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Measuring Irregular Migration

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Belgium Country Brief on Irregular Migration Policy Context

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Table of contents

THE MIRREM PROJECT	3
1.1 POLICY PRIORITIES	4
1.2 OVERVIEW OF THE BELGIAN POLICY FRAMEWORK	4
1.2.1 Policy implementation measures	5
1.2.2 Policy evolution: Main turning points	5
1.2.3 Policy impact	6
1.2.4 Policy Challenges in Addressing Migrant Irregularity	6
1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN BELGIUM: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY	9
1.3.1 Pathways into and out of irregularity	10
1.3.2 Regularisation	11
References	12
ANNEX 1: Policy and Legal Frameworks	13
ABOUT THE AUTHORS	18

LIST OF TABLES

Table 1: Relevant Belgian institutions	7
Table 2: Categories of migrant irregularity in Belgium	9

THE MIRREM PROJECT

MIRREM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MIRREM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRREM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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KEYWORDS

Irregular migration; policy measures; pathways into and out of irregularity

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Belgium

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Promoting voluntary return**

Belgium has implemented structured initiatives to encourage the voluntary return of rejected asylum seekers and undocumented migrants (Lietaert et al., 2017). By facilitating their departure and providing reintegration support, the government seeks to offer a pathway back to their home countries.

- **Refining detention practices**

Belgium maintains detention centres, termed ‘closed centres,’ to hold irregular migrants, including rejected asylum seekers, during deportation processes. However, questions have arisen about the appropriateness of detaining vulnerable groups, prompting discussions about alternative measures.

- **Combating human trafficking**

Belgium has taken proactive steps to counter human trafficking and migrant smuggling. Legislative actions aim to combat these criminal activities and safeguard irregular migrants from exploitation.

- **Pursuing selective regularisations**

Selective regularisations have been historically employed, granting legal status to migrants who fulfil specific criteria. However, questions around the fairness and efficacy of such programmes have sparked debate.

1.2 OVERVIEW OF THE BELGIAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Coercive Measures for Voluntary Return**

Belgium has introduced measures aimed at facilitating the voluntary return of irregular migrants, including rejected asylum seekers. The law of 19 January 2012 amended the Reception Act and introduced the concept of the ‘return path,’ defined as individual support offered to facilitate the return of rejected asylum seekers. Coercive measures may be applied in cases of resistance. These measures could involve administrative penalties or restrictions on access to certain services to incentivise voluntary return.

- **Penalties for Human Trafficking and Migrant Smuggling**

Belgium has adopted laws to combat human trafficking and migrant smuggling, aiming to protect irregular migrants from exploitation and abuse. Penalties for individuals involved in such criminal activities can include imprisonment, fines, and asset seizures. Additionally, penalties may apply to businesses or organisations facilitating human trafficking or smuggling.

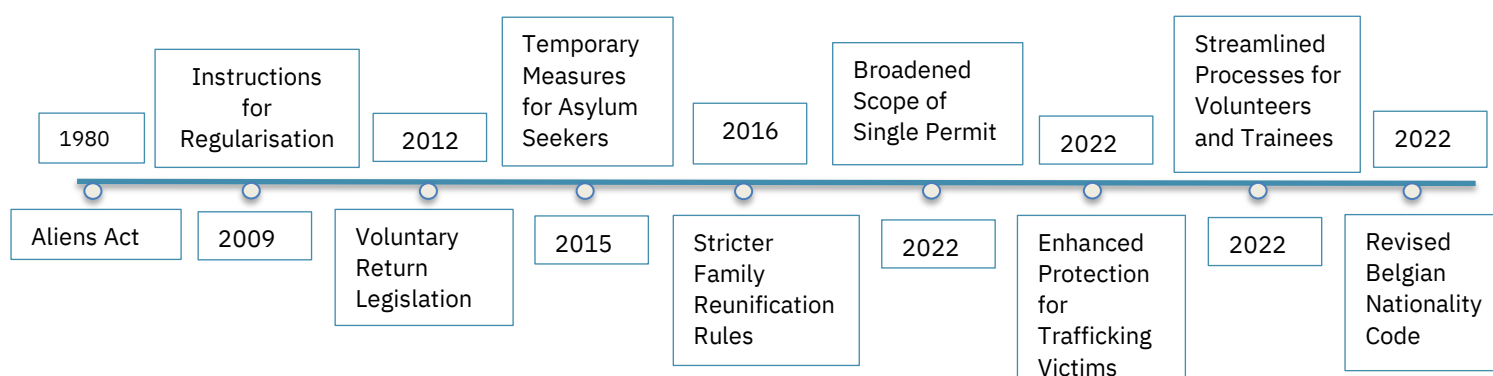
- **Reforms and Penalties for Detention Practices**

Belgium maintains “closed centres” to detain irregular migrants, including rejected asylum seekers. In response to criticism and international standards, Belgium is in the process of transitioning towards banning child detention and devising alternatives. The Immigration Office (IBZ) charges penalties for not adhering to these reforms, which could involve legal action, fines, or restrictions on detention practices.

