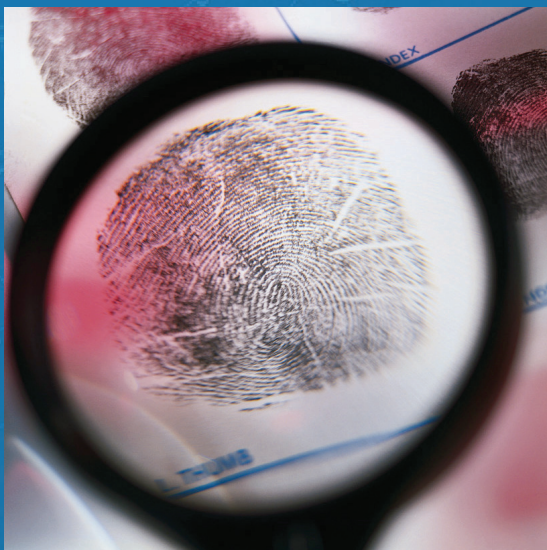


# Establishing Foreigners` Identity for International Protection. Challenges and Practices

## National contribution from Poland

*Report was prepared by the National Contact  
Point to the European Migration Network  
in Poland*



August 2012



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This National Report was prepared by the Ministry of Interior acting as the coordinator of the National Contact Point to the European Migration Network in Poland (PL NCP EMN). This Report follows the common specifications and methodology adopted by the European Migration Network (EMN).

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The European Migration Network was established by Council Decision 2008/381/EC of 14 May 2008 in order to provide up-to-date objective, reliable and comparable information on migration and asylum to Community institutions, Member States authorities and to general public, with a view to supporting policy-making in the EU. The EMN is co-ordinated and financially supported by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway and Croatia.

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## Preface

This National Report constitutes a compilation of replies to the questions specified in the EMN Questionnaire. Replies have been provided - on the request of the Migration Policy Department (Ministry of Interior) - by the staff of respective institutions, the Border Guard Headquarters and the Office for Foreigners.



# Establishing Foreigners` Identity for International Protection. Challenges and Practices

National contribution from Poland

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# Summary of national information (PL NCP EMN)

The purpose of this focussed expert study<sup>1</sup> of the European Migration Network<sup>2</sup> is to summarise significant challenges faced by national bodies when it comes to **identification of the people applying for international protection** (i.e. the refugee status and subsidiary protection) in the case of absence of relevant documentation and **returns of the people whose applications were rejected**.

This study concerns identification of foreigners as a process aimed at identifying a foreigner for the needs of proceedings for granting international protection in Poland and, in the case of a negative decision, obtaining a travel document for the foreigner to organise his/her return to the country of origin. Identification of a foreigner includes determining and/or confirming the applicant's personal data (first name and surname), the country of origin and citizenship. Determining the foreigner's citizenship and/or country of origin is important to evaluate the situation in the applicant's country of origin and determine the reasons that substantiate granting international protection. In the case of issuing a negative decision to a foreigner under proceedings for granting international protection, which entails an order to leave Poland, determining the applicant's country of origin will define the actions to be taken under the expulsion procedure.<sup>3</sup>

The authority responsible for identification of foreigners applying for international protection in Poland is primarily the body to which relevant applications are submitted – the Border Guard. The Border Guard identifies the applicant and the person on behalf of whom the applicant acts and obtain information on: the country of origin; visas or residence permits issued by authorities from third countries to the applicant and the person on behalf of whom the applicant acts; routes taken to the border and the place of crossing the border; applying by the applicant or his/her family member for the refugee status in another country; first name, surname, date and place of birth, address and family relationship with the applicant's family member staying in another Member State. This information (gathered during an interview of a Border

- 1 In 2011, the European Migration Network decided to prepare the so-called focussed expert reports on the basis of special questionnaires. First reports of this kind were drafted in 2012 and this report devoted to foreigner's identification under the refugee procedure is the second one. The first focussed expert report concerned the abuse of the right to family reunification in Poland in the context of marriages of convenience and false fatherhood declarations.
- 2 The report has been prepared by the National Contact Point to the European Migration Network (NCP EMN) at the Ministry of Interior, which also plays the role of the national coordinator. Presently, the Polish NCP consists of representatives of the Ministry of Interior (National Coordinator), the Ministry of Labour and Social Policy, the Office for Foreigners, the Border Guard, and the Central Statistical Office. The major input into this focussed expert report was contributed by the Border Guard Headquarters and the Office for Foreigners.
- 3 It concerns the execution of the expulsion decision, application of readmission agreements Poland is bound by, the so-called Dublin proceedings and the *non refoulement* principle.



## Summary of national information (PL NCP EMN)

Guard officer with the foreigner) is entered into and verified against EURODAC and national databases once the foreigner is fingerprinted and his/her photo is taken. This information is the basis for filling in an application for the refugee status. In addition, the body accepting the application registers it in the POBYT system (which contains information on administrative procedures on the foreigner, in particular for granting the refugee status or another form of protection, expulsion, legalisation of stay, documents issued by Polish authorities in relation to proceedings pending and documents used by the foreigner). When accepting the application for the refugee status, the foreigner is fingerprinted and the prints are entered into EURODAC. The officer accepting the application checks the fingerprints in EURODAC to see if any other refugee proceedings are pending in Member States in order to make the right decision on application of the Dublin II procedure. The data are further used and verified during the refugee procedure by the Office for Foreigners and if a final decision ordering the foreigner to leave Poland is issued – also by the Border Guard.

The basis to perform verification aimed at identifying a foreigner consists of the tools set out in the readmission agreements signed by Poland.<sup>4</sup> Where it is impossible to perform verification on the basis of the agreements, solely the provisions of the following acts apply:

- Act of 13 June 2003 on foreigners (Journal of Laws of 2011, No 264, item 1573, consolidated text, as amended);
- Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2012, item 680, consolidated text);
- and the following Ordinances:
  - Ordinance of the Minister of the Interior and Administration of 12 August 2003 on the procedures applied by authorities in the proceedings related to the expulsion of a foreigner and on the manner of noting in the travel document the issuance of a return decision compelling a foreigner to leave the territory of Poland or an expulsion decision (Journal of Laws of 22 August 2003, No 146, item 1427, as amended);

<sup>4</sup> They include *inter alia* a survey of the foreigner's personal data (the so-called readmission survey), verification of data against the documents to confirm the identity of a given person provided by the foreigner, and an expert interview a.o. on information about the country of origin carried out by Border Guard officers, experts or representatives of a diplomatic post of the foreigner's country of origin (solely under the expulsion and readmission procedure).

## Summary of national information (PL NCP EMN)

- Ordinance of the Council of Ministers of 23 October 2003 on the manner and procedures of exercising certain powers by Border Guard officers (Journal of Laws of 12 November 2009, No 190, item 1476);
- Ordinance of the Minister of the Interior and Administration of 21 July 2010 on gathering fingerprints, photographs and personal data, their keeping, use and provision to other bodies by the Border Guard and specimen of documents used (Journal of Laws of 2010, No 134, item 902).

The basic forms of identifying foreigners are:

- checking their data in national and EU systems (including in particular: POBYT, EURODAC, SIS, VIS, Registratura, AFIS),
- cooperation with third country diplomatic posts (located in or outside the Republic of Poland. The above cooperation may also cover exchanging letters and/or consular intelligence, and preparing dactyloscopic documentation – if required by the third country diplomatic post).<sup>5</sup>

Due to vast diversification of the procedures in force in third countries and seeking more effective ways to identify foreigners, the Border Guard and the Office for Foreigners attempt at working out alternative methods of identifying foreigners. They include *inter alia* the following:

- phone interviews with experts, linguistic analyses and the so-called knowledge tests;
- close cooperation in the area of identification by strengthening cooperation with third countries;
- identifying foreigners by organising interviews with experts from the foreigner's country of origin from migration authorities, Border Guard or diplomatic missions.

In order to identify people applying for the refugee status beyond doubt, it is also necessary for the Office for Foreigners to perform detailed explanatory proceedings that take the form of interrogation. Information gathered in this way forms an important element of evidence that serves a.o. identifying the foreigner.

It is also important to maintain and deepen cooperation with representatives of diplomatic posts of third countries by a.o. regular visits of officers whose task is to

<sup>5</sup> It should be noted that when Border Guard officers and personnel of the Office for Foreigners contact third country diplomatic posts, information on the nature of proceedings which the foreigner is undergoing is not revealed at any stage (nor after completion of the proceedings).

