



FAMILY REUNIFICATION WITH THIRD COUNTRY NATIONAL SPONSORS IN BELGIUM

STUDY OF THE BELGIAN CONTACT POINT
OF THE EUROPEAN MIGRATION NETWORK (EMN)

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The European Migration Network (EMN) is coordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.

Belgian study and EU comparative study

Belgian report: This is the Belgian contribution to the EMN focused study on Family reunification with third country national sponsors. Other EMN National Contact Points (NCPs) produced a similar report on this topic for their (Member) State.

Common Template and Synthesis Report: The different national reports were prepared on the basis of a common template with study specifications to ensure, to the extent possible, comparability. On the basis of the national contributions of 25 Member States and Norway, a *Synthesis Report* was produced by the EMN Service Provider in collaboration with the European Commission and the EMN NCPs. The Synthesis Report gives an overview of the topic in all the (Member) States.

Aim of the study: The EMN Study aims to compare national policies and/ or practices on family reunification between the 25 EU Member States plus Norway, and to provide up-to-date information on the latest developments in this area of legal migration to Europe since 2011 onwards. The Study further aims to provide data on the scale of family reunification at present, as well as over time (2011-2015 and 2016 where available), supplementing available Eurostat data with national statistics where available.

Scope of the study: The scope of the Study includes the family members of TCNs residing legally on the territory of the EU and Norway (=sponsors), who come to these (Member) States through the channel of family reunification together with the sponsor or at a later stage. The sponsor is a TCN who resides in the EU or Norway as a beneficiary of international protection, which means either refugee or beneficiary of subsidiary protection, or is a holder of another residence permit (e.g. worker, student, etc.). Conditions for family reunification for non-mobile EU nationals, are *not* covered by this Study. Family reunification under the Dublin III Regulation is *not* within the scope of the Study. The Report follows to a certain extent the provisions contained within the Family Reunification Directive (2003/86/EC) on the right to family reunification. The Directive establishes a right to family reunification and provides: a definition of eligible sponsors and family members (Section 2); optional requirements for exercising the right to family reunification, for example income (Section 3); guidance on the application procedure (Section 4); and rights following family reunification, such as access to education and training (Section 5). Note that the Directive applies to all (Member) States, except Denmark, Ireland, the United Kingdom and Norway.

Available on the website: The Belgian report, the Synthesis report and the links to the reports of the other (Member) States are available on the website: www.emnbelgium.be.

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EXECUTIVE SUMMARY - BELGIUM

Family reunification: an important entry channel into Belgium

Family reasons is commonly referred to as the **main ground for legal migration** of third country nationals towards Belgium. In 2015, 52% of all first residence permits to third country nationals (TCN) were issued for 'family reasons' (26.206 of 50.085), far more than the first residence permits issued for reasons of international protection (14%) or any other reason.

(Family) Migration as a political priority in Belgium

Migration policy in general has been a continuous political priority over the past years, especially family reunification, asylum and return policies. Concerning family reunification, several legal changes were made since 2011, mostly restricting the right to (re)unite with family members. Among others, in recent years an income requirement was introduced, the fight against marriages and partnerships of convenience was stepped up and today the fight against false declarations of parenthood is on the political agenda. Also an obligatory financial retribution (fee) was introduced for most persons applying for family reunification, as well as an integration requirement at the renewal of a temporary permit. Moreover, the period to control the fulfillment of all conditions for family reunification was extended from three to five years, and the maximum processing times for an application were lengthened from six to nine months (with possible extensions).

Stricter criteria on family reunification were reflected in a decrease in the numbers

An important legal reform in 2011 introduced stricter criteria on family reunification in the Immigration Act. The impact of this reform can be observed in the numbers: a **sharp decrease in 2012 and 2013** of the (absolute) number of first residence permits issued to TCN for family reasons: minus 27% between 2010 and 2013. The observed drop in numbers is especially pronounced for Moroccan and Turkish citizens joining a sponsor in Belgium: between 2010 and 2013, 49% less first permits were issued to family members of these nationalities.

Since 2013, the number of first residence permits for family reasons rose again. However, in 2016, it remained stable compared to 2015 and the total number is still well below the level of 2011 (around 26.000 in 2016 compared to around 30.000 in 2011). As a consequence of the important inflow of asylum seekers in 2015, and the high recognition rate, it is expected that the number of family reunifications of beneficiaries of international protection will rise. This is reflected in the nationalities of the family migrants coming to Belgium and first signs can also be observed in the visa data.

