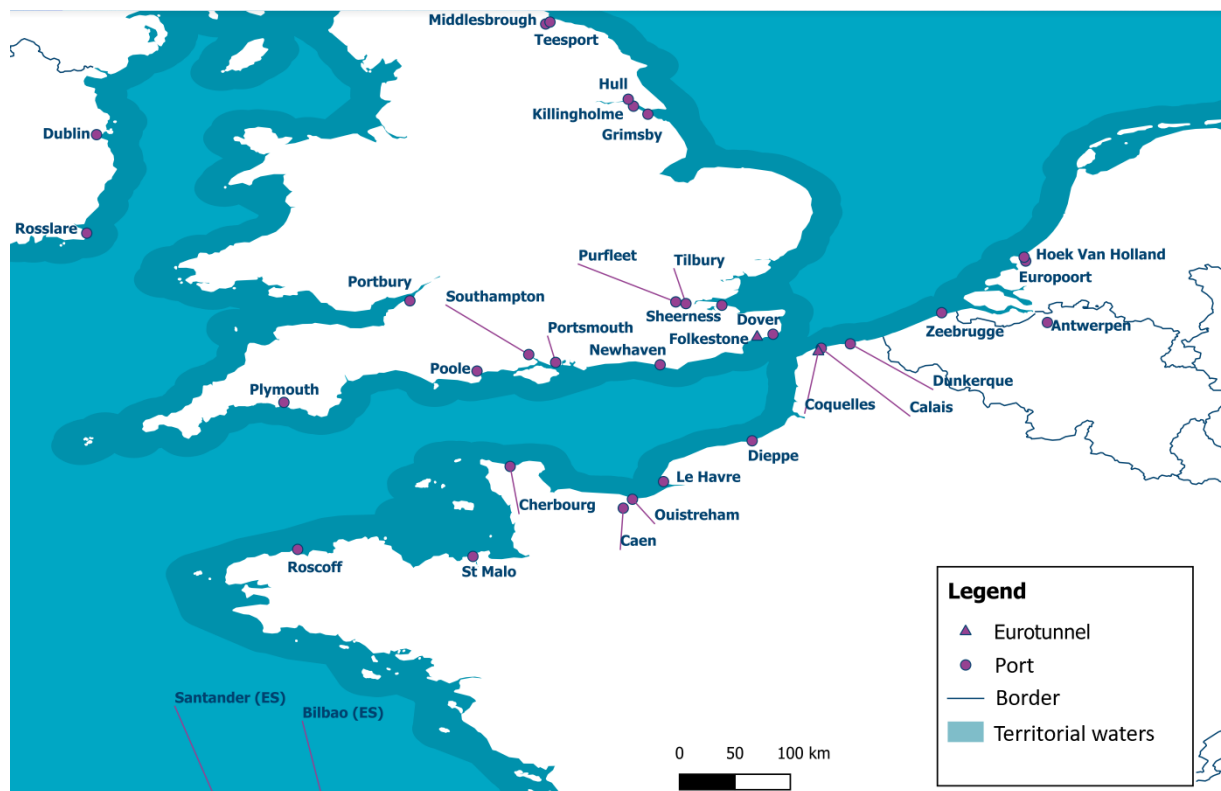


Executive summary Myriadoc: Belgium, on the road to the United Kingdom

“Transit migration”: what exactly is it, how is Belgium dealing with it today and what could stand to be improved? The notion of ‘transit migration’ may be omnipresent in politics and the media, objective facts and data on this phenomenon have until now been scarcely available. This is why Myria decided to examine this form of migration exhaustively for the first time. This Myriadoc puts transit migration into a broader European context and sketches a profile of the transit migrant in Belgium. Myria investigates how the phenomenon is currently being addressed and recommends establishing a clear policy while respecting fundamental rights.