## Summary of national information (PL NCP EMN)

identify foreigners in diplomatic posts or joint meetings with representatives of diplomatic posts organised by the Border Guard to exchange experience connected with identifying foreigners. It is equally important to establish direct working contacts with people who practice foreigner's identification in the foreigner's country of origin. Such contacts are conducive to improving mutual trust and facilitate exchanging experience and the best practices.

Under the refugee procedure, identification takes place on the basis of the documents produced by the foreigner, and in absence of such documents on the basis of the foreigner's oral statement. In addition, the bodies carrying out the proceedings inform the foreigner on the obligation to give true information and on sanctions imposed by Polish law for doing otherwise. It is possible to deprive a foreigner of the refugee status if, after the refugee status is granted, the competent authority learns that the foreigner: withheld information or documents, or presented false information or documents of significance to granting the refugee status. Summing up, the activities related to identification of the person applying for the refugee status are taken at the initial stage, i.e. at the time of accepting the application for the refugee status and at the stage of proceedings aimed at verifying the reliability of information provided by the foreigner, especially the arguments used by the foreigner to prove fear of persecution in his/her country of origin. In 2011, the most numerous group of foreigners filing applications were citizens of Russia and Georgia (ca. 88%). The majority of foreigners (nearly 90%) show identity documents to Border Guard officers when crossing the border. The situation is different in the case of citizens of African and Asian states, and Middle East (in 2011, they constituted 12% of applicants) as they are identified on the basis of the foreigner's oral statement during the refugee procedure. It should be noted that in the case of this category of foreigners, when there are no grounds to grant the refugee status or any other form of protection in the Republic of Poland, it is much more difficult to obtain an identity document (even 100% in the case of Bangladeshis or Nepalese). The situation is due to lack of cooperation between a diplomatic post of the country whose citizenship was declared by the foreigner or giving false or insufficient information by the foreigner, which prevents data verification. It is important to note that the countries from the above regions are not always interested in having their citizens returned to the country of origin, thus indirectly supporting illegal migration.

# 1 | The National Framework

## 1.1. The challenges and the scope of the phenomenon

1. Is the issue of establishing identity in the absence of credible documentation considered as a problem within the framework of the procedure on international protection and the forced return of a rejected applicant to their (presumed) country of origin?

(Yes) Pursuant to Article 29(1)(1) and 29(1)(3)(a)-(e) of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2012, item 680, consolidated text), the **body accepting the application identifies the applicant and the persons on behalf of whom the applicant acts** and obtains information on: the country of origin; visas or residence permits issued to the applicant and the person on behalf of whom the applicant acts by bodies from third countries; routes taken to the border and the place of crossing the border; applying by the applicant or his/her family member for the refugee status in another country; first name, surname, date and place of birth, address and family relationship with the applicant's family member staying in another Member State.

According to the above article of the Act on granting protection to foreigners within the territory of the Republic of Poland, the Border Guard is primarily responsible for identifying foreigners applying for the refugee status in Poland. The Border Guard have adequate means and tools to identify foreigners that are listed in:

- readmission agreements signed by Poland;
- Ordinance of the Minister of the Interior and Administration of 12 August 2003 on the procedures applied by authorities in the proceedings related to the expulsion of a foreigner and on the manner of noting in the travel document the issuance of a return decision compelling a foreigner to leave the territory of Poland or an expulsion decision (Journal of Laws of 22 August 2003, No 146, item 1427, as amended);<sup>6</sup>
- Ordinance of the Council of Ministers of 23 October 2003 on the manner and procedures of exercising certain powers by Border Guard officers (Journal of Laws of 12 November 2009, No 190, item 1476)<sup>7</sup> – Articles 4-11;

<sup>6</sup> Legal basis: Article 100 of the Act of 13 June 2003 on foreigners (Dz. U. [Journal of Laws] of 2011, No 264, item 1573, consolidated text, as amended).

<sup>7</sup> Legal basis: Article 11(2) of the Act of 12 October 1990 on the Border Guard (Dz. U. [Journal of Laws] of 2005, No 234, item 1997, as amended).

- Ordinance of the Minister of the Interior and Administration of 21 July 2010 on gathering fingerprints, photographs and personal data, their keeping, use and provision to other bodies by the Border Guard and specimen documents used (Journal of Laws of 2010, No 134, item 902)<sup>8</sup> – particularly Articles 6, 7 and 11.

It should be noted that when it is impossible to perform the actions leading to foreigner's identification, i.e. the process aimed at confirming citizenship and obtaining travel documents to enable the foreigner to return to the country of origin on the basis of a readmission agreement, solely the provisions of the national law apply.

The actions undertaken by the Head of the Office for Foreigners, the body granting the refugee status in Poland or other forms of protection, are only supplementary.

Identification of people applying for the refugee status (determining their personal data and citizenship) is important from the point of view of discovering individual reasons for granting the refugee status, it is also an important element in the process of discovering facts as identification with the above data has specific legal effects for applicants. Citizenship of the people applying for the refugee status is important when **determining their country of origin** and assess the grounds for fear of persecution, the threats related to returning there and reasons for granting other forms of protection. Pursuant to Article 2(9) of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland, a foreigner's country of origin is his/her country of citizenship; in case when it is impossible to define citizenship or when a foreigner does not possess the citizenship of any country – the country, in which he/she has resided permanently. Article 1A(2) of the Convention relating to the Status of Refugees done in Geneva on 28 July 1951 (Journal of Laws of 1991, No 119, item 515 and 516) is complementary with the above provision. It stipulates that in the case of a person who has **more than one nationality**, the term “the country of his nationality” shall mean each of the countries of which he is a national. The citizenship of a person applying for the refugee status is the first factor which conditions determining the country of origin and at the same time the first stage of the process of determining facts. If citizenship is unknown, the place of residence plays an important role. Identification of a person applying for the refugee status (personal data) is particularly important when the person refers to individual reasons and presents evidence consisting in documents he/she was issued by the authorities of the country of origin, publications or other documents that are evidence in refugee proceedings.

<sup>8</sup> Legal basis: Article 10a(8) of the Act of 12 October 1990 on the Border Guard (Dz. U. [Journal of Laws] of 2005, No 234, item 1997, as amended).

## 1 | The National Framework

To identify a person applying for the refugee status in Poland, first of all his/her data are checked in EURODAC<sup>9</sup> and in national databases (e.g. AFIS, POBYT). Then, identity documents issued by the authorities of the country of origin are analysed. If the documents are not challenged by the body accepting the application for the refugee status (Border Guard officers), the foreigner's identity is confirmed on that basis. Secondly, copies of the documents attached to the application to confirm the applicant's identity are examined. As it could be difficult for foreigners to prove important circumstances of their legal situation, especially to present original identity documents if these copies would not raise any doubts and not contradict other findings, the foreigner's identity is determined on the basis of document copies.<sup>10</sup>

Information provided by the Border Guard shows that the major problems faced by officers when trying to identify foreigners are:

- unwillingness to cooperate on the part of third country diplomatic posts (particularly of African and Asian states) in the process of identifying foreigners and/or obtaining travel documents by foreigners;
- absence of travel documents which prevents the enforcement of the final decision on a foreigner's expulsion from the Republic of Poland.

## 2. | Is the volume of cases where no credible documentation is available to substantiate an applicant's identity considered to be large and/or growing?

<sup>9</sup> EURODAC (Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention) is a system for comparing the fingerprints of asylum seekers and certain categories of illegal immigrants. The system facilitates the application of Dublin II Regulation which allows determining the EU Member State competent for examining the application for international protection. Apart from fingerprints, the data sent by Member States include information such as the Member State of origin, sex, place and date of submission the application for international protection or place and date of detention, reference number, date of fingerprinting, date of sending the data to the central unit.

<sup>10</sup> Pursuant to Article 11(2) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005), applicants for asylum have to hand over to the authorities of the state where he/she files the application (in this case Border Guard officers and personnel of the Office for Foreigners) documents in their possession relevant to the examination of the application, such as their passports, and the competent authorities may take a photograph of the applicant, search the applicant and the items he/she carries with him/her and record the applicant's oral statements, provided he/she has previously been informed thereof.

If the foreigner's identity had not been established on the basis of an identity document, but only on the basis of his/her declarations, but once the decision on granting the refugee status is issued the foreigner nevertheless presents an identity document, it becomes the basis for reopening the procedure due to new evidence.