Morocco and Syria most important nationalities of TCN family migrants in 2016

In 2016, 26.325 non-EU citizens received a first residence permit in Belgium for 'family reasons'. Morocco and Turkey were traditionally the highest TCN-beneficiaries of first residence permits for family reasons in Belgium, but in recent years an important development can be observed: although **Morocco** remains in 2016 the number one nationality among the non-EU beneficiaries of family reunification (more than 3700 first residence permits for family reasons), **Syria** becomes second. A tenfold increase can be observed in the number of Syrian family members reuniting with a sponsor in Belgium since 2013: from around two hundred in 2013 to over two thousand in 2016. The number of **Indian** nationals, the third nationality among TCN beneficiaries of first residence permits for family reasons in Belgium, slowly but steadily increased over the past years. In 2016, **Turkey** comes at the fourth place, after Syria and India.

16.000 first residence permits for TCN joining a TCN sponsor in 2016, mostly children

In total, out of the 26.325 TCNs who received a first residence permit for family reasons in 2016, 16.067 joined a sponsor who is himself/herself a TCN.

It concerned **mostly children (12.392)**, but also 3.635 spouses or partners joined a non-EU sponsor in Belgium and 40 other family members.

It is important to point out that part of the first residence permits for family reasons do not relate to migration in the strict sense of the word, since children born in Belgium from foreign nationals (legally residing in Belgium) also receive a first residence permit for family reasons.

Who can be a sponsor and has a right to family reunification in Belgium? Which family members can join a third country national sponsor in Belgium?

The legislation for family reunification with third country national sponsors differs from the (more favorable) legislation applicable to sponsors who are EU-citizens on the one hand and Belgian sponsors on the other hand. The study focuses on the legislation and practice for TCN sponsors. However, also in the general regime for TCN sponsors, there are differences and exceptions depending on the status of the sponsor and the family member joining him/her.

In general, one can say that four *categories of family members* are eligible to join a TCN sponsor in Belgium (with a right to family reunification) if all conditions are being fulfilled:

- a spouse or registered partner, including same-sex partners,
- a minor child (below age 18) of the sponsor and/or of his/her spouse,
- a dependent, unmarried child aged 18 or older with a disability,
- the parents of an unaccompanied minor benefiting from protection status.

Other (dependent) persons do not have a right to family reunification in Belgium. The only possibility for them is to ask for a visa (from abroad) on the basis of article 9 of the Immigration Act, or a residence permit (from in Belgium) on the basis of article 9bis of the Immigration Act. However, the granting of a visa or permit on the basis of these dispositions is a favor not a right. The result for the applicants is therefore uncertain: there are no criteria foreseen by law - it is a discretionary competence of the competent State Secretary and the Immigration Office (See Section II, Text box 2). Moreover, there is no maximum processing time foreseen by law.

Requirements for exercising the right to family reunification

The legislation is complex, but in general, the following requirements are imposed for exercising the right to family reunification:

- The applicant needs to **pay a fee to apply** for a residence permit, in principle **200 euro** per adult;
- The TCN sponsor must have an **accommodation suitable for the size of the family**;
- The TCN sponsor must have **healthcare insurance**, covering the sponsor and his/her family members;
- The TCN sponsor must have **sufficient, stable and regular means of subsistence**, to cover the needs of the sponsor as well as those of the family members to avoid them

becoming a burden on the public authorities. The level of income is set at 120% of the social assistance level (or living wage): this amounts to 1415.58 EUR. Allocations that are not part of the contributory social security system (social assistance, child benefits etc) are excluded. This condition does however not apply when the sponsor is only joined by a minor child.

- Since January 2017, there are also **integration requirements**:
 - Before admission, the applicant will in the future (legally foreseen, but not yet into force) need to sign a declaration indicating that he or she understands the fundamental values and norms of society and will act accordingly;
 - After admission (already in force): the family member needs to provide evidence of his/her willingness to integrate into society. The Immigration Office will do the verifications and if the person does not make a 'reasonable effort' to integrate, the Immigration Office can put an end to his/her permit to stay.

Moreover, an application for family reunification can be rejected on grounds of **public order or national security**. Every adult applicant needs to include in the application an extract from the judicial records of his/her file. Moreover, every applicant needs to prove not to suffer from any of the diseases that may endanger **public health**.

In some cases a **waiting period of 12 months** of legal residence applies before an application for family reunification can be made.