For the purpose of this Myriadoc, Myria completed a literature study and an analysis of available and additional requested data. Furthermore, Myria spoke with various actors who come in contact with transit migration, like humanitarian organisations and volunteers, the Immigration Office (DVZ or *Dienst Vreemdelingenzaken*), the maritime police, the Guardianship Service (*Dienst Voogdij*) and the UK Home Office. These interviews afford the report a practical dimension and allow us to draw a comprehensive picture of transit migration in Belgium.



What is transit migration?

Since there is no uniform definition of what constitutes a ‘transit migrant in Belgium’, Myria first formulated a working definition. According to this definition, a transit migrant is a third country national, generally in irregular residence, who:

- is passing through Belgium with the objective of establishing residence in the United Kingdom (UK) and
- does not initially have the intention of staying in Belgium.

Who is the transit migrant in Belgium?

Transit migrants often avoid public institutions and sometimes use smuggling networks. This makes it particularly difficult to identify precisely who transit migrants in Belgium are.

Transit migrants appear to originate predominantly from countries in East Africa and the Middle East. According to the numbers of the Immigration Office, the most frequently quoted countries of origin by persons detained in the first half of 2019 in the context of transit migration were Eritrea, Sudan and Iraq (see Figure 1). In the migrant accommodation centre Porte d’Ulysse, where most of the population is made up of transit migrants, the top countries are Eritrea, Sudan and Ethiopia. Furthermore, there are also less visible transit migrants who use smuggling networks and manage to stay under the radar. They are often Albanian, Vietnamese and Indian.

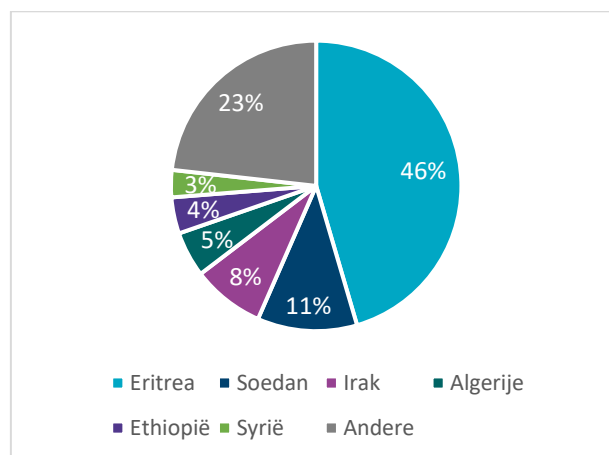


Figure 1: number of administrative detentions of transit migrants per (declared) nationality between January and July 2019 (Source: Immigration Office)

The interviews conducted by Myria show that transit migrants are predominantly male. However, NGOs report that more female transit migrants show up from the moment separate facilities, like specific accommodation, are provided.

It is clear that the transit migrant is very young, typically between the ages of 17 and 25. This young age not only shows from the interviews Myria conducted, but also from the percentage of minors that were recorded after an administrative detention. In the first half of 2019, 27% of the persons arrested in the context of transit migration declared themselves to be minors.

Transit migrants travelling to the UK generally do not have a legal residency status in Belgium. Sometimes they have already gone through an (asylum) procedure in another member state and they have sometimes even already been granted international protection there. What is certain, though, is that this group of migrants initially has no intention of submitting an application for international protection or any other right of residence in Belgium.

The mode of travel of these transit migrants depends to a great extent on their financial situation. Transit migrants with limited means often travel under their own steam. They try, for instance, to climb into lorries or cross the Channel with small crafts they may or may not have assembled themselves. Transit migrants with greater means often use networks of human smugglers who, for instance, offer access to certain car parks for a fee.

Also, places of accommodation for transit migrants vary greatly. Some choose to stay in camps in northern France or in Maximilian Park or around Brussels North Station in Belgium. Others stay in homeless shelters, with private individuals, in hotels or at safe houses run by human smugglers.

Why do transit migrants want to get to the UK?