(Yes) As the Border Guard and the Office for Foreigners do not keep separate statistics on cases where lack of reliable identity documents of a foreigner applying for the refugee status was determined during refugee proceedings, there are no precise data on the matter. In line with the above information that 90% of the citizens of Russia and Georgia, who are the most numerous group of foreigners applying for the refugee status in Poland (90% of all applicants in 2010 and 88% in 2011), present their identity documents during the refugee procedure, and foreigners from African and Asian countries usually have difficulties with obtaining such documents, the number of cases where it is impossible to identify foreigners is not high. Yet, it is a problem when the latter group is concerned (ca. 10% of international protection applicants). It is difficult to describe any specific trend in the number of cases involving problems with foreigner identification as the data depend on the geographic factor to a large extent as well as on the internal situation of the country/region of origin of the people applying for the refugee status.

When there were no reliable documents to confirm the identity of foreigners applying for the refugee status and to arrange for their return when their applications were rejected, foreigners were identified through:

- requests to third country diplomatic posts to confirm the identity of the foreigners

In 2009, a total of **312** requests for confirming identity and issuing travel documents were made. **97** travel documents were obtained.

In 2010, a total of **369** requests for confirming identity and issuing travel documents were made. Consequently, the identity of **194** foreigners was confirmed and **136** travel documents were obtained.

In 2011, a total of **316** requests for confirming identity and issuing travel documents were made. Consequently, the identity of **157** foreigners was confirmed and **91** travel documents were obtained.

Annual reports on the number of requests for confirming the identity of foreigners<sup>11</sup> to diplomatic posts of Division II on Identification and Returns of the Department for Foreigners of the Border Guard Headquarters shows that the number of such cases has been increasing slightly. Most frequently, the requests concerned the citizens of **Armenia, Afghanistan, Vietnam and the Democratic Republic of the Congo**.

<sup>11</sup> The request can be made at the onset of the refugee procedure and when performing the final decision that obliges a foreigner to leave Poland. The foreigner's country of origin is never notified on the nature of proceedings carried out towards the person inquired about.

## 1 | The National Framework

It should be noted that the above statistics do not cover cooperation under readmission agreements (as the majority of readmission applications pertain to foreigners without travel documents or with invalid documents, see below).

- readmission of foreigners from the Republic of Poland that also includes the identification component (in the case of issuing a final decision that obliges the foreigner to leave Poland)

In 2009, the Border Guard sent **249** applications for transferring foreigners under the readmission procedure from the Republic of Poland to another state (party to a readmission agreement). **193** admission consents were received.

In 2010, the Border Guard sent **260** applications for transferring foreigners under the readmission procedure from the Republic of Poland to another state (party to a readmission agreement). **185** admission consents were received.

In 2011, the Border Guard sent **404** applications for transferring foreigners under the readmission procedure from the Republic of Poland to another state (party to a readmission agreement). **273** admission consents were received.

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

(Yes and No; Providing a specific answer is impossible because each identification procedure is different) When there are no reliable documents to confirm the identity of foreigners applying for the refugee status and to arrange for their return when their applications were rejected, information on the applicant's country of origin, visas or residence permits are examined. To acquire the information, the Office for Foreigners cooperates closely with the Consular System Division of the Consular Department of the Ministry of Foreign Affairs that provides access to all visa applications submitted to Polish consular offices since 2000 and allows checking applicants. To verify the authenticity of documents used as evidence, including identity documents, the staff of the Refugee Procedures Division of the Department for Refugee Procedures in the Office for Foreigners ask the Division of Information on Countries of Origin of the Office for Foreigners<sup>12</sup> for verification or directly the diplomatic posts in the

<sup>12</sup> When making decisions on granting international protection within the territory of Poland, the employees of the Office for Foreigners must take into account all available information which may contribute to objective evaluation of a given application. In practice, in addition to statements by applicants and the documents they submit, such information includes mainly the Country of Origin Information (COI). The information on applicants' countries of origin is supposed to contribute to:

- establishing the actual, and not the declared, country of origin of an applicant and his/her nationality;



applicant's country of origin or those subject to territorial competence of the country (yet no information on the nature of the procedure is provided).

In order to identify people applying for the refugee status beyond doubt, it is also necessary to perform detailed explanatory proceedings that take the form of interrogation. It is frequently the case that information gathered in this way forms an important element of evidence that serves a.o. identifying the foreigner.

The Border Guard claims there are groups of foreigners whose identification does not require the involvement of many staff or financial resources, such as Georgian nationals, for example. Identification of foreigners from Africa or Asia usually requires inviting experts in identification from the foreigner's country of origin to Poland or involving the aid of diplomatic post personnel who may interview the foreigner in Poland and possibly confirm his/her identity.

To identify a foreigner for the needs of performing the decision on expulsion from the Republic of Poland, additional documents obtained by the Border Guard can be used, such as those relating to the foreigner's travel (boarding passes, passenger lists, electronic tickets, etc.).

#### 4. | The measures used to establish identity are not always successful.

(Yes) In spite of taking a wide array of actions, including those described above, not all identification procedures end with identifying a foreigner. Contrary to efforts and

- determining/evaluating the current situation in the applicant's country of origin, including also, if important for full clarification of the application, the situation in a specific region of this country;
- verifying the reliability of individual parts of statements of the applicant, his/her family members, and the documents provided by the applicant (e.g. party membership cards, articles from local press, etc.).

The organisational unit of the Office for Foreigners responsible for obtaining, processing and storing country of origin information is the Country of Origin Information Unit. While preparing answers to specific questions of employees conducting proceedings in cases related to granting international protection in Poland, the Country of Origin Information Unit uses mainly publicly available information, obtaining it from:

- various Internet sources (as they provide access to numerous government, non-government and international reports, press articles, maps, etc.);
- books, specialist magazines and newspapers.

In some cases, the Country of Origin Information Unit requests assistance from other domestic (e.g. Ministry of Foreign Affairs or the Centre for Eastern Studies (OSW)) and foreign institutions (e.g. partner units in immigration/asylum offices of other EU Member States) or international institutions (e.g. UNHCR), as well as from external experts.

Recently, the Division of Country of Origin Information began to collect information also during the so-called study missions in the countries of origin (e.g. mission to Armenia).

## 1 | The National Framework

involvement, also of intermediary institutions, the results are not always satisfactory and may not be considered the basis for definitive identification of a foreigner. The number of cases where a foreigner declares his/her identity is still significant as compared to the number of situations where a foreigner actually produces an identification document. It is also frequently the case that the foreigners are not reliable and the documents they produce are not coherent.

The answer to this question also largely depends on the evidence gathered, on the approach of the third country to the possibility of receiving their citizens who, by money transfers, support their families in the country of origin. According to many experts, it strengthens the national economies of foreigners' countries of origin.

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

(Yes) Due to the above, making decisions concerning applicants for international protection is difficult. Inability to identify a foreigner applying for international protection gives rise to the risk that his/her application may contain data (also true data) of other persons, even foreigners from other countries or regions in countries, different than the data declared by the foreigner filing the application for international protection.

In practice, if it is impossible to identify a foreigner, particularly to determine his/her country of origin, the issue is left to be resolved by the Border Guard – the body responsible for effective execution of the expulsion decision if international protection in Poland is not granted.<sup>13</sup> The sentence of the decision states that citizenship is unknown and the grounds for the decision state the possible options.

### 6. | 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.

(Yes) As concerns the competence of the Office for Foreigners and the categories of people applying for the refugee status in Poland, the countries declared by foreigners as their countries of origin in the case of which **it is particularly difficult to identify their citizens** are: Afghanistan, Pakistan, Bangladesh, Somalia, Democratic Republic of the Congo, Cameroon, and Sudan.

<sup>13</sup> Information provided by the Border Guard shows that in practice when it is impossible to identify a foreigner, he/she must regularly appear at the relevant Border Guard unit for data verification. During such meetings, Border Guard officers make another attempt at verifying doubtful data, including e.g. identification data.

Foreigners' countries of origin **in the case of which identifying a foreigner and his/her return is particularly difficult** are: Somalia, Democratic Republic of the Congo, Guinea, China, Pakistan, India, Iraq, Nepal and Bangladesh.

### 7. | Other specific factors.

Due to vast diversification of the procedures applied in third countries and seeking more effective ways to identify foreigners, the Border Guard attempt at working out alternative methods of identifying foreigners. They include *inter alia* the following:

- telephone interviews (Gambia, Palestine, Somalia, Kenya);
- close cooperation in the area of identification by strengthening cooperation with third countries (Sierra Leone, Nigeria, Lebanon, Cameroon);
- identification of foreigners by organising interviews with experts:
  - from the foreigner's country of origin who work for migration authorities or the Border Guard (Vietnam, Sierra Leone, Rwanda, Haiti, Guinea);
  - from diplomatic missions (India, Pakistan, Afghanistan, Iraq, Nigeria, Armenia);
- strengthening cooperation with other countries (European Union Member States, FRONTEX) in the area of foreigner identification.