More favorable rules for beneficiaries of international protection

Family members of beneficiaries of international protection applying for family reunification do not need to pay the retribution (fee) and are excluded from the integration requirements (before and after admission).

Moreover, if the application for family reunification is introduced in the year following the decision granting international protection and if the family ties precede the entry of the foreigner, family members of a TCN who were granted refugee or subsidiary protection do not have to prove the requirements concerning the accommodation, the healthcare insurance and the resources). For **unaccompanied minors** with refugee or subsidiary protection status, the more favorable conditions apply anyhow: it is not required that the application was submitted within the year following the decision on the protection status.

Moreover, also the parents of the unaccompanied minor (with refugee or subsidiary protection status) can benefit from family reunification

Submission and examination of the application for family reunification

Application by the family members in the country of origin

In Belgium, the formal party to an application for family reunification in Belgium is the **sponsor's family member**. As a general rule, family members who want to reunite with a TCN sponsor, need to submit their application in the Belgian diplomatic or consular post **in their country of residence**. They must in principle present themselves there and explain in person the reason and the context of their application.

In case there is no embassy or consulate in the country of residence, they must direct themselves to the competent Belgian diplomatic post for the country in question. Family members of

beneficiaries of international protection in Belgium can submit their application at any diplomatic post authorized to issue visas.

By way of derogation and **only in specific situations**, family members of TCN sponsors who are already in Belgium, can submit an application at the municipality or local administration of the place of residence **in Belgium**. This is only possible in very limited cases (see section IV, Text box 4).

Documentary evidence on identity and family relationship

Establishing family or marriage ties is crucial within the family reunification process. These ties must in principle be proven by means of official authentic documents, drawn up in accordance with the rules of private international law, with regard to both substantive and procedural requirements and legalization.

In the absence of these documents, and only when it is impossible for the foreigner to produce official documents, Belgian legislation foresees that "other valid forms of proof" are produced. This is subject to the discretionary assessment of the Immigration Office. If there is no other valid form of proof, the Immigration Office may proceed to an interview with the applicant or any other inquiry deemed necessary. A complementary analysis, such as DNA testing can be proposed.

General rule: maximum processing time of 9 months, with possible extension till 15 months

The law foresees that the decision has to be taken and notified as soon as possible and nine months after the submission of the application at the latest. The date of submission is the moment when all necessary documents are provided to the competent consulate or embassy, or the local administration. The Immigration Office may extend the time limit for a period of three months, and can do this twice, for reasons related to the complexity of the case. The law also allows for such extensions if investigations must be done as to the sincerity of the marriage (i.e. suspicion of marriage of convenience). Do note that when an application is submitted at the municipality or local authorities in Belgium (as said, this is only possible in specific cases), different time limits apply.

Conditions after admission and access to rights following family reunification

Persons authorized to stay in Belgium for reasons of family reunification with a TCN, must present themselves to the municipal administration of the place of residence. They are registered in the National Register (Foreigners Register) and are issued a **residence card** ("A-type") of limited duration, each time valid for one year and renewable.

Verification of conditions after admission

During the first five years the residence permit (of limited duration , 1 year) is always conditional. The Immigration Office can verify whether the requirements set for the family reunification are still being met any time during the stay before the acquisition of an autonomous right to stay. These checks are usually done at the moment of the renewal of the residence permit. However, verifications may be made at any time where there is a well-founded presumption of fraud, or where the marriage, partnership or adoption has been concluded to allow the person concerned to enter or remain in Belgium.

Access to an autonomous right of residence independent of the sponsor

If the family member can receive an autonomous right of residence independent of the sponsor depends on the status of the sponsor (and the fulfillment of the conditions, see above):

- If the **sponsor** is authorized to stay for a **limited period of time**, the family member will **not** have the possibility to obtain an autonomous right of residence for an unlimited period of time.
- If the **sponsor** has a residence right for an **unlimited period of time**, the family member will be eligible for an autonomous right of residence **after five years of stay**. Nonetheless, if, after those five years, all the requirements are not met, the right of residence permit will not become unlimited, but will be renewed for a period of one year, with explicit conditions as to the means of subsistence, health insurance, no offence to public order, etc.

Access to work

As long as the person has a **temporary residence permit** as a family member of a TCN, he or she has also access to the labour market, but he or she must apply for a **work permit (C)**. This work permit is easily delivered and renewed. If the sponsor has a temporary residence right, there are a few exceptions of categories of family members who cannot get a work permit C.