The motives of transit migrants to continue to the UK are varied. Often, they have family or acquaintances in the UK or they already speak English. Many also believe it is easier to live under the radar in the UK. However, in recent years, the British government has introduced many rules that make it more difficult for people in irregular stay to work or rent, for instance. In addition, many transit migrants (erroneously) believe that, while the Dublin Regulation does apply in Belgium, it does not in the UK. This regulation allows persons to be sent to another EU member state to have their application for international protection examined, for instance, because they had previously already submitted an application in that member state.

Where can transit migrants be found?

Contrary to the countries in the Schengen area, there are border controls at the border with the UK. Transit migrants often remain close to these national borders in their attempts to continue travelling. Transit migrants are mostly found in France (Calais and Dunkirk) and Belgium (Zeebrugge), but it is also a known phenomenon in the Netherlands (Hoek van Holland) and Spain (Santander and Bilbao). The Myriadoc includes contributions from three experts, one for each of these EU member states.

Most transit migration to the UK is focused around the area of Calais and Dunkirk. This is hardly surprising since between Calais and Dover, the Channel is only 33 kilometres wide. This is also why collaboration with France is a priority for the UK, which over the last few years has invested tens of millions of euro on security in the port of Calais.

This increase in security and the clearing of the 'jungle' in northern France in 2016 have contributed to a shift of crossings to Zeebrugge. Belgium and the UK are also working together in terms of increased border controls, information exchange and dissuasive measures.

How many transit migrants are there in Belgium?

Transit migrants in Belgium and other transit countries are often not (properly) registered. Any numbers on the phenomenon must therefore be considered with care. However, in this report, Myria draws a first picture of the transit migrant population in Belgium.

As a guide, Myria uses Immigration Office data on the number of administrative detentions in the context of transit migration. In 2018, these amounted to 12,848 detentions. However, this number is biased since there is no uniform definition of transit migrant nor are there any guidelines by which to categorise a person as such. Furthermore, it only shows the total number of detentions and not the number of unique individuals. In other words, people may have been counted several times in the statistics.

Also the numbers from the NGOs may offer an indication as to the size of the transit migrant population. Between January 2018 and June 2019, the Humanitarian Hub in Brussels was open for 350 days, during which time there were 68,000 consultations. The night shelter Porte d'Ulysse with a capacity of 350 is as good as fully occupied every night, bearing in mind it doesn't allow people to stay there continuously. No data is available on the number of unique individuals. Furthermore, an estimated 500 families offer shelter to a person once a week.

Myria recommends the collection of reliable, transparent and comparable data on the phenomenon of transit migration, by:

- the development of a uniform working definition of the concepts 'transit migration' and 'transit migrant';
- Identifying the number of unique individuals in the data on transit migrants and making this statistical information available;
- Ensuring the validation of available information and the publication of non-confidential information.

Myria also recommends implementing multidisciplinary monitoring of the phenomenon of transit migration, with due consideration of the European and international context and in cooperation with the actors in the field.

Call for a transversal approach with protection of fundamental rights

Transit migrants in Belgium find themselves in a precarious situation and face uncertainty about their rights and prospects. Many need protection. Yet as it stands today, the government is opting for an approach that consists of predominantly repressive measures. In contrast, Myria advocates developing a sustainable policy with a strong emphasis on the protection of fundamental rights and on the fight against human smuggling.

Repressive approach

Transit migrants have the right to freedom and the right to be heard. They also cannot be subject to torture, inhuman or degrading treatment or punishment. This Myriadoc demonstrates that as it stands, the government falls short in respecting and protecting the fundamental rights of this vulnerable category of migrants during their arrest, detention or deportation.

Since 2015, transit migration has figured prominently on the political agenda with repression and dissuasion as the cornerstones of government policy. As such, entering ports was made a punishable offence in 2016. Ever since, there are severe penalties on gaining illegal access to ports – even without causing any damage – penalties which Myria considers disproportionate.