### 1.2. Statistics on the scale of the phenomenon

In line with the information provided earlier on, neither the Border Guard nor the Office for Foreigners (the two bodies competent for identification of foreigners who apply for international protection and to perform returns of applicants whose applications are rejected) keep separate statistics on the scale of the phenomenon.

Yet, considering the large number of people applying for international protection (in 2010: 6,534 people, in 2011: 6,887 people; in the first half of 2012 applications were lodged by 3,848 foreigners), the major countries of origin of applicants (usually Russian foreigners – including those declaring Chechen nationality, also foreigners from Georgia, Armenia, and Kazakhstan) and the list of third countries requested for identification of foreigners by the Border Guard (in 2011 requests submitted to diplomatic posts of Armenia constituted 14% of the total number of requests, Afghanistan – 11%, Democratic Republic of the Congo – 7% and Vietnam – 6%) or cooperation in executing readmission agreements (Vietnam, Russia, Georgia, Ukraine,

and the Cotonou Agreement), the conclusion is that the phenomenon is a potential problem for border services of EU Member States, including Poland. Although only estimates, data show it is frequently the case that border services find it impossible or difficult to identify foreigners applying for international protection or returning to the country of origin when their applications are rejected. It is usually the case with African states' nationals and countries such as Vietnam, Afghanistan, Bangladesh, Nepal and Iraq where nearly 100% of applicants have no identity documents. The problem is less pressing in the case of third country nationals who form the most numerous group of applicants for protection in Poland, i.e. citizens of Russia and Georgia. Close to 90% of foreigners who come from those countries produce identification documents to Border Guard officers when submitting the application for the refugee status.

**Table 1.** Statistical data regarding the issue of establishing foreigner's identity for international protection (prepared on the basis of the data from the Border Guard and the Office for Foreigners)

	2007	2008	2009	2010	2011	<b>Additional information (e.g. source, objections, reasons behind trends, five nationalities whose representatives file the majority of applications and the number of applicants)</b>
Total Number of applicants for international protection	10048	8517	10587	6534	6887	In the past several years, the trend on the origin of foreigners who lodge applications for international protection in Poland has continued. The most numerous group of applicants for international protection in Poland were Russian citizens (in 2011: 4,305 people), of which 3,733 people declared to be Chechen nationality, followed by Georgians (in 2011: 1,735 people). There are also citizens of Armenia (216 people in 2011), Belarus and Ukraine (81 and 67 applicants in 2011, respectively).
Number of applicants for whom identity was not documented at the time of application	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data	The Border Guard and the Office for Foreigners do not keep separate statistics for the scale of the phenomenon. If an application for international protection in Poland is rejected and an expulsion procedure is launched in relation to a foreigner, the Border Guard requests diplomatic posts of third countries to confirm his/her identity. In 2009, 312 such requests were made, in 2010 – 369, and in 2011 – 316. In 2009, data of 97 people were confirmed, in 2010 of 136 people and in 2011 of 157 people. The data do not reflect the entire situation as they only present the scale of official requests for identity confirmation and do not take into account e.g. informal cooperation between liaison officers, phone calls, expert visits, etc.
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)	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data	The Border Guard and the Office for Foreigners do not keep separate statistics for the scale of the phenomenon.
<b>Total Number of Positive Decisions</b>	<b>116</b>	<b>186</b>	<b>131</b>	<b>82</b>	<b>153</b>	
Total Number of Positive Decisions for applicants whose identity was not documented at the time of application	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data

		<b>Additional information (e.g. source, objections, reasons behind trends, five nationalities whose representatives file the majority of applications and the number of applicants)</b>				
		<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Total Number of Positive Decisions for applicants whose identity was considered sufficiently established by the decision-making authorities	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data
Total Number of Negative Decisions	<b>1732</b>	<b>1454</b>	<b>4043</b>	<b>3905</b>	<b>2739</b>	In the last several years, the largest number of negative decisions, decisions to discontinue proceedings or decisions not to examine a case was issued to citizens of Russia (particularly those declaring Chechen nationality) and Georgia. Citizens of Russia and Georgia also filed the majority of applications for international protection (in 2010: 1,082 Georgian citizens and 4,795 Russian citizens; in 2011 the figures were: 1,735 Georgian citizens and 4,305 Russian citizens).
Total Number of Negative Decisions for applicants whose identity was not documented at the time of application	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data
Total Number of Negative Decisions for applicants whose identity was not considered by sufficiently established by the decision-making authorities	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data
Total number of (Forced) Returns undertaken of all rejected applicants	<b>59</b>	<b>73</b>	<b>118</b>	<b>318</b>	<b>352</b>	The number of foreigners expelled from Poland due to a decision obliging a foreigner to leave the Republic of Poland as part of the decision to refuse the refugee status.
Number of (Forced) Returns of rejected applicants whose identity had to be established at the time of return	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data
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	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data	Lack of data

### 1.3. Relevant EU and national legislation

1. Specify which legislative documents, including references to relevant EU acquis, regulate the process of identity determination in relation to the procedure for international protection.

The activities aimed at confirming the identity of foreigners applying for international protection within the territory of Poland are based on Article 29(1) of the Act on granting protection to foreigners within the territory of the Republic of Poland, which requires the authority accepting an application for asylum (i.e. the Border Guard) to establish the applicant's identity. It provides that a Border Guard officer shall perform the following activities:

- establish the identity of the applicant and the person on behalf of whom the applicant acts;
- take a photo of the applicant and the person on behalf of whom the applicant acts and take their fingerprints (applies to people aged 14 or over) using fingerprint cards or an electronic device for fingerprints collection;
- obtain information on:
  - the country of origin,
  - visas or residence permits issued to the applicant and to the person on behalf of whom the applicant acts by foreign authorities,
  - the route to the border and the border-crossing point,
  - whether the applicant or his/her family member applies for asylum in another country,
  - first and last name, date and place of birth, residence address and the degree of relationship between the applicant and his/her family member, who resides in another Member State;
- establish whether the applicant and the person on behalf of whom the applicant acts possess documents entitling them to cross the border or whether they stay in the territory of the Republic of Poland legally;
- ensure that the applicant and the person on behalf of whom the applicant acts are subject to medical examinations and that their bodies and clothes are subject to necessary hygiene treatment;

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- inform the applicant in a language which he or she understands about:
  - the rules and procedures for granting the refugee status,
  - their rights, obligations and legal consequences of non-compliance,
  - the possibility of giving his/her consent to providing the representative of the Office of the United Nations High Commissioner for Refugees with information on the course of proceedings and to consulting the case files and making notes and copies thereof,
  - organisations whose statutory duties include dealing with refugee issues,
  - the address of the centre where they must present themselves;
- inform the applicant's spouse in a language which he or she understands about the consequences of giving consent to the applicant acting on their behalf and on behalf of their children.

On this basis, the procedures were adopted by the Border Guard, according to which the foreigners whose identity cannot be established at the time of applying for asylum are subject to an identification procedure.

Within the competence of the Head of the Office for Foreigners, after the information gathered by Border Guard officers has been submitted, the following methods of establishing identity and verifying the data necessary to make a decision on granting international protection in Poland are applied:

- refugee status interview;
- language analysis;
- age examination (applicable when doubts arise during the proceedings over the age of the foreigner; otherwise, at the stage of accepting an application, it is a task falling within the competence of the Border Guard);
- cooperation with national diplomatic posts on such issues as the authentication of the documents constituting the evidence in the case (on the stipulation that the information on the type of proceedings pending is not provided).

It is significant for the development of the issues related to establishing the identity of foreigners that training centres of the Border Guard Headquarters organise training on verification of the public documents issued to foreigners and identification of foreigners when organising their return to the country of origin. The entity responsible for the above mentioned training is the Border Guard Specialist Training Centre in Lubań.



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2. 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.

The activities aimed at confirming a foreigner's identity for the purpose of organising his or her return to the country of origin are conducted based on re-admission agreements (both Community and bilateral). When it is impossible to perform such activities based on the above mentioned agreements, only the national law provisions apply, namely the provisions laid down in:

- Act of 13 June 2003 on foreigners (Journal of Laws of 2011, No 264, item 1573, consolidated text, as amended);
- Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2012, item 680, consolidated text); and
- Ordinance of the Minister of the Interior and Administration of 12 August 2003 on the procedures applied by authorities in the proceedings related to the expulsion of a foreigner and on the manner of noting in the travel document the issuance of a return decision compelling a foreigner to leave the territory of Poland or an expulsion decision (Journal of Laws of 2003, No 146, item 1427, as amended).