Once they have a **residence status of unlimited duration**, family members of a TCN national have access to the labour market without needing a work permit or professional card.

I. OVERVIEW OF THE NATIONAL SITUATION

1.1 Background on the legal basis for family reunification in Belgium

The **broader legal framework** for family reunification of TCNs in Belgium consists of:

- the European Convention on Human Rights, article 8 on the right to respect private and family life;
- Directive 2003/86 on the right to family reunification¹;
- the Belgian Immigration Act²: articles 10 to 13;
- the Belgian Royal Decree implementing the Immigration Act³.

The genesis of family reunification is to be found in **bilateral agreements** signed by Belgium with third countries from which “labour forces” migrated. Belgian authorities promoted family reunification of TCNs as part of a policy to attract foreign workers. Furthermore, family reunification has long been seen as a way to contribute to and ensure the integration of foreign workers into Belgian society.

After 1974, and more clearly after the entry into force of the **Belgian Immigration Act** (Law of 15 December 1980) and its modifications in the early 80’s (notably in 1984), more conditions have been put in place for family reunification, making it more difficult for family members to reunify.

In 2006, Belgium transposed **Directive 2003/86**⁴ on the right to family reunification. This transposition led to some changes, e.g. as to the right of non-married partners in legal cohabitation (see 2.2.1) to benefit from family reunification. Belgium did not make use of all “may clauses” foreseen by the Directive, and did not, for instance, make use of the possibility to foresee socio-economic requirements at that time. **Since then, Belgium has amended the law several times** (more details on the reforms after 2011 below, see 1.2.3) and, generally speaking, requirements were added, approaching the minimum standards set by Directive 2003/86.

(Section 1 – Q1 of the EMN Questionnaire)

1.2 Recent changes to law, policy and practice (since 2011)

1.2.1. Family reunification in the public debate

Family reunification is commonly referred to as the **main legal migration channel** for third country nationals towards Belgium. In 2015, 52% of all first residence permits for third country nationals were issued for ‘family reasons’, far more than the first residence permits issued for reasons of international protection (14%) or any other reason (see section 6 for more statistical analysis).⁵ Since 2015, there were high numbers of asylum seekers, and a high recognition rate, so it is expected to see a rise in the number of first permits issued for international protection. This will again impact the number of family reunifications.

¹ Council directive 2003/86/EC of 22 September 2003 on the right to family reunification (Hereafter: Directive 2003/86)

² Law of 15 December 1980 concerning the access to the territory, stay, settlement and removal of foreign nationals, *Belgian Official Gazette* 31 December 1980. (Hereafter: Immigration Act) .

³ Royal Decree of 8 October 1981 concerning the implementation of the law on the access to the territory, stay, settlement and removal of foreign national, *Belgian Official Gazette* 27 October 1981. (Hereafter: Royal Decree implementing the Immigration Act).

⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (Hereafter: Directive 2003/86). ²

⁵ Source: Immigration Office and Eurostat.

Given the fact that family reunification standards are set in an instrument of international law (Directive 2003/86), which is not easily amendable, some policy makers in Belgium utter that family immigration is a form of **immigration we are subjected to or undergo** (in French "immigration subie"). They argue that they cannot close this migration channel, but they can restrict the flows (to the minimum set in the Directive).

Another element that is brought into the debate by certain policy makers is that family migration in their view can **hinder the integration** of TCNs into Belgian society. They then refer to the possibility that foreigners or persons of foreign origin make themselves use of 'family formation' (through marriage or partnership) with other TCNs residing abroad, who, in turn, migrate and settle in Belgium. The argument made is that the integration process has to start all over again in this context. This statement contrasts sharply with the idea that family reunification 'facilitates the integration of TCN in the Member State', as the Directive 2003/38 states in its recital 4.

1.2.2. Family reunification, currently a national priority?

One could say that migration policies in general have been a **continuous priority** over the past years, and several legal modifications were made (see below, 1.2.3). Although since 2015, asylum and return were even higher on the political agenda, also family reunification remained an important political priority in recent years.

In the general policy notes of November 2014⁶, November 2015⁷ and October 2016⁸ family reunification was addressed through: the fight against marriages of convenience⁹ and false recognition of parenthood¹⁰, fees for the introduction of residence applications, the extension of the conditional period (i.e. period within which the requirements for family reunification must be able to maintain the right of residence), and the extension of the delay within which the administration must answer to an application. In the beginning of 2017 legal measures are being prepared on the matter of **false declarations of parenthood** at governmental level¹¹ (see 1.2.3 below).

