annually covering the period between 2007 and 2011 inclusive.

	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)
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 http://www.bmi.gv.at/cms/BMI_AsyIwesen/statistik/ (accessed on 11 September 2012).
Number of applicants for whom <u>identity</u> was not documented at the time of application						
Number of applicants for whom <u>identity was wholly or partially established</u> during the asylum process thereby allowing the relevant authorities to reach a particular decision on international application (e.g. grant, refuse, defer)						
Total Number of <u>Positive Decisions</u>	5,197	3,753	3,247	2,977	3,572	Federal Ministry of the Interior, Asylum Statistics, available at http://www.bmi.gv.at/cms/BMI_AsyIwesen/statistik/ (accessed on 11 September 2012).
Total Number of Positive Decisions for applicants whose identity was not documented at the time of application						

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Total Number of Positive Decisions for applicants whose identity was considered sufficiently established by the decision-making authorities						
Total Number of <u>Negative Decisions</u>	6,646	7,968	13,531	13,290	11,553	Federal Ministry of the Interior, Asylum Statistics, available at http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/ (accessed on 11 September 2012).
Total Number of Negative Decisions for applicants whose identity was not documented at the time of application						
Total Number of Negative Decisions for applicants whose identity was not considered by sufficiently established by the decision-making authorities						
Total number of (Forced) <u>Returns undertaken</u> of all rejected applicants						
Number of (Forced) Returns of rejected applicants whose identity had to be established at the time of return						
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						

If desired, and it cannot be fitted in the Table, add further details concerning particular trends and/or notable aspects of the statistics provided.

1.3 Relevant EU and National Legislation

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

Yes.

If Yes, briefly specify which legislative documents, including their link to relevant EU acquis, regulate the process of identity determination in relation to the procedure for international protection.

Where possible, please refer to your National Contribution to the Organisation of Asylum and Migration Policies in the EU, rather than repeating the information here.⁵

Concerning the establishment of identity in the asylum proceedings, the Asylum Act provides the main regulations. Art. 19 para 1 Asylum Act provides 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?

If Yes, briefly specify which legislative documents, including their link to relevant EU acquis, regulate the process of identity determination in relation to the forced return of rejected applicants.

Where possible, please refer to your National Contribution to the Organisation of Asylum and Migration Policies in the EU, rather than repeating the information here.⁶

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 at national level

Which national authorities have the operational responsibility for establishing the

⁵ If however the level of detail is highly relevant, by shedding light on, for example, which elements of identity should be evidenced, what methods can or should be used to do so, what weight is to be given to the outcomes of the use of these methods, etc., it would be useful to insert the information directly in the Template.

⁶ Idem.

identity of applicants for international protection?

The overall responsibility for determining identity in the first instance⁷ 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.

***Does your (Member) State have a central competence centre for issues related to the determination of identity and/or verification of documents?*⁸**

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.

If Yes, what issues does the centre cover:

-issues relating to the determination of identity in respect of the procedure for granting international protection OR in respect of the procedure for executing the return of rejected applicants) OR in respect of both of these procedures

-issues relating to the verification of documents in respect of the procedure for granting international protection OR in respect of the procedure for executing the

⁷ 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).

⁸ This may be a separate body (as in Norway) or a unit within a relevant authority.

return of rejected applicants OR in respect of both of these procedures

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.

If Yes:

- ***Has the centre developed its own database / reference base for***
 - ***genuine documents?*** Yes
 - ***false documents?*** Yes
- ***Does it make use of the database iFADO (iPRADO)⁹ for checking false ID documents?*** No.
- ***Does it make use of the EDISON¹⁰ system?*** No.
- ***Does its tasks involve:***
 - ***Advisory services?*** Yes.
 - ***Development of Methods?*** No.
 - ***Training of frontline officers?*** Yes.
 - ***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.

If No, 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.

