



## **Ad-Hoc Query on sanctions for holders of an asylum residence permit in case of (proven) identity fraud**

**Requested by NL EMN NCP on 19 February 2015**

**Summary prepared by NO EMN NCP of responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovenia, Sweden, United Kingdom plus Norway (18 in Total)**

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

### **Background Information**

In the Dutch Aliens Act there is no special article on the penalization of (proven) identity fraud. Fraud involving the name(s), birth date, birth place and nationality of the holder of a residence permit is subject to the general stipulation on fraudulent data and information. This means that in case of (proven) identity fraud by the holder of an asylum residence permit the withdrawal of the permit depends on whether the newly submitted information or data would have led to the refusal of the application. Often, the outcome of this assessment is that, despite the false identity, the new identity would not have led to the refusal of the application. Therefore, the residence permit remains intact. If the assessment leads to the conclusion that the residence permit is to be withdrawn, a check whether the holder of an asylum residence permit can safely return to his or her home country is mandatory. Transcription errors and other mistakes with regard to the writing of names, naturally, do not fall within the category of fraud.

In order to strengthen the penalty regime for holders of an asylum residence permit in case of (proven) identity fraud, Dutch policy makers are exploring the possibilities of using a more strict interpretation of the current legal stipulations. This interpretation is centred on the assumption that, if the holder of the asylum residence permit has carried a false identity, the residence permit never actually was conferred to the person in question. In a sense, the residence permit is ‘void’, since based on a fictitious identity. The subsequent (retroactive) withdrawal of the residence permit would then be a mere administrative act, rather than a full decision which involves the consideration of all the aspects of the case. The assessment of whether the holder of an asylum residence permit can safely return to his or her home country (the so called *ex nunc* assessment) naturally remains intact. The right of the (ex) holder of a residence permit to submit a new application, also remains intact.

Questions:

1. Does your Aliens Act (or similar legislation) have a special article or chapter on the penalization of (proven) identity fraud?
  - a. If yes, how does this particular stipulation in your legislation read and what is its underlying motivation?
  - b. If no, is the sanctioning of (proven) identity fraud subject to a general stipulation on fraudulently submitted data and information, as is the case in the Netherlands?
2. Is your assessment of the possible withdrawal of the asylum residence permit also centred on whether the newly submitted information or data would have led to the refusal of the application?
3. Under which conditions can an asylum residence permit be withdrawn on this ground in your country?
4. Is (proven) identity fraud by holders of an asylum residence permit a significant problem in your country? What are the numbers?
5. Is your sanctioning regime in case of (proven) identity fraud successful?

### **Summary of responses**

- Only two countries (AU and FR) answered a clear ‘no’ to the question of whether the relevant national legislation includes special provisions on the penalization of (proven) identity fraud. Among the other 18 responses at least 3 stated that identity fraud would be covered by general provisions on penalties for having provided false information in support of the application for international protection.
- In 10 responses it was stated that the assessment of the possible withdrawal of the asylum residence permit also centered on whether the new information would have led to the rejection of the application for asylum. In 4 responses it was stated that the question was not applicable to the legislation and in another 4 the reply was ambiguous on this point.
- Only one response (that of NL) clearly signaled that identity fraud by holders of an asylum residence permit is regarded as a significant problem in the country. However, in the response from another two countries concern with this issue is signalled. Only 4 responses submitted (a few) statistics that may indicate the (approximate) number of cases where identity fraud has been instrumental in the revocation of a residence permit.
- Only two responses (those of BE and HU) signalled that the current regime for penalizing identity fraud in connection with applications for international protection was considered to be effective. The other responses basically signalled that this has not been evaluated seriously.

**Comments**

Most of the responses signal that identity fraud is one type of proven misleading information which may result in penalization of the person that have received protection, including a revocation of the residence permit. The NO response is the one which provides most details on the concern with identity fraud and it states that such fraud is the most common cause for revoking a residence permit granted for protection, even though the quoted basis for revocation (§ 63.1 of the Immigration Act) does not mention such fraud explicitly. (The long list of (unexplained) paragraphs given with the statistics that the NO has provided on residence permits revoked serves no useful purpose. They seem to be related to the original basis for granting a residence permit.)

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