1.2.3. Laws impacting family reunification of TCN since 2011¹²

Law of 08.07.2011¹³

This law entered into force on 22 September 2011 and amended substantive and procedural aspects regarding family reunification. Among other changes, the law introduced so-called "socio-economical requirements" (an income requirement: stable, regular and sufficient means of subsistence, sufficient housing, health insurance) for both family members of TCN and Belgian sponsors. The requirements had to be met during the first three years (do note this became five years in 2016, see below), after which the residence permit of the family member becomes *unconditional*: a residence permit which is autonomous of the right to stay of the sponsor, and

⁶ Belgian House of Representatives, [General Policy Note on Asylum and Migration](#), State Secretary for Asylum Policy and Migration in charge of administrative Simplification, Doc 54 0588/026, 28 November 2014.

⁷ Belgian House of Representatives, [General Policy Note on Asylum and Migration](#), State Secretary for Asylum Policy and Migration in charge of administrative Simplification, Doc 54 1428/019, 3 November 2015.

⁸ Belgian House of Representatives, [General Policy Note on Asylum and Migration](#), State Secretary for Asylum Policy and Migration in charge of administrative Simplification 27 October 2016, DOC 54 2111/017.

⁹ Langhendries B., « La lutte contre les mariages de complaisance ou l'émotive course aux armements du gouvernement », *Newsletter ADDE*, July 2013, n° 89.

¹⁰ Langhendries B., « 'Les bébés papier' : Derrière le concept choc, un nouveau risque de discrimination des familles en migration », *Newsletter ADDE*, November 2013, n° 92.

¹¹ On the initiative of both the Minister of Justice and the State Secretary for Asylum Policy and Migration.

¹² For more details on the legal modifications during these years, also see the Annual Policy Reports on Immigration and Asylum, published every year by the Belgian EMN national contact point.

¹³ The [Law of 8 July 2011](#) amending the Immigration Act regarding the conditions for family reunification, *Belgian Official Gazette* of 22 September 2011.

which would not be affected by the fact that one or more requirements set for family reunification is not met anymore. Also the preconditions for family reunification with unmarried partners on the ground of a 'stable relationship' were tightened.

Text box 1: Important ruling of the constitutional court in 2013

In March 2012 six Belgian non-governmental organisations introduced actions for annulment of the law of 8 July 2011 before the Constitutional Court. Concerns were raised regarding provisions considered as discriminatory and prejudicial to the right to family life. In its ruling of 26 September 2013¹⁴, in short, the Constitutional Court dismissed many arguments raised by the organisations leaving many stricter requirements for family reunification unchanged. However, the Court did annul three provisions on the right to family reunifications of Belgians and EU-citizens¹⁵. Moreover, the Court interpreted many other provisions of the law, which had important consequences. It concerned among others the following:

- The Court found that **beneficiaries of subsidiary protection** are exempted from the requirements regarding means of subsistence, housing and health insurance when the application for family reunification is lodged within the year following the recognition of protection status and when the family tie existed before the arrival in Belgium. This is irrespective of the nature of the residence permit; limited or unlimited duration.¹⁶
- As to the **resource-condition**, the Court stated that in the evaluation of the condition **at the time of the renewal of the permit**, both the resources of the sponsor and of the family member may be taken into consideration.¹⁷
- The Court confirmed that **non accompanied minors with refugee or subsidiary protection status** must not be granted an unlimited stay in order to assert their **right to family reunification with their parents**. As to the renewal of the residence permit of the parents, the requirement of means of subsistence only applies when they request a residence permit of unlimited duration. As long as the child does not reach the age of majority, they can renew their residence permit without the obligation of proving sufficient, stable and regular means of subsistence.¹⁸

(Q23 of the EMN Questionnaire)

¹⁴ C.C., 26 September 2013, n° 121/2013. For more information and analysis see also the website of the Flemish Agency on Integration ("Agentschap Integratie en Inburgering") <http://www.kruispuntmi.be/nieuws/grondwettelijk-hof-wijzig-diverse-toepassingen-van-wet-gezinshereniging> en <http://www.kruispuntmi.be/nieuws/omzendbrief-over-gezinshereniging-na-arrest-gwh-en-extra-info-van-kruispunt-m-i>

¹⁵ This falls outside the scope of the study, but the Court annulled the following three provisions requiring legislative changes:

- a. An exception had to be introduced as regards the 21 year old age requirement for registered partners of EU citizens (article 40bis, §2, alinea 1er, 2°, c) of the Immigration Act) because such exception also applies for partners of third-country nationals.
- b. The Belgian law had to foresee – in accordance with directive 2004/38 – a residence procedure for certain 'other' family members of EU citizens.
- c. There could not be any resource requirement in the case only a minor child of a Belgian citizen (or his/her partner/equivalent partner) applies for family reunification (article 40ter, alinea 2 of the Immigration Act) because such requirement would imply a difference in treatment between Belgians and their family members on the one hand and TCN's and their family members on the other hand.