In recent years, there has been a sharp rise in the number of administrative arrests of migrants in general and of transit migrants in particular. Also the proportion of transit migrants in the total number of arrests has gone up from only 8% in 2014 to 35% in 2018 (see Figure 2).

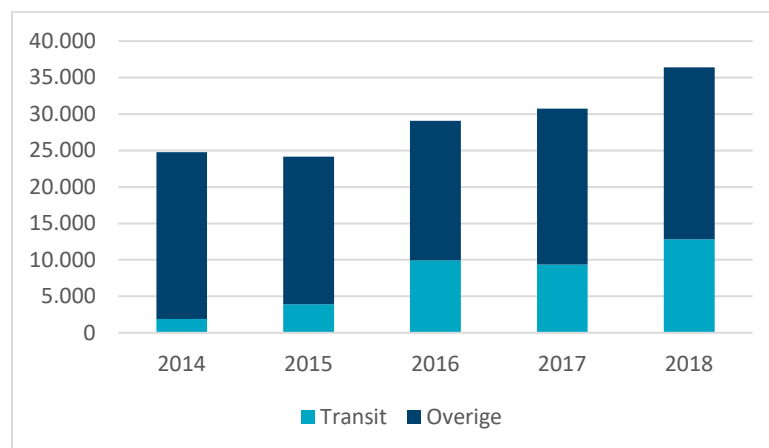


Figure 2: Proportion of transit migration arrests over total of administrative arrests in 2014-2018 (Source: Immigration Office)

During checks and arrests, the police often treat transit migrants respectfully. Yet sometimes, the police resort to physical violence without there being any real need for it. In that respect, victims have recently been reporting fist and baton blows, sleep or food deprivation and strip searches without clear cause. Myria therefore advises authorities to investigate police violence proactively in the context of transit migration.

Myria emphasises that the right to be heard must always be respected. During the interviews conducted by the police and the Immigration Office, all relevant aspects in the context of the assessment under Articles 3 and 8 of the ECHR as well as the importance of the interview must be addressed. All this must be explained in a language the person concerned understands, if necessary with free assistance from an interpreter or intermediary.

The number of decisions to detain a transit migrant after an administrative detention has increased sharply over the years: from only 7% in 2014 to 19% in 2018 and even 42% in the first half of 2019. Transit migrants are often detained following an arrest, then released and finally arrested again. A release is possible when it's not possible to deport a person within a reasonable amount of time (e.g. when someone's identity cannot be established) or when the detention centres are running out of capacity. This cycle of detentions is at odds with the right to freedom, has a negative impact on the physical and mental health of the transit migrant, has no demonstrable dissuasive effect and also costs the government a great deal of money.

Considering the right to freedom, Myria recommends taking the decision to detain only after verifying whether the deportation of the person can take place within a reasonable time. Risks of violation of Article 3 ECHR must always be taken into account.

Repatriation of transit migrants is often very difficult or even impossible: it must be possible to identify the person involved, the authorities of the country of origin must be willing to take back their nationals and the principle of *non-refoulement* must be respected. Transit migrants furthermore often need international protection since they are often nationals of countries with a high recognition rate, like Eritrea or Sudan. In other words, they cannot be sent back to these countries.

They can, however, be sent back to another member state to have their request for international protection considered based on the Dublin Regulation. Myria believes this European regulation is in need of a thorough overhaul, one that takes into account the needs and rights of the people involved. But even in its current form, Belgium has the authority to consider a request for international protection itself in such situation. It has this authority by way of derogation from the rules based on the 'sovereignty clause'. However, there is no transparency on the criteria used in application of this clause.

Myria recommends releasing persons concerned when individual circumstances have changed, for instance, when a first request for international protection is submitted and the country involved has a high recognition rate.

Myria recommends the competent Secretary of State or Minister to draw up clear guidelines regarding the sovereignty clause in the Dublin Regulation. Flexibility in application of this clause is necessary when dealing with vulnerable persons.