⁹ [PRADO](#) Public register of authentic identity and travel documents online

¹⁰ EDISON Travel Documents System

Section 2

Methods for Establishing Identity

(National Contribution: Maximum 8 pages)

The Synthesis Report will provide an overview of the types of documents that are required for establishing identity (preferable in Table format), of the methods that can/should be used in the absence of credible documentation (preferably in Table format), and the relative weight that is given to the outcomes of the methods used (Table or narrative, depending on the responses given) across the (Member) States.

2.1 Definition and Documents required for establishing identity

What definition (if any) of identity is used with regard to (a) applicants for international protection and (b) 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? For example:

- *Official travel documents: Passports, ID cards;*
- *Other documents: birth certificates, divorce certificates, marriage licences, qualification certificates, etc.*

Where possible, please indicate whether copies are accepted by relevant authority(ies) and which type of documents are considered by the national authorities as core or supporting documents. Also indicate the major issues faced concerning determining the veracity (or genuineness) of documents.

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? Please illustrate any differences between the documents accepted by the authorities of the (presumed) countries of origin and the documents accepted by the relevant authorities of your (Member) State.

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

The aim of this section is to investigate, for cases where aspects of the applicant's statements regarding his/her identity are not supported by documentary evidence, which methods are used by the competent authorities in the (Member) State to check the credibility of the applicant's statements. In the boxes below, a list of methods is provided. For each method listed, please indicate

- (a) whether it is used within the framework of the procedure for international protection and/or the procedure to forcibly return rejected applicants, or have exhausted or abandoned the procedure for international protection;*
- (b) whether the method is obligatory (i.e. enshrined in law), whether it is part of standard practice (i.e. used in most cases but not enshrined in law) or whether it is optional (i.e. not enshrined in law and used in some cases only). The rationale for selecting some methods as obligatory or optional may relate to national legislation, outlined in Section 1.2 (which the (Member) State can refer to in their replies);*

Do national authorities make use of:

i) Language analysis to determine probable country and/or region of origin?

- Applicants for international protection:
Yes, optional.
- Return of rejected applicants for international protection:
Yes, optional (due to limited acceptance by countries of origin).

ii) Age assessment to determine probable age¹¹

- Applicants for international protection:
Yes, optional.

¹¹ EMN NCPs are asked to update the information provided through the EMN Comparative EU Study on Unaccompanied Minors. EMN (2010), *Policies on Reception, Return and Integration arrangements for, and numbers of, Unaccompanied Minors*, European Migration Network, May 2010. The EMN Synthesis Report, as well as the 22 National Reports upon which the synthesis is based, are available from <http://emn.sarenet.es/Downloads/prepareShowFiles.do;?directoryID=115>.

➤ Return of rejected applicants for international protection:

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

➤ Applicants for international protection:

Yes, part of standard practice.

➤ Return of rejected applicants for international protection:

Yes, part of standard practice.

European databases

➤ Applicants for international protection:

Yes, part of standard practice.

➤ Return of rejected applicants for international protection:

Yes, part of standard practice.

iv) Photograph for comparison with National and European databases

National Database

➤ Applicants for international protection:

No.

➤ Return of rejected applicants for international protection:

No.

European databases

➤ Applicants for international protection:

No.

➤ Return of rejected applicants for international protection:

No.

v) Iris scans for comparison with National and European databases

National Database

➤ Applicants for international protection:

No.

➤ Return of rejected applicants for international protection:

No.

European databases

- Applicants for international protection:
No.
- Return of rejected applicants for international protection:
No.

vi) DNA analysis

- Applicants for international protection:
Yes, optional, if requested by and the applicant.
- Return of rejected applicants for international protection:

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 (or other elements of identity, such as faith and ethnicity)**¹²

- Applicants for international protection:
Yes, obligatory.
- Return of rejected applicants for international protection:
Yes, part of standard practice.

viii) Other (please describe, e.g. type of co-operation with or contacts in third countries), related to

- Applicants for international protection:
Liaison officers, co-operation with Austrian representation authorities and the Country of Origin Information Unit, administrative co-operation under the Dublin Regulation.
- Return of rejected applicants for international protection:
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.