¹⁶ C.C., 26 September 2013, n° 121/2013, pts B.15.6 & B.18.6.

¹⁷ C.C., 26 September 2013, n° 121/2013, pt. B.21.4. The Constitutional Court pronounced itself on evaluation on the renewal. On the subject of the evaluation at the first application for family reunification, the case law is more divided (see Section III, Text box 3) .

¹⁸ C.C., 26 September 2013, n° 121/2013, pts B.9.4 & B.15.5.

Law of 15.05.2012¹⁹

This law relates to family members of blue-card holders, transposing Directive 2009/50, and defining the status of their family members.

Law of 02.06.2013²⁰

This law introduced further measures with the aim to **fight misuse of family reunification** through marriage and 'legal cohabitation' of convenience²¹, including measures at administrative, judicial and penal levels, inter alia:

- The strengthening of penalties, including (1 month – 3 years) imprisonment, (> 5 00 euro) fine and (5 year) entry ban against those involved in such misuses;
- The expansion of the competence of criminal law judges to the civil procedure for annulment of marriage and declaration of legal cohabitation of convenience;
- The extension of examination/investigation periods of Public Prosecutors;
- The exchange of information (in case of refusal or nullity of marriage / legal cohabitation).

Some procedural guarantees were also introduced for couples who want to register their partnership in the form of a 'legal cohabitation', such as the delivery of a receipt, maximum delays to decide, ... An administrative circular of 17 September 2013²² guarantees that as soon an application for registration of a legal cohabitation or of the celebration of a marriage is delivered by the civil officer, the order to leave the territory cannot be executed until the registration of the marriage. There are however some exceptions to this protection.

Changes in practice in 2014

Two policy changes were introduced in the course of 2014 at the level of the administration handling applications for family reunification. Since then, the Immigration Office

- refuses an application for family reunification in case of an entry ban.
- **no longer exempts sponsors with a residence permit based on a medical stay** (on the basis of article 9ter of the Immigration Act) **from the socio-economic conditions for family reunification** during the first year after obtaining their residence status (as it is the case for beneficiaries of international protection). This is based on the *M'Bodj*-jurisprudence of the Court of Justice²³, as a stay for medical reasons (on the basis of article 9ter of the Immigration Act) is not considered as being a form of EU subsidiary protection.

Law of 19.12.2014²⁴

This law introduced the requirement to pay a **retribution for an application for certain types of residence permits**: in principle 160 EUR for family reunification asked from abroad²⁵, except in

¹⁹ The [Law of 15 May 2012](#) amending the Immigration Act, *Belgian Official Gazette*, 31 August 2012.

²⁰ The [Law of 2 June 2013](#) concerning the fight against marriages of convenience and legal cohabitation of convenience, *Belgian Official Gazette* of 23 September 2013.

²¹ Evrard T. and Apers C., « La loi du 2 juin 2013 visant à lutter contre les mariages de complaisance et les cohabitations légales de complaisance », *Rev. dr. étr.*, 2014, n° 180, pp. 563-576.

²² [Circular of 17 September 2013](#) concerning information exchange between civic registrars and the Immigration Office in case of a marriage declaration or a declaration of legal cohabitation.

²³ Court of Justice of the European Union, *M'Bodj*, 18 December 2014, C-524/13.

²⁴ The [Program Law of 19 December 2014](#) inserted in the Immigration Act a provision requiring the payment of a fee covering the administrative costs of the Immigration Office for the processing of certain residence applications. The [Royal Decree of 16 February 2015](#), modifying the Royal Decree of 8 October 1980 relating to the entry, residence, settlement and removal of foreign nationals determines the amount of the fees as well as practical arrangements for collecting them.

²⁵ 215 EUR if the application is submitted in Belgium or under article 9 and 9bis of the Immigration Law (discretionary power and not family reunification case)

the case of family reunification with a sponsor who is a beneficiary of international protection. In 2016 this retribution was again augmented again (see below).

