



## **NO OPEN Summary**

### **EMN Ad-Hoc Query on Handing over of personal documents in the framework of the asylum and return procedure**

Requested by BELGIUM on 10th March 2016

#### **Return**

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Norway (24 in total)

#### *Disclaimer:*

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

## **Background information:**

According to Council Directive 2013/32/EU, article 13 b) member states may require that documents relevant to the examination of the asylum application, such as passports, are handed over to the authorities during the time necessary for the processing of the application. Following this disposition, the documents should in principle be handed back to the applicant at the end of the asylum process since their withholding will no longer be required.

However, Belgium is currently examining the possibility to keep the identity and travel documents confiscated at the end of the asylum procedure so that, in case a return decision has been imposed immediately after a negative response to the asylum claim, the documents could be used to facilitate the return of the former applicant. In that case, the risk of documents being intentionally withheld in order to avoid a return procedure is reduced.

Because Council Directive 2008/115/EC stipulates that the third country national should be given the possibility of voluntarily returning to his country of origin (for which he or she will need his documents) and only foresees in the possibility to confiscate documents in case there is a risk of absconding (article 7, 3<sup>o</sup>), Belgium would like to know if the practice of keeping documents systematically confiscated even after the end of the asylum procedure already exists in other Member States and, if so, on what legal grounds?

For your information, Estonia launched in 2012 already a similar AHQ (see attachment)

## **Questions**

1. Are documents actually being confiscated at the beginning of the asylum procedure or is it merely a handing over in good trust? What are the consequences if the applicant does not want to hand over his personal documents?
2. Which kind of documents are being confiscated/handed over (every kind of identity document or only the international travel documents, such as passports)?
3. Are the documents, confiscated during the asylum procedure, systematically handed back to the former applicant at the end of the asylum procedure or are there situations where these documents are systematically being kept even after the end of the asylum procedure in order to facilitate a return?
4. If so, what (international) legal base is used to motivate the prolongation of the confiscation?
5. After the end of the asylum procedure, the rejected applicant should in principle be given the opportunity of voluntary return, for which he or she will need his identity and travel documents. Are documents still being confiscated during this period of voluntary return? If so, what is the procedure in your country regarding the return of these documents? Will the former applicant have to supply a proof of return intention (f.i. purchase of flight ticket) in order to get his documents back?

## Summary: 24 MS including NO responded.

1. Only PT **does not** retain ID-documents during the asylum procedure.

2. Countries that **retain** ID-documents during the asylum procedure

- 7 of the responding 24 MS hand back the documents to the applicant **once the identity is proven**, including BE.
- 9 countries including NO, NL, LUX & UK **systematically keep the ID-documents (confiscated) until after the end of the asylum procedure in order to facilitate a return** or if there is a positive decision, the documents are returned.
- 4 countries including FR, SE, FI and DE foresee the possibility of retaining the ID-documents until after the end of the asylum procedure in order to facilitate or enforce a return. FR returns the documents once there has been a negative decision.

### Other information obtained

#### Which documents are being handed over or confiscated?

All documents that can prove an applicant's identity (passports, ID-cards, birth certificates, driving licenses,...) are asked to be handed over since establishment of identity is fundamental in the asylum process.

The CZ republic and ES only confiscate travel documents while most other member states retain every kind of ID than can help to facilitate the return.

Little information is being given about the international legal basis motivating the confiscation, but NL and SE mention that their regulation and practice is not contradictory to the EU Directives.

In cases of voluntary return (question 5), countries that confiscate documents only hand these back just before or at the moment of departure, although on the basis of individual assessments, documents can be handed back earlier (for example, when the risk of absconding is low).