¹² This would depend on the elements included in your national definition of "identity" used within the procedures covered by this Study. See Section 2.1.

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 finger prints, 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.

Section 3

Decision-making Process

(National Contribution: Maximum 3 pages)

The Synthesis Report will describe how the different methods are combined to establish an identity and how the outcomes of attempts to establish identity are then used in making a decision on international protection and forced return. To the extent possible, the Synthesis Report will draw out commonalities and differences across (Member) States.

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? Briefly outline whether the results from the different methods will have different status and/or will be given different weights, and whether this is laid down in legislation, policy or practice guidelines.¹³

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”)? If Yes, outline what this is.

As mentioned above, 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.

Are any future measures considered with regard to setting up or further elaborating a “grading” structure? If Yes, outline what these are.

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

3.2.1 For the consideration of the application for international protection

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? For example, does the outcome of identity establishment influence a

¹³ Member States may differ significantly in how they deal with applicants for international protection whose statements regarding their identity are not supported by valid documentary evidence, not only in the methods they can or should use, but also in the weight they give to the outcomes of some methods. The aim, therefore, is to highlight these differences, should they exist.

recommendation to “grant international protection,” “refuse international protection,” “defer decision”?

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.

How important is establishing identity relative to other factors used in making an overall decision? For example, if identity cannot be established, does this de facto lead to a rejected decision? Are other factors such as gender, suspected country of origin, given more weighting than identity determination in some cases?

See above.

3.2.2 For the return to country of origin

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? For example, does the outcome of identity establishment influence a recommendation to “defer return”?

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?

Yes.

If ‘yes’: please describe the type of supplementary steps that may be needed with respect to identity documentation before the authorities in the receiving country are prepared to accept the return.

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

If ‘no’: please describe the type of steps that may be needed with respect to identity documentation before the authorities in the receiving country are prepared to accept the return.

Section 4

Conclusions

(National Contribution: Maximum 2 pages)

The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level.

With regard to the aims of this Focussed Study, what conclusions would you draw from your findings? What is the relevance of your findings to (national and/or EU level) policymakers?

Although statistics on the establishment of identity in Austrian asylum or return proceedings do not exist, it can be concluded 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, the rejected asylum seeker's reluctance to provide appropriate information on their identity is regarded 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, independent of the credibility of the applicant or the quality of identity documents provided. 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 may be provided for the aliens' police procedure in general, these are of little or no relevance for the purpose of this study, as main relevance in the field of return lies with the country of origin's demands regarding the rejected applicant's identity and 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. 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. If, in an individual return case, a method is regarded as particularly promising, it will be carried out regardless of considerations on resources.

ANNEX I

Methodology

Due to a lack of literature on the topic and the technical and focussed character of the study, the main information sources were two interviews, carried out with four experts of the Federal Ministry of the Interior and the Federal Asylum Office.

The first interview, which focused on 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 study was drafted by Adel-Naim Reyhani (Legal Assistant) and supervised by Mária Temesvári (Legal Advisor), both from the IOM Country Office Vienna.

ANNEX II

LIST OF TRANSLATIONS AND ABBEVIATIONS

English term	English Abbreviation	German term	German Abbreviation
Aliens' Police Act	-	Fremdenpolizeigesetz	FPG
Asylum Act	-	Asylgesetz	AsylG
Asylum Court	-	Asylgerichtshof	AsylGH
Criminal Intelligence Service Austria	-	Bundeskriminalamt	BK
Federal Asylum Office	-	Bundesasylamt	BAA
Federal Ministry of the Interior	FMI	Bundesministerium für Inneres	BMI
Federal Police Headquarter	-	Sicherheitsdirektion	SID
First Reception Centre	-	Erstaufnahmestelle	EAST
General Administrative Procedure Act	-	Allgemeines Verwaltungsverfahrensgesetz	AVG
Police Records Department	-	Zentraler Erkennungsdienst	-