Humane approach

Transit migrants have the right to a dignified standard of living and the right to information. As it stands in Belgium, it is predominantly NGOs and volunteers who are providing core services to this group of migrants. They do so despite the fact that first and foremost it is the task of the government to offer the necessary assistance and to inform them fully and correctly.

Assistance to migrants in irregular stay with no financial gain can be subject to criminal prosecution in Belgium for 'aiding irregular migration', unless the help was offered for 'mainly humanitarian reasons'. This notion is vague and creates legal uncertainty for aid workers. Organisations and volunteers offering emergency aid to transit migrants shouldn't be intimidated with such a threat of prosecution.

Myria recommends clarifying the notion of 'mainly humanitarian reasons' under Article 77 Immigration Act and to be very cautious with the official reporting and prosecution of not-for-profit aid.

In 2017, an NGO collective established the Humanitarian Hub in the Brussels North area. The hub offers transit migrants social and legal services as well as medical and psychological aid and assists them with tracing family members. Since late 2017, these migrants can also go to Porte d'Ulysse for shelter at night. Transit migrants in the Belgian coast region can turn to the church at the port of Zeebrugge for food and shelter.

However, these local initiatives cannot offer a structural approach to the phenomenon of transit migration. The help they are offering is inherently temporary and depends on the limited resources and commitment of individuals. Moreover, there is a risk that transit migrants don't always receive accurate and neutral information there.

Myria recommends consolidating the Humanitarian Hub in Brussels. The government must ensure the financing, organisation and the oversight of this collective in close collaboration with the Citizens' Platform and the specialised NGOs. Also in the other regions, the establishment of a hub with basic services must be considered.

Myria recommends investing in outreach work to trace and inform (vulnerable) transit migrants and also to provide sufficient beds in homeless shelters for the transit migrants.

Focus on unaccompanied minors

Finally, this Myriadoc pays special attention to the position of unaccompanied minor transit migrants in Belgium. This vulnerable group often shows a strong distrust for authorities and civil society organisations. Many amongst them receive erroneous information about their rights and options from smugglers and fellow travellers. Sometimes, these young transit migrants run the risk of being economically exploited after arriving in the UK. They must therefore be offered proactive support and shelter in a way that is appropriate to their situation and their age.

Like other people in irregular stay, unaccompanied foreign minors (UM) in Belgium can be subject to police checks and arrests. Police authorities are obliged to report checked people to the Guardianship Service if they are unaccompanied and suspected to be minors.

In certain circumstances, minors can be transferred to a detention centre, for instance, when they have declared themselves to be an adult and the police does not suspect them to be a minor. Minority can subsequently still be established through an age assessment test.

Myria recommends that the police be particularly attentive to potential minors given the young age of the average transit migrant, also when the young person doesn't indicate such. At the slightest doubt, the young person must be treated as a minor and should not be locked up in a cell or a detention centre.

Initially, (suspected) UM are accommodated at an Observation and Orientation Centre (OOC) run by Fedasil. In the first days, they are largely isolated from their former environment and are not allowed any contact with external parties. These strict rules were put in place for the protection of the UM but are often in stark contrast with the reality in which they were living up to that point, for instance living 'in transit'. Some figures indicate more than 50% of these UFM's disappeared from these centres in 2017 and 2018.

Disappearances often occur during the first three days of their stay, even before a guardian is appointed. In the absence of a guardian and – after disappearing from the centre – of professional social guidance, these UM often receive incomplete or erroneous information about their prospects in Belgium.

Myria recommends the development of a specific methodology to attract transit UM to make use of the reception network.

In addition, Myria explicitly pleads for the availability of clear data on the number of disappearances from the OOC, the duration of stay and the profile of these UM.

Myria recommends that the appointment of a guardian by the Guardianship Service takes place as a matter of priority after the notification of a UM with transit profile. Given the large number of cases of absconding from the OOC, it is recommended that these guardians are always specifically trained to work with transit UM.