Law of 04.05.2016²⁶

This law **extended the period to control the fulfilment of the conditions for family reunification**. This period was lengthened from three to five years after granting a temporary residence permit to a TCN's family member.²⁷ During this period, the Immigration Office can check whether the conditions for family reunification are still being fulfilled. If not, the residence permit of the TCN's family members can be withdrawn by the Immigration Office.

After five years, the sponsor must prove that he/she fulfils the requirements otherwise the family member cannot receive an *unconditional* residence permit (i.e. a residence permit which is autonomous from the right to stay of the sponsor, and which would not be affected by the fact that one or more requirements set for family reunification is not met anymore), and the residence permit will remain *conditional*.

This modification brings the "control period" for family members of third country nationals in accordance with the five-year period in force since 2013²⁸ for family members of Belgian and EU-citizens.

The Law of 4 May 2016 also included other changes in relation to the **condition having stable, regular and sufficient resources**. It introduced a modification on the individual needs examination when verifying the fulfilment of this requirement (see 3.1.3). Moreover, it clarified the requirement for TCN-students who want to reunite with family members: it is the TCN student who needs to fulfil the condition having stable, regular and sufficient resources. When assessing if the income of the student is sufficient, the income of the family migrant can no longer be taken into consideration.

Law of 17.05.2016²⁹

The law **lengthened the maximum decision time** for family reunification requests: it increased the maximum time limit for processing applications for family reunification with third country national sponsors **from six to nine months**. In complex cases, it is still possible to extend the nine months period by two times three months.

Law of 01.06.2016³⁰

Due to a technical but important modification of the Immigration Act, **family reunification with beneficiaries of international protection is now always regulated by article 10 of the Immigration Act ('right' to stay)**. Based on the so-called Qualification directive (2011/95/EU)³¹ family members of all beneficiaries of international protection should be in the category with 'a

²⁶ [The law of 4 May 2016](#) introducing various provisions regarding migration and asylum, *Belgian Official Gazette*, 26 June 2016. Entry into force on 7 July 2016.

²⁷ This modification brings the control period for family members of TCNs in accordance with the five year period in force since 2013 (Law of 28 June 2013) for family members of Belgian and EU-citizens.

²⁸ Entry into force (of the [Law of 28 June 2013](#)) on 11 July 2013. Before, there was also a three-year control period for family members of EU or Belgian citizens (articles 40bis/40ter) within a period of five years (instead of three) following the granting of such right.

²⁹ [Law of 17 May 2016](#) modifying articles 10ter and 12bis of the Law of 15 December 1980 on the access, residence, settlement and removal of foreign nationals, *Belgian Official Gazette*, 28 June 2016.

³⁰ [Law of 1 June 2016](#) amending the Immigration Act, *Belgian Official Gazette*, 28 June 2016, entry into force 8 July 2016.

³¹ Directive 2011/95/EU of the European Parliament and of the council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

right' to stay. Before this modification, family reunification for beneficiaries of subsidiary protection under a temporary residence permit, was legally regulated by article 10bis of the Immigration Law on those who are 'authorized' to stay.

However, this is a **technical modification** which has no consequences in terms of the conditions for family reunification. In practice, conditions for recognized refugees and beneficiaries of subsidiary protection were already equal after the judgement of 2013 of the Belgian Constitutional Court (see text box 1).

It is worth mentioning that the same law modified that **refugees** are now not (anymore) entitled to an unlimited right to stay when they are recognized, but their **right to stay is limited during the first 5 years**.

Executive Decree of 14 February 2017³²

Since March 2015, the standard **fee for family migrants applying for a residence permit** (to cover the administrative costs related to the processing of their application) was in principle 160 EUR³³, and this **increased to 200 EUR** starting from March 2017. Family members of beneficiaries of international protection remain exempted from the fee in most cases. As a consequence of another law, also in case of a renewal of a residence permit, a fee can be asked at the level of the municipalities.³⁴

Law of 18 December 2016³⁵

Provable integration efforts are now a new condition to maintain a residence permit in Belgium. The law inserted a general residence condition into the Immigration Act: the foreign national needs to provide evidence of his/her willingness to integrate into society. If the person does not make a 'reasonable effort' to integrate, the Immigration Office can put an end to his/her permit to stay. This condition has already entered into force for all foreigners applying for a residence permit after 25 January 2017.³⁶

Another aspect of the law did not yet enter into force (and the date of entry into force is not yet defined).³⁷ It implies that a person who applies for a residence permit in Belgium will need to **sign a declaration indicating that he or she "understands the fundamental values and norms of society and will act accordingly"**. This measure is commonly referred to as the 'newcomers declaration'. Signing this declaration will be a condition of admissibility for the residence permit.