- **Restrictions on Transit Migration**

Belgium has taken steps to restrict transit migration. The government aims to limit the movement of irregular migrants through its territory. Penalties for individuals attempting to transit through Belgium without legal authorisation may include detention, deportation, or fines. Furthermore, businesses or individuals facilitating transit migration may also face penalties.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Assisted Voluntary Return (AVR)**

AVR programmes, initially a central pillar of asylum and migration policy, aimed to promote voluntary return. However, over the years, policy shifts and changes in enforcement have influenced the behaviour of undocumented immigrants, affecting their choices more towards seeking asylum than joining the AVR programmes (Vandevoordt, 2017).

- **Detention and Deportation**

The shift from passive tolerance to active expulsion through enforcement of “Orders to Leave the Territory” and forced deportations has significant implications (Wittcock et al., 2023). The policy focus on detention and deportation impacts the treatment of undocumented immigrants and their ability to remain in the country (Wéry, 2023).

- **Regularisation**

Changes in immigration policies, including stricter labour regulations, have indirect consequences on the regularity of migrants’ status (Chauvin et al., 2013). Stricter sanctions for employers hiring undocumented workers affect employment opportunities for irregular migrants, potentially influencing their regularisation prospects (Van Meeteren, 2014). That is because a lack of employment hinders irregular migrants to be financially stable for applying for regularisation. Also, the regularisation process is highly costly in Belgium and most migrants are financially unable to apply.

- **Combat Human Trafficking**

Policies aimed at combating human trafficking intersect with irregular migration, as some irregular migrants may be vulnerable to exploitation by traffickers (van der Leun & van Schijndel, 2016). The effectiveness of these policies and their impact on reducing irregular migration and protecting vulnerable migrants is a significant concern for some stakeholders regarding the overall policy framework .

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Obstacles to Return**

Repatriating irregular migrants to their countries of origin poses complex challenges, especially in countries with deteriorating security and economic conditions like Afghanistan and Syria (Scalettaris & Gubert, 2019). This challenge is exacerbated by migrants’ apprehension about returning to uncertain prospects in their home countries. Moreover, lack of collaboration with some countries of origin hampers the execution of return policies, challenging government policies on return.

- **Multifaceted Motivations of Irregular Migrants**

Policies aimed at reducing support and aid to irregular migrants may not deter them from staying in host countries. Irregular migrants often have strong personal ties and motivations beyond financial assistance, emphasising the importance of understanding their complex motivations when devising policies.

- **Resource Scarcity for NGOs**

NGOs play a critical role in supporting irregular migrants, but they face challenges due to limited resources and funding (Hantson et al., 2022). This scarcity impedes their ability to provide adequate assistance and worsens the already challenging conditions faced by this vulnerable population.

Table 1: Relevant Belgian institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	The Federal Government Department for Interior Affairs (ibz)	The Federal Government Department for Interior Affairs (ibz, Service public fédéral Intérieur) is responsible, inter alia, for managing migration flows, asylum seekers and unlawfully present 'aliens'. The ibz is the competent body for access to territory, residence, settlement and expulsion of foreign nationals. In general, ibz is responsible for coordinating security and public order, civil protection, immigration and asylum, police and security services, nationality and civil registration, local authority support, elections, and emergency management.	Link (EN)
2.	The Commissioner General for Refugees and Stateless Persons (CGRS/CGRA)	The Commissioner General for Refugees and Stateless Persons (CGRS) is in charge of refugees and stateless persons. CGRS is responsible for assessing and determining the eligibility of asylum seekers for refugee status or subsidiary protection, ensuring a fair and thorough examination of asylum claims, and providing legal and administrative support to individuals seeking protection in Belgium.	Link (EN)
3.	Aliens Litigation Council (CCE)	CCE is an administrative court composed of judges who rule independently on appeals brought before it. CCE is responsible for reviewing and adjudicating appeals and disputes related to the legal stay, residence	Link (BE)