Furthermore, additional issues are addressed in the Ordinance of the Council of Ministers of 23 October 2003 on the manner and procedures of exercising certain powers by Border Guard officers (Journal of Laws of 12 November 2009, No 190, item 1476) and the Ordinance of the Minister of the Interior and Administration of 21 July 2010 on gathering fingerprints, photographs and personal data, their keeping, use and provision to other bodies by the Border Guard and specimen of documents used (Journal of Laws of 22 August 2003, No 146, item 1427).

### 1.4. The institutional framework at national level

1. Which national authorities have the operational responsibility for establishing the identity of applicants for international protection?

In Poland, the authority responsible for establishing the identity of a foreigner applying for international protection at the stage of accepting an application for refugee status and after issuing a final decision in administrative proceedings in order

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to effectively implement the expulsion decision is the Border Guard. The specialist unit at the Border Guard Headquarters for identifying foreigners is the 2nd Division for Identification and Return of the Department for Foreigners.

The Office for Foreigners (Department for Refugee Procedures) is the competent authority for confirming a foreigner's identification data at the stage of processing an application for refugee status.

2. 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 competent authorities in this situation are the Border Guard bodies accepting a foreigner's application for being granted an international protection, as specified in Article 28 of the Act on granting protection to foreigners within the territory of the Republic of Poland, i.e. the Border Guard Post's Commander – in the case of filing an application while entering the territory of Poland or the Commander in Chief of the Regional Border Guard Unit – in the case of submitting an application while staying within this territory.

3. Does your (Member) State have a central competence centre for issues related to the determination of identity and/or verification of documents?<sup>14</sup>

(No) The specialist unit at the Border Guard Headquarters for identifying foreigners is the 2nd Division for Identification and Return of the Department for Foreigners. The procedure for identifying foreigners by the Border Guard is followed in order to implement a decision to expel a foreigner from the territory of the Republic of Poland, as well as in specific cases for the purposes of proceedings for granting the refugee status, and involves providing support in difficult cases to local units of the Border Guard and the Police.

4. 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) The situation when officers responsible for establishing the identity of persons applying for international protection are entitled to consult the EU databases containing information on the identity of third-country nationals occurs during the proceedings for removal of a foreigner carried out by the Border Guard. At that point, the following systems are being examined: EURODAC, SIS, and VIS.

<sup>14</sup> This may be a separate body (as in Norway) or a unit within a relevant authority.

(No) Such activities are not performed as part of refugee procedures within the scope of duties of the Office for Foreigners.

5. | 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?

The officers of the Office for Foreigners are entitled to maintain direct contacts with other officers, in this case the Border Guard officers and the officers of the Ministry of Foreign Affairs, who have access to the above mentioned databases, however this fact is used to a very limited extent.

## Methods for Establishing Foreigners' Identity

### 2.1. Definition and documents required for establishing identity

#### 1. | What definition (if any) of identity is used with regard to:

##### | (a) applicants for international protection

In Poland, there is no legal definition of foreigner's identity. However, Article 4 of the Ordinance of the Council of Ministers of 23 October 2003 on the manner and procedures of exercising certain powers by Border Guard officers (Journal of Laws of 12 November 2009, No 190, item 1476) indirectly state that the Border Guard officers establish the identity of controlled persons on the basis of a.o.:

- an identity card;
- a passport;
- a travel document;
- some other document containing a photograph, number and series and whose authenticity is unquestionable;
- declarations made by a person whom the Border Guard officer knows personally or declarations by some other person whose identity has been established in the manner specified in this Ordinance.

The Ordinance in question also states that when it is impossible to establish the identity of a controlled person or in case of doubts related to this person's identity, the Border Guard officer takes from such person his fingerprints in order to conduct a fingerprints check.<sup>15</sup> Should it be impossible to establish a person's identity by checking his documents or by taking his fingerprints, the Border Guard officer may use other identification materials allowing him to establish a person's identity, especially such which contain this person's photograph or description of his appearance.

In practice, establishing foreigner's identity under the refugee procedure consists in establishing his personal details, age, country of origin and citizenship.

<sup>15</sup> The procedure for obtaining fingerprints in order to establish a person's identity is regulated by the Ordinance of the Minister of the Interior and Administration of 21 July 2010 on gathering fingerprints, photographs and personal data, their keeping, use and provision to other bodies by the Border Guard and specimen of documents used (Dz. U. [Journal of Laws] of 2010, No 134, item 902). The data is gathered by the Border Guard in the Central Dactyloscopic Registry run by the Central Forensic Laboratory of the Police. The fingerprint photos are arranged on the so-called fingerprints cards, next they are stored in the databases of the local organizational units of the Border Guard and made available in the so-called sets of databases.

## 2 | Methods for Establishing Foreigners' Identity

| and (b) for the return process?

In the case of a foreigner whose application for refugee status was denied and against whom a removal order was issued, the identity of such foreigner is established on the basis of valid and authentic travel documents (issued by a diplomatic mission or by a competent authority from the country of origin). If a foreigner holds no such travel documents, the relevant Voivodeship Police Commander, the Commander-in-Chief of the Border Guard, the Commander in Chief of the Regional Border Guard Unit, the Border Guard Post's Commander or the Voivode who has issued the removal order, submits to the relevant diplomatic mission or consular post a written request for issuing a proper travel document. In justified cases, before issuing a travel document confirming a foreigner's citizenship, relevant Border Guard authorities shall organise a meeting between a foreigner and a consular officer in the premises of the consulate or in the premises of the authority which applies for issuing an order to remove a foreigner from the territory of the Republic of Poland.

2. | 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; or other documents: birth certificates, divorce certificates, marriage licences, qualification certificates, etc.

All identity document constitute a basis for establishing foreigner's identity, but the official documents, such as passports and identity cards, are of key importance. Due to their nature (no photograph), birth certificates, divorce certificates, marriage certificates and other similar official records are complementary to other documents, i.e. they are considered together with other documents confirming one's identity and displaying one's photograph.

3. | 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.

(Yes) Having regard to the specific nature of the refugee procedure and to problems which applicants face when required to submit evidence confirming the circumstances of their departure as well as evidence confirming their identity, the applicants are allowed to submit copies of such evidence. Still, establishing the authenticity of such evidence is difficult. The usual procedure in such cases, i.e. when the copies of documents other than a passport or an identity card are submitted (officials are

usually familiar with the templates of relevant documents), involves additional verification by a Polish diplomatic post in the applicant's country of origin.

4. 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.

Below is a list of documents which the Border Guard officers use for establishing and confirming identity of foreigners.

A general list of documents which **are accepted as a proof of one's citizenship**:

- all types of passports (national passports, diplomatic passports, service passports, group passports and substitute passports, including passports for children);
- identity documents (including documents issued for a specific period and temporary documents);
- citizenship certificates or some other official documents in which one's citizenship is mentioned or clearly specified.

A list of documents which **may be accepted as a proof of one's citizenship**:

- the above-mentioned documents (the general list) whose validity expired over 6 months earlier;
- photocopies of the above-mentioned documents (the general list documents);
- driving licenses or photocopies thereof;
- birth certificates or photocopies thereof;
- company identity cards or photocopies thereof;
- witness statements;
- statements made by an individual;
- any other documents which may be helpful in establishing identity of an individual;
- service badges and military service books;
- seaman's registration books and skippers' service cards;

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- laissez-passer issued by the country of origin.

In a case where it is necessary to make some additional findings **documents may be supplemented with:**

- confirmation of identity as a result of a search carried out in the Visa Information System (VIS);
- in the case of Member States not using the Visa Information System, positive identification established from visa application records; and
- any other documents which may be used as additional materials in the procedure of confirming a foreigner's identity.<sup>16</sup>

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

1. Which methods are used by the competent authorities in the (Member) State to check the credibility of the applicant's statements, for cases where aspects of the applicant's statements regarding his/her identity are not supported by documentary evidence? 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;

The refugee procedure uses the detailed status interview method, the questions of which are drafted for special purposes and for particular individuals, i.e. a list with specific questions is drafted depending on a foreigner's country of origin (the so-called knowledge test). Also, often during the interview a language analysis is carried out by a translator/interpreter who is a native speaker of a given language, although since there is no specialised unit within the Office for Foreigners for carrying out such analyses, this depends on the availability of human and financial resources. The Office for Foreigners established cooperation with a Swedish-based company Verified, which provides language analysis services.