		permits, deportation, detention, and other immigration-related matters concerning foreigners in the country.	
4.	Fedasil	Fedasil is the Federal Agency responsible for the reception and voluntary return of asylum seekers and other similar target groups in Belgium. Fedasil facilitates material aid to asylum seekers and to other categories of foreigners with equal rights to reception (in accordance with the 'Reception Act' of 12 January 2007).	Link (EN)
5.	Public Centre for Social Welfare (CPAS/OCMW)	The Public Centre for Social Welfare, known as Openbaar Centrum voor Maatschappelijk Welzijn (OCMW) in Dutch and Centre Public d'Action Sociale (CPAS) in French is responsible for ensuring the well-being of every lawfully resident inhabitant of Belgium. In general, CPAS/OCMW is responsible for providing social assistance, welfare services, and support to individuals and families in need, including financial aid, housing assistance, medical and social services, and various forms of social support. In rare situations, CPAS/OCMW supports undocumented migrants which includes access to emergency shelter, medical care, food aid, and other basic necessities. However, the level and type of support can vary depending on local policies, available resources, and the specific situation of the individual.	Link (BE)
6.	State Secretary for Migration	The Belgian State Secretary for Migration takes measures to regularise migrants under very specific criteria. The State Secretary for Asylum and Migration in Belgium is responsible for formulating, implementing, and overseeing policies related to immigration, asylum, border control, regularisation, international cooperation, integration, legislation, and public communication.	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN BELGIUM: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Belgium

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Visa overstayer	<p>A person who has legally entered but then stayed beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and/or residence permit.</p> <p>Penalties in Belgium include fines, immediate deportation or even getting banned from entering the Schengen Zone for a specific amount of time, detention and losing social support.</p>
Rejected asylum seeker	<p>A person whose application for international protection has been reviewed and denied at the final stage following any appeals, encompassing decisions deeming the application inadmissible or unfounded. These decisions are made by administrative or judicial bodies through various procedures, including priority and accelerated processes, during the specified reference period.</p>
People who arrive with a tourist visa and stay for medical support	<p>Individuals from countries with lower medical systems come to Belgium for medical treatment. Based on the Alien Act, migrants regardless of their status are entitled to medical support. Certain conditions apply.</p>
Dublin procedure migrants	<p>Asylum seekers with a fingerprint lodged in other Member State(s) who are asked to leave the territory</p>
Travellers and Romani people	<p>The cities of Brussels, Antwerp, Ghent and Sint-Niklaas have a substantial Roma population. Often, owing to their lifestyle and vulnerabilities, Roma people face challenges in obtaining formal documentation and administrative support, resulting in their status as an irregular or undocumented population.</p>
Transit migrants	<p>Refers to a person who temporarily stays or passes through Belgium (mostly to the UK) during their (irregular) migration journey.</p>

Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum seekers without proof of registration	Due to a lack of space for asylum seekers in government shelters, many asylum seekers often sleep rough. Since 2021, Belgium has been facing a serious shortage of space to provide shelter for asylum seekers. In 2023, the CGRS decided to expedite the asylum procedures for individuals with a higher chance of receiving a positive decision. This includes people who worked in the security and political sectors in Afghanistan before the Taliban takeover, as well as individuals with serious illnesses and vulnerabilities.
EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
EU citizens without residence right	Some EU migrants come for a short-term stay but continue to work undeclared or stay with relatives without registering. This includes EU and non-EU institutions' trainees, interns and temporary staff, and students, among others.

1.3.1 Pathways into and out of irregularity

- **Economic and Policy Shifts**

Economic crises and government policy changes, such as restrictions in response to economic crises, can propel individuals into irregularity by limiting opportunities for legal migration and changing the rules for entry into the country (Schoumaker et al., 2022).

- **Loss of Legal Status**

Some individuals initially enter the country legally but later fall into irregularity due to factors such as visa or permit expiration, changes in regulations, and government restrictions (Farcy & Smit, 2020).

- **Staying Undocumented**

Even after the expiration of legal documents or receiving asylum application rejections, some migrants choose to remain undocumented in the country rather than return to their home countries. They may live in vulnerable and legally unprotected conditions, susceptible to exploitation and disadvantages in their places of residence.

- **Article 9 of the Migration Act: Residence Permit**

Article 9 of the Migration Act on Residence Permits allows individuals with valid residence status in another EU Member State to reside in Belgium for specific purposes, fostering freedom of movement within the EU and offering legal pathways for temporary stays, reducing the likelihood of resorting to irregular means.

1.3.2 Regularisation

- **Article 9bis of the Migration Act on Residence Permit**

The Article 9bis Residence Permit enables foreign nationals who do not meet other permit requirements to regularise their stay in Belgium based on exceptional reasons or humanitarian grounds, acknowledging the specific circumstances of individuals residing without legal status or facing changing situations.

- **Article 9ter of the Migration Act on Residence Permit**

The Article 9ter Residence Permit focuses on humanitarian reasons, providing protection and legal status for foreign nationals facing serious threats to their life or physical integrity in their home countries, including those with protection needs and those at risk of torture or inhuman treatment.

- **Other Pathways to Regularisation**

Various less common pathways for regularisation include employment-based regularisations, victimhood-based regularisations for those subjected to human rights violations (including e.g. human trafficking), family (re)unification, and education-based regularisations. These routes offer opportunities for individuals to transition out of irregularity under specific circumstances.

References

- Chauvin, S., Garcés-Mascreñas, B., & Kraler, A. (2013). Working for legality: Employment and migrant regularization in Europe. *International Migration*, 51(6), 118–131.
- Farcy, J.-B., & Smit, S. (2020). Status (Im) mobility and the legal production of irregularity: A sociolegal analysis of temporary migrants' lived experiences. *Social & Legal Studies*, 29(5), 629–649.
- Hantson, L., Westerveen, L., & Adam, I. (2022). *Immigrant integration in small and medium-sized towns and rural areas: Local policies and policymaking relations in Belgium Country Reports on multilevel dynamics*.
- Lietaert, I., Broekaert, E., & Derluyn, I. (2017). From social instrument to migration management tool: Assisted voluntary return programmes—the case of Belgium. *Social Policy & Administration*, 51(7), 961–980.
- Scalettaris, G., & Gubert, F. (2019). Return schemes from European countries: Assessing the challenges. *International Migration*, 57(4), 91–104.
- Schoumaker, B., Le Guen, M., Caron, L., & Nie, W. (2022). Multiple (il) legal pathways. *Demographic Research*, 47, 247–290.
- van der Leun, J., & van Schijndel, A. (2016). Emerging from the shadows or pushed into the dark? The relation between the combat against trafficking in human beings and migration control. *International Journal of Law, Crime and Justice*, 44, 26–42.
- Van Meeteren, M. (2014). *Irregular migrants in Belgium and the Netherlands: Aspirations and incorporation*. Amsterdam University Press.
- Vandevoordt, R. (2017). Between humanitarian assistance and migration management: On civil actors' role in voluntary return from Belgium. *Journal of Ethnic and Migration Studies*, 43(11), 1907–1922.
- Wéry, N. (2023). *Detention centres for migrants* (Jesuit Refugee Service Belgium).
- Wittock, N., Cleton, L., Vandevoordt, R., & Verschraegen, G. (2023). Legitimising detention and deportation of illegalised migrant families: Reconstructing public controversies in Belgium and the Netherlands. *Journal of Ethnic and Migration Studies*, 49(7), 1589–1609.

ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Aliens Act: the Law of 15 December 1980	1980	The Law of 15 December 1980 on access to the territory, residence, settlement and removal of foreign nationals was published in the Belgian Official Gazette on 31 December 1980 and entered into force on 1 July 1981.	Link (FR)
2	The Royal Decree of 8 October 1981	1981	The Royal Decree of 8 October 1981[1] on access to the territory, residence, settlement and removal of foreign nationals was published in the Belgian Official Gazette on 27 October 1981.	Link (FR)
3	Royal Decree of 2 August 2002 – Royal Decree on Closed Centres	2002	Determining the regime and regulations to be applied in the places on the Belgian territory managed by the Immigration Office where an alien is detained, placed at the disposal of the government or withheld, in the application of article 74/8 §1 of the Aliens Act.	Link (FR)
4	Royal Decree on Immigration Office Asylum Procedure	2003	Royal Decree of 11 July 2003 determining certain elements of the procedure to be followed by the Immigration Office charged with the examination of asylum applications based on the Law of 15 December 1980.	Link (NL)
5	Royal Decree on CGRS Procedure	2003	Royal Decree of 11 July 2003 determining the procedure and functioning of the Office of the Commissioner General for Refugees and Stateless persons.	Link (FR) Link (NL)
6	Royal Decree on CALL Procedure	2006	Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation.	Link (EN)

7	Reception Act	2007	Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens.	Link (FR)
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[1] In Belgium, the key distinction between a royal decree and a legislative act lies in their scope and authority. Legislative acts are the primary laws enacted by the Parliament, while royal decrees are secondary legal acts issued by the King to provide detailed regulations and guidelines for the implementation of these laws.