<sup>16</sup> The relevant registries of persons applying for international protection are also kept by e.g. the International Committee of the Red Cross.

(b) whether the method is obligatory (i.e. provided by law), whether it is part of standard practice (i.e. used in most cases but not provided by law) or whether it is optional (i.e. not provided by 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 1.3 (which the (Member) State can refer to in their replies);

Application of the above-mentioned methods constitutes one of the elements of practices employed in Poland.

## 2. | Do national authorities make use of:

(a) language analysis to determine probable country and/or region of origin?

- Applicants for international protection:

(Yes) Language analysis is an accepted practice used by the Office for Foreigners, whereas the Border Guard Headquarters employ it optionally.

- Return of rejected applicants for international protection:

(Yes) The method is used optionally by the Headquarters of the Border Guard.

(b) age assessment to determine probable age

- Applicants for international protection:

(Yes) Pursuant to Article 30 of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland, where there is doubt as to the age of a foreigner who claims to be a minor, such foreigner may, with his consent or with the consent of his statutory representative, be subjected to medical examination aimed at establishing his actual age. The results of the examination should indicate the age of the examined person and the margin of error. Where a foreigner who claims to be a minor does not consent to undergo the medical examination, he shall be considered an adult.

The authority responsible for ensuring that the medical examination is carried out during the refugee procedure is the Office for Foreigners and in the case when doubts about a foreigner's age arose during the submission of the application – the responsibility lies with the authority accepting such application (i.e. the Border Guard).

The examination consists especially in making an X-ray of a foreigner's wrist and determining his age by a medical expert (usually in order to determine a person's



skeletal age the method of comparing X-rays of single body parts or X-rays of multiple body parts is used).

- **Return of rejected applicants for international protection:**

(Yes) As it was already mentioned, Article 30 of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland constitutes the legal basis for conducting such examination. The examination consists especially of making an X-ray of a foreigner's wrist and determining his age by a medical expert.

- **(c) fingerprints for comparison with National and European databases**

#### National Database

- **Applicants for international protection:**

(Yes) The so-called "Foreigner Identification Application", which is lodged to the II Identification and Returns Division at the Department for Foreigners of the Border Guard Headquarter, contains an order to check the relevant data in the national databases, e.g. in the AFIS database.

- **Return of rejected applicants for international protection:**

(Yes) As above, the so-called "Foreigner Identification Application", which is lodged to the II Identification and Returns Division at the Department for Foreigners, contains an order to check the relevant data in the national databases, e.g. in the AFIS database.

#### European Databases

- **Applicants for international protection:**

(Yes) The so-called "Foreigner Identification Application", which is lodged to the II Identification and Returns Division at the Department for Foreigners, contains an order to check the relevant data in the European databases, e.g. in EURODAC and VIS.

- **Return of rejected applicants for international protection:**

(Yes) As above, the so-called "Foreigner Identification Application", which is lodged to the II Identification and Returns Division at the Department for Foreigners, contains an order to check the relevant data in the European databases, e.g. in EURODAC and VIS.

(d) photograph for comparison with National and European databases

### National Database

- **Applicants for international protection:**

The point of taking photographs of persons is to issue a document authorising him to stay for the duration of the procedure for granting the refugee status. Also, by placing the scanned document in the POBYT system<sup>17</sup>, which contains the register of all persons who have applied for recognition as refugees in Poland, it facilitates identification of persons.

- **Return of rejected applicants for international protection:**

Photographs of a foreigner are taken so that a diplomatic post or a competent authority in the country of origin could issue a travel document. There is no national database which contains photographs of persons returning to their country of origin.

At the same time, Article 7, 9 and 10 of the Ordinance of the Minister of the Interior and Administration of 21 July 2010 on gathering fingerprints, photographs and personal data, their keeping, use and provision to other bodies by the Border Guard and specimen documents used (Journal of Laws of 2010, No 134, item 902) stipulate that digital files or negatives of photos of persons whose identity has not been established or who try to hide their identity are kept in the Border Guard's organizational units territorially competent to conduct preparatory proceedings based on the said resources.

<sup>17</sup> The POBYT system is a national collection of registers, accounting records and lists which contain data on foreigners' cases. The system is operated by the Office of Foreigners pursuant to both the Act of 13 June 2003 on foreigners and the Act of 13 June 2003 on protection provided to foreigners staying in the territory of the Republic of Poland. The system consists of the following elements:

- registry of cases related to visas, residence permits for a fixed period, permits to settle or a long-term EC resident's residence permit;
- registry of causes related to issuing Polish identity documents for foreigners and Polish travel documents for foreigners, as well as to issuing to foreigners temporary travel documents
- registry of cases related to the refusal of entry, return decisions and removal of foreigners from Poland, including EU citizens and their family members;
- registry of cases related to granting refugee status as well as providing subsidiary protection and aid to foreigners applying for refugee status;
- registry of cases related to the expulsion of persons with a refugee status;
- registry of cases related to granting asylum and temporary protection;
- registry of causes related to permit for tolerated stay;
- registry of cases conducted pursuant to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national;
- records of invitations;
- list of foreigners whose stay in the territory of Poland is undesirable.

## 2 | Methods for Establishing Foreigners' Identity

### European Databases

- Applicants for international protection:

(No)

- Return of rejected applicants for international protection:

(Yes) The VIS system is used to do this.

- (e) 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)

- (f) DNA analysis

- Applicants for international protection:

(No)

- Return of rejected applicants for international protection:

(No)

- (g) Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)

- Applicants for international protection:

(Yes) When accepting the application for international protection within the territory of Poland, the Border Guard officers may conduct an interview in order to establish foreigner's supposed country or region of origin. A similar practice

is employed when verifying data under the refugee procedure conducted by the Office for Foreigners.

- **Return of rejected applicants for international protection:**

(Yes) This is the accepted practice which the Border Guard employs with respect to certain citizens of third countries. Interviews are conducted with experts from the foreigner's declared country of origin (in most cases experts are people representing relevant institutions from the foreigner's country of origin or diplomatic posts of such countries, both in Poland and abroad).

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

- **Applicants for international protection:**

(Yes) As regards the cooperation with external units, it should be stressed that the Office for Foreigners established cooperation with a Swedish company Verified, which provides services related to language analysis and preparation of the so-called knowledge tests.

(No) As far as this area is concerned, the Border Guard Headquarters do not engage in activities other than those which were specified earlier.

- **Return of rejected applicants for international protection:**

(Yes) When organising returns of foreigners, the Border Guard uses the possibility to conduct telephone interviews with experts. For example, this is method is frequently used in the case of foreigners of Somali origin.

3. **If possible, outline briefly the rationale behind the method(s) indicated above used in your (Member) State, e.g. why some method(s) have 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.**

The sequence of using methods when establishing and/or confirming foreigner's identity by the Border Guard and the Office for Foreigners has been specified in detail in point 1.3 herein. There it was highlighted that the fact that the identity of people who apply for the refugee status (as well as their country of origin, citizenship, age, etc.) has been established is crucial for discovering individual reasons for granting the refugee status and constitutes an important element in the process of discovering facts, since establishing identity in the defined scope entails specific legal consequences for the specified category of foreigners (both in the case of a decision granting a foreigner one of the forms of international protection as well as in the

case of denying such protection, which is tantamount to issuing a removal order)<sup>18</sup>. Where a foreigner claims in his statement to be a minor, determining his real age is necessary also because of provisions on the detention of minors. Due to the above, particular attention is being paid to checking information on foreigners in national and European databases (POBYT, EURODAC, SIS, VIS and other internal databases run by the Border Guard). This also constitutes a basis for commencing the process of identifying foreigners for the purposes of refugee procedure and for the enforcement of the order to remove a foreigner from the territory of the Republic of Poland.

Another important element is the consular interview or the interview conducted with experts from a foreigner's country of origin who are responsible for confirming his identity (when removing a foreigner). The cooperation with diplomatic posts of third countries (i.e. exchanging letters and/or consular intelligence) is carried out both with countries having their diplomatic missions in Poland<sup>19</sup> and with countries whose diplomatic posts are located outside Poland (in Berlin, Moscow, Hague, etc.)<sup>20</sup>. In such cases, also fingerprint cards are drafted (if required by the third country's diplomatic post). It is important to bear in mind that no data related to the refugee procedure nor any information about reviewing such application is sent to the party which is being consulted.

Due to vast diversification of the procedures in force in specific third countries and seeking more effective ways to identify foreigners, the Border Guard attempt to develop alternative methods for confirming foreigners' identity. Such methods involve:

- conducting telephone interviews (Gambia, Palestine, Somalia, Kenya);

<sup>18</sup> This has been already mentioned on point 1.1 on page 11–13 herein.

<sup>19</sup> These being: Afghanistan, Albania, Algeria, Armenia, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, China, Egypt, Columbia, Congo, Egypt, Georgia, India, Iraq, Iran, Israel, Yemen, Kazakhstan, Lebanon, Libya, the former Yugoslav Republic of Macedonia, Morocco, Moldova, Mongolia, Nigeria, Pakistan, Palestine, Russian, Sri Lanka, Syria, Tunisia, Turkey, the Ukraine, Uzbekistan, Venezuela and Vietnam.

<sup>20</sup> These being: Berlin – Bahrain, Bolivia, Burkina Faso, Cote d'Ivoire, the Dominican Republic, Eritrea, Ethiopia, Guinea, Jamaica, Jordan, Liberia, Malawi, Mali, Namibia, Nepal, Niger, Rwanda, El Salvador, Senegal, Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe;

Brussels – Gambia;

Copenhagen – Swaziland;

Hague – Bangladesh;

Minsk – Kirghizstan, Tajikistan, Turkmenistan;

Moscow – Burundi, Cameroon, Guinea-Bissau, Mauretania, Sierra Leone, Somalia, Chad and Madagascar;

Rome – Kenya.

- entering into close cooperation in activities for confirming identity by strengthening cooperation with third countries (Sierra Leone, Nigeria, Lebanon and Cameroon);
- confirming foreigners' identity by conducting telephone interviews with experts from:
  - migration authorities of a foreigner's country of origin or the Border Guard (Vietnam, Sierra Leone, Rwanda, Haiti, Guinea),
  - diplomatic missions (India, Pakistan, Afghanistan, Iraq, Nigeria, Armenia);
- strengthening cooperation with other states and organisations (EU Member States, FRONTEX) in the area of confirming foreigner's identity.

The experience of the Border Guard shows that establishing direct professional relations with persons responsible for identification in a foreigner's country of origin significantly shortens the time of receiving an answer to a sent identification request. Such contacts are conducive to improving mutual cooperation and trust, and facilitate exchanging experiences and best practices related to organising returns.

Moreover, it is also important to maintain and deepen cooperation with representatives of diplomatic posts of third countries, both in Poland and abroad. This could be achieved by participating in meetings held by diplomatic posts, regularly sending officers responsible for identifying foreigners in diplomatic posts with the seat outside of Poland and by participating in joint meetings with representatives of diplomatic posts organised by the Border Guard with the aim to exchange experiences related to identification of foreigners.

## 3 | Decision-making Process

### 3.1. Status and importance of different methods to determine foreigner's identity

1. 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.

The decision certifying identification of a foreigner is made on the basis of evidence gathered during the entire refugee procedure.

If the foreigner's identity had not been established on the basis of an identity document, but only on the basis of his/her declarations, but once the decision on granting the refugee status is issued the foreigner nevertheless presents an identity document, it becomes the basis for reopening the procedure due to new evidence. The procedure is reopened only if the personal data of the foreigner are different than those on the basis of which proceedings had been initially opened. The procedure is not reopened when the data stated in the application for the refugee status and based on oral representations are different from the data in the document only due to notation and the transcription applied by the translator present when the application is filed. In such case, the binding notation becomes the correct one from the foreigner's document.

When a foreigner tries to prove his/her other identity using an identity document (obtained, as he/she claims, for cash), the identification of the person will be made only on the basis of identity documents with a photo issued by the authorities of the country of origin. In such case, the burden of proof to confirm all the identification data rests with the foreigner. In practice, there were cases of foreigners who used a passport issued by the authorities of the country of origin (the passport did not raise any doubts as to its authenticity), but the foreigner tried to prove his personal data were different than those in the passport and presented a document (usually a scan) issued e.g. by the authorities of the party he belonged to, which could significantly affect the decision in his case. Apart from the supposedly his personal data, the document did not include any important elements (such as a photo) that could be conducive to ascertaining the facts beyond doubt.<sup>21</sup>

<sup>21</sup> In such a situation, when the first instance body (Head of the Office for Foreigners) issues a decision, the case is referred by the appeal body (the Refugee Council) for re-examination. The grounds are

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Reliable information on a foreigner's identification for the purpose of executing the decision on expulsion from the Republic of Poland is to have confirmed his/her identity by a diplomatic post or competent body in the country of origin and obtain a travel document.

The experience of the Border Guard shows that when it comes to expulsion procedures, the most effective way of identifying foreigners is to have them interviewed by experts in identification (who represent competent institutions from the foreigner's country of origin or persons responsible for such tasks in diplomatic posts). The least effective identification method is exchanging letters.

In addition, the Border Guard organises regular visits of lawyers from the Identification and Returns Division at the Department for Foreigners at the Border Guard Headquarters to diplomatic posts accredited for Poland and located outside Poland to maintain contact with competent employees of the posts. These are expert meetings that allow defining the procedures and discussing cooperation in the area.

The Department for Foreigners at the Border Guard Headquarters also organises meetings for representatives of diplomatic posts located in Warsaw at the Border Guard Headquarters. The meetings are similar to visits of Identification and Returns Division personnel to diplomatic posts outside Poland.

2. | 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.

(Yes and No. It is difficult to provide an unambiguous answer) Information provided by the Office for Foreigners and the Border Guard Headquarters shows that there is no single system to account for the degree to which foreigners' identity is established and the two institutions apply different standards. In the case of the Office for Foreigners, the terms are the same as those in the question. Yet, the Border Guard divides foreigners subject to the identification procedure into the categories listed below (from documented/confirmed identity to undocumented/unconfirmed identity):

- foreigner holding an original/valid travel document – **identity fully documented**;
- foreigner holding an original but expired travel document; the travel document validity can be extended at a diplomatic post or a competent body of the country

that the documents provided (without a photo, scan) must be re-analysed, and it would be best done by a diplomatic post located in the applicant's country of origin.



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of origin can issue a new travel document (on the basis of the expired one) – **identity confirmed/determined;**

- foreigner having only Xerox copies of documents that may indicate his/her country of origin – **identity confirmed/determined partially;**
- foreigner who does not have any documents and cooperates with Border Guard officers during the identification procedure – **identity unconfirmed/undetermined;**
- foreigner who does not have any documents and refuses to cooperate with Border Guard officers during the identification procedure – **identity impossible to confirm/determine.**

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

At present, it is not planned to introduce (at any stage) new measures to establish or develop the single system to account for the degree to which foreigners’ identity is established that exists only in practice.

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

#### 3.2.1. Making decision on a person`s application for international protection

#### 1. | What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially)? For example, does the outcome of identity establishment influence a recommendation to “grant international protection,” “refuse international protection,” “postponing return”?

The result of foreigner identification process is of utmost importance to the recommendation on granting international protection, refusing it or postponing return, particularly as concerns determining the applicant’s country of origin. If due to the situation in a given country its citizens qualify for international protection (especially subsidiary protection), determining the country of origin is particularly important (e.g. in the case of foreigners from countries such as Afghanistan or Somalia).

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2. 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?

Identification in terms of personal data (first name and surname) is of particular importance if the applicant invokes individual grounds (e.g. the grounds for granting the refugee status – identification may play the key role in refugee proceedings). Identification in terms of the country of origin or age tend to influence decisions resulting from regulations related to granting subsidiary protection.

#### 3.2.2. Making decision on a person`s return to his/her country of origin

1. 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 “postponing return”?

According to practice foreigners returning to their country of origin possesses travel documents.

In particularly justified cases, when citizenship has been proven but it is impossible to issue a replacement travel document, it is possible to issue an *EU standard travel document for expulsion purposes*, the so-called EU Letter, set out in Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals (OJ C 274, 19.9.1996, p. 18) which allows executing a foreigner’s return escorted by Border Guard officers.

The result of the identification process can also influence the decision on postponing a foreigner’s return in special situations (such as the current situation in the Syrian Arab Republic).