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Law of 30 April 1999 concerning the employment of foreign workers	1999	To identify and sanction the illegal employment of third-country nationals and inform on the outcomes for the third-country nationals involved.	Link (FR)
				Link (NL)
2	Royal Decree of 9 June 1999 implementing the law of 30 April 1999 regarding the employment of foreign workers	1999	Regulating the conditions under which foreign workers can work and the obligations of the employer and the employee.	Link (FR)
3	Law of 26 May 2002 on the right to social integration	2002	Law on Social Integration.	Link (FR)
				Link (NL)
4	Royal Decree on Legal Aid	2003	Royal Decree of 18 December 2003 establishing the conditions for second-line legal assistance and legal aid fully or partially free of charge.	Link (FR)
				Link (NL)
5	Royal Decree on Medical Assistance	2007	Royal Decree of 9 April 2007 determining the medical aid and care that is not assured to the beneficiary of the reception because it is manifestly not indispensable and determining the medical aid and care that are part of daily life and shall be guaranteed to the beneficiary of the reception conditions.	Link (FR)
				Link (NL)
6		2007		Link (FR)

	Royal Decree on the Assessment of Reception Needs		Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.	Link (NL)
7	Royal Decree on OOC	2007	Royal Decree of 9 April 2007 determining the regime and functioning rules of the Centres for Observation and Orientation of Unaccompanied Minors.	Link (FR) Link (NL)
8	Amendments to the legal framework regarding students' right to stay	2021	The law concerns students who have the right to stay in Belgium and are subject to amendments in the legal framework. The amendments, implemented through a ministerial decree, introduce new standard documents for applying or renewing a student's residence permit. These documents include a higher education enrolment certificate that serves to demonstrate the purpose and nature of the student's stay, indicating whether it is for final enrolment, provisional admission, a preparatory year, an exchange year, or enrolment for an admission test.	Link (NL)
9	Amendment to the Immigration Act	2022	The amendment concerns a broader category of people who are applying for a single permit from the Belgian territory, particularly volunteers, trainees, and researchers, who would benefit from the partial transposition of Directives (EU) 2016/801 related to volunteers and trainees and researchers, and it addresses issues related to their participation in European volunteer projects, access to traineeships, and eligibility for a search year.	n/a

10	Amendment to the legislation on trafficking and smuggling	2022	The amendment concerns individuals who can be considered victims of trafficking in human beings and (aggravated forms of) human smuggling. It also involves authorities who are explicitly required to refer all victims to specialized reception centres. Additionally, front-line workers and public authorities are part of the amendment's focus, aiming to raise awareness, provide tools for dealing with potential cases, and improve the protection and assistance to victims. The text also mentions posted third-country nationals and labour exploitation, particularly focusing on social dumping and labour exploitation among them, as well as unaccompanied minor girls who are suspected victims of human trafficking (primarily sexual exploitation) and are targeted by a new reception structure.	N/A
11	Amendment to the immigration/alien act	2022	The changes pertain to volunteers and trainees in Belgium, allowing volunteers on European projects to apply for a single permit or work permit and exempting them from the labour market test (Immigration Act), while trainees can obtain permits regardless of age or study program involvement, with adjustments to means of subsistence requirements (Articles 61/13/16 to 61/13/24 and 61/13/25 until 61/13/32).	n/a
12	Amendments to the Royal Decrees determining the functioning of the CGRS and the Immigration Office	2022	Providing the possibility for these instances to organise interviews remotely.	Link (NL)

13	Amendments to the Belgian Nationality Code (BNC)	2022	The amendment involves various changes, such as replacing the term "stateless" with "has no other nationality," streamlining the process of recognizing a child as Belgian; clarifying the accountable civil registrar for the application of Article 10 BNC to the child's place of birth; and formalising the Public Prosecutor's engagement to provide non-binding opinions, replacing the prior dependence on the Nationality Service for guidance, with a novel provision permitting the Justice FPS to be consulted in matters beyond the remit of the Public Prosecutor.	Link (EN)
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