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

(Yes) The results of actions aimed at identifying foreigners obtained under the international protection procedure and available as part of the grounds for a decision on granting international protection can be used when arranging for a forced return. The said documentation is not made available to authorities or public institutions in the foreigner’s country of origin in any form, in line with the rule laid down in Article 9 of the Act of 13 June 2003 on granting protection to foreigners within the territory

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of the Republic of Poland. The article stipulates that a foreigner's data on the basis of which it is possible to ascertain:

- whether the proceedings for granting him/her the refugee status, asylum or the permit for tolerated stay have been completed or are still pending;
- whether the foreigner has been granted or refused the refugee status;
- whether the foreigner has been granted or refused asylum or the permit for tolerated stay;
- whether the foreigner has been granted or refused subsidiary protection;
- must not be made available to authorities or public institutions of the country of his/her origin.

3. 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.

In order to document a foreigner's identity before arranging his/her return to the country of origin, it may be necessary to carry out a consular interview with the foreigner and obtain a written reply from the diplomatic post confirming the identity of the foreigner, and obtain a travel documents to make the return possible.

In addition, the said information may be used by the Identification and Returns Division at the Department for Foreigners of the Border Guard Headquarters to obtain the consent of the country examining the application for transferring the foreigner under a relevant readmission agreement.

## 4 | Conclusions

During the work on this report, we did not manage to find reliable statistical data on the number of cases where it was impossible to identify foreigners under the refugee and expulsion procedure connected with executing a decision refusing international protection throughout Poland. The size of the phenomenon is reflected, although indirectly, by statistical data collected by the Border Guard on the number of requests for identification confirmation and issuing a replacement travel document to diplomatic posts, and the data on executing readmission agreements (see: data in the statistical annex below). Yet, the data are not sufficient to present the whole picture.

Assuming that the system of gathering and comparing data that allow identification of third country citizens applying for the refugee status currently in place in EU Member States (i.e. EURODAC) is a necessary and important instrument to control the influx of citizens, we must constantly aim at creating mechanisms to improve the efficiency of its operation, as well as further evolution of the existing system. Considering that the above system allows recording and comparing foreigner's identification data (apart from personal data, fingerprints and photographs, it also gathers data on the country of origin, sex, place and date of submitting the application of international protection or detaining, and a reference number), it seems a sufficient source of information. However and due to the fact that some EU Member States do not register foreigners' fingerprints or data in EURODAC, or do it with a significant delay, there is always a risk of making an error by Member States and breaching the *non-refoulement* principle if a person fails to declare that he/she had applied for the refugee status in another country but his/her data were not registered in EURODAC. Thus there is a need of constant development of the existing database - especially as the type of information entered into the system and the scope of entities entering and using the materials is constantly expanding. The above database would in a future provide additional information to migration services of EU countries. Better effectiveness of the abovementioned database would also reduce the risk of abusing the refugee procedure by foreigners. Its undoubted asset would also consist in enhancing the efficiency of foreigners' returns.

Actions of individual states should focus primarily on ongoing accurate recording of migration events and providing specific data resulting from the Regulation establishing EURODAC. It is the only way that allows effective use of the information on foreigners in subsequent proceedings on the EU level.

Later on, the framework could be conducive to evaluating and developing national tools to confirm/determine foreigner identity.

## 5 | Statistical annex

**Table 1.** Requests for confirming identity and issuing replacement travel document to diplomatic posts in 2011. Materials prepared by the Border Guard Headquarters

No	Country	Requests	Identity confirmation	Issuing a document
1.	Afghanistan	36	26	10
2.	Algeria	2	2	2
3.	Armenia	45	32	15
4.	Azerbaijan	2	1	0
5.	Angola	1	1	1
6.	Bangladesh	8	1	1
7.	Belarus	14	14	9
8.	Bosnia and Herzegovina	1	0	0
9.	Ethiopia	1	1	0
10.	Egypt	3	2	2
11.	China	9	3	3
12.	Ghana	1	0	0
13.	Georgia (01.03.2011)	2	2	2
14.	Ghana	1	0	0
15.	Guinea	1	0	0
16.	Haiti	2	0	0
17.	Israel	2	2	2
18.	Iran	4	1	1
19.	Iraq	14	2	0
20.	Jamaica	2	0	0
21.	Jordan	1	0	0
22.	India	2	0	0
23.	Cameroon	7	6	6
24.	Kazakhstan	1	1	0
25.	Kyrgyzstan	4	4	0
26.	DR of the Congo	21	7	2
27.	Kenya (Italy)	3	0	0
28.	North Korea	1	0	0
29.	Lebanon	10	1	0
30.	Libya	2	0	0
31.	Mexico	1	1	1

No	Country	Requests	Identity confirmation	Issuing a document
32.	FYR Macedonia	1	1	1
33.	Morocco	5	1	0
34.	Mongolia	5	5	3
35.	Nepal	4	0	0
36.	Nigeria	8	6	6
37.	Palestine	9	2	0
38.	Pakistan	8	2	0
39.	Russia	4	4	4
40.	Rwanda	1	0	0
41.	Syria	12	4	0
42.	Serbia	1	1	1
43.	Somalia	11	0	0
44.	Sierra Leone	1	1	0
45.	Tanzania	10	10	10
46.	Tajikistan	1	0	0
47.	Tunisia	6	2	1
48.	Turkey	2	2	2
49.	Ukraine	1	0	0
50.	Uzbekistan	2	2	2
51.	Vietnam	20	4	4
<b>TOTAL</b>		<b>316</b>	<b>157</b>	<b>91</b>

**Table 2.** List of bilateral readmission agreements signed by Poland, as at 2 August 2012. Materials prepared by the Border Guard Headquarters

No	Country	Date signed	Date of entry into force
1.	Republic of Austria	2002-06-10	2005-05-30
2.	Republic of Bulgaria	1993-08-24	1994-02-04
3.	Republic of Croatia	1994-11-08	1995-05-27
4.	Czech Republic	1993-05-10	1993-10-30
5.	Hellenic Republic	1994-11-21	1996-05-05
6.	Kingdom of Spain	2002-05-21	2004-06-23
7.	Ireland	2001-05-12	2002-06-22
8.	Republic of Lithuania	1998-07-13	2000-01-08
9.	Republic of Latvia	2006-03-29	2007-12-27
10.	Romania	1993-07-24	1994-01-19
11.	Slovak Republic	1993-07-08	1993-11-12
12.	Republic of Slovenia	1996-08-28	1998-04-06
13.	Republic of Vietnam	2004-04-22	2005-05-14
No	Country	Date signed	Date of entry into force
14.	Federal Swiss Confederation	2005-09-19	2006-03-31
15.	Kingdom of Sweden	1998-09-01	1999-04-09
16.	Republic of Hungary	1994-11-25	1995-08-05

**Table 3.** List of multilateral readmission agreements signed by Poland, as at 2 August 2012. Materials prepared by the Border Guard Headquarters

	Country	Date signed	Date of entry into force
	Schengen countries		
1	(Kingdom of Belgium, FRG, French Republic, Italian Republic, Grand Duchy of Luxembourg, Kingdom of the Netherlands)	1991-03-29	1991-04-01

**Table 4.** List of readmission agreements between the European Community and third countries to which Poland is a party, as at 2 August 2012. Materials prepared by the Border Guard Headquarters

No	Country	Date signed	Date of entry into force
1.	Hong Kong	27.11.2002	01.03.2004
2.	Macao – Special Administrative Region of the People's Republic of China	13.10.2003	01.06.2004
3.	Democratic Socialist Republic of Sri Lanka	04.06.2004	01.05.2005
4.	Republic of Albania	14.04.2005	01.05.2006
5.	Russian Federation	25.05.2006	01.06.2007
6.	Ukraine	18.06.2007	01.01.2008
7.	Republic of Montenegro	18.09.2007	01.01.2008
8.	FYR of Macedonia	18.09.2007	01.01.2008
9.	Republic of Serbia	18.09.2007	01.01.2008
10.	Bosnia and Herzegovina	18.09.2007	01.01.2008
11.	Republic of Moldova	10.10.2007	01.01.2008
12.	Islamic Republic of Pakistan	26.10.2009	01.12.2010
13.	Georgia	22.11.2010	01.03.2011
14.	Cotonou Agreement (79 states)	23.06.2000	

**Table 5.** List of foreigners transferred to Poland in 2010 and 2011 pursuant to the readmission agreements Poland is a party to. Materials prepared by the Border Guard Headquarters

	2010	2011
Total	557	2347
of which:		
Russia	73	713
Ukraine	220	652
Georgia	27	299
Vietnam	136	222
Moldova	33	50
China	2	66
Belarus	7	58
Armenia	1	56
Turkey	8	15
India	1	15
Iraq	5	8
Uzbekistan	5	7



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