³² [Executive Decree of 14 February 2017](#), *Belgian Official Gazette*, 21 February 2017.

³³ 215 EUR if the application is submitted in Belgium or under article 9 and 9bis of the Immigration Law.

³⁴ Since 2017 foreign nationals will also need to pay a fee in certain municipalities when they renew, extend or replace a temporary residence permit at the level of the municipalities. Modifications by the Law of 18 December 2016 make it possible for municipalities to collect this fee. (Law of 18 December 2016 modifying the Law of 14 March 1968 suspending the laws concerning the foreigners tax, *Belgian Official Gazette*, 2 February 2017.) The government again explained the measure by referring to the administrative costs related to the processing of the application. The maximum amount of 50 EUR itself is not inscribed in this Law, but is determined an Executive Decree.³⁴ Municipalities have the possibility to collect this fee (if they choose to do so) on top of the fee due for the production cost of the residence card (17,5 EURO).

³⁵ [Law of 18 December 2016](#) inserting a general residence condition into the Law of 15 December 1980 on the access, residence, settlement and removal of foreign nationals, *Belgian Official Gazette*, 8 February 2017.

³⁶ The Law was first published in the Belgian Official Gazette with a mistake concerning a formal legal requirement. The Law of 24 November 2016 (Official Gazette of 16 January 2017, and entry into force on 26 January) was therefore rectified and replaced by the (same) Law of 18 December 2016 (Official Gazette of 8 February 2017). More information on the website of the Immigration Office: <https://dofi.ibz.be/sites/dvzoe/NL/Gidsvande procedures/Pages/Integratiebereidheid%20en%20bewijzen%20inspanningen%20tot%20integratie%20in%20de%20Belgische%20samenleving%20-%20Nieuwe%20algemene%20verblijfsvoorwaarde.aspx>

³⁷ In contrast to immigration, integration is not a federal competence. Therefore, an official cooperation agreement needs to be put in place with the Communities and the Regions.

These two new conditions are however **not applicable to a number of categories**, including certain family migrants. Minors, sick and protected persons are also exempted.

Draft law on the fight against false declarations of parenthood³⁸

A draft law on the fight against false declarations of parenthood was approved in the Federal Parliament on 13 July 2017. Although registrars are according to government and legislator, more often confronted with foreigners who aim to recognize a child with the aim of obtaining an advantage in terms of residence in recent years, registrars do not – until now – have the tools to take action.³⁹ The measures taken include preventive and repressive actions by modifying the Civil Code, the Immigration Law, the Judicial Code and the Consular Code. It includes among others legal means for registrars to postpone or refuse a declaration of parenthood, and it limits the territorial competence of registrars. Also, it introduces – as for marriages and partnerships of convenience – penalties for falsely declaring parenthood and it foresees the possibility to annul a declaration on parenthood. As a consequence, persons who are found guilty of falsely declaring their parenthood will not receive a residence permit or can lose it if the parentage tie is annulled later on.⁴⁰

1.2.4. Limited impact of the Commission Guidelines of 2014

In 2014 the European Commission published a Communication on guidance for application of Directive 2003/86/EC on the right to family reunification.⁴¹ These Commission guidelines have not significantly changed the way the law is interpreted and applied. Also the jurisprudence only rarely refers to the guidelines. If it does, it is mainly regarding the evaluation of the “means of subsistence requirement”^{42 43} or regarding the proportionality test and the importance of the best interest of the child⁴⁴.

(Section 1 – Q2 of the EMN Questionnaire)⁴⁵

³⁸ Belgian House of Representatives, [DOC 54 2529](#).

³⁹ Belgian House of Representatives, [Answer from the Minister of Justice to a written question](#), 23 December 2016.

⁴⁰ Belgian House of Representatives, [General Policy Note on Asylum and Migration](#), 27 October 2016, DOC 54 2111/017, p. 32-33.

⁴¹ European Commission, *Communication on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM (2014) 210, 3 April 2014.

⁴² C.A.L.L., 24 March 2016, n° 164 629. This case was about the family reunification with a European citizen, but the guidelines are referred to by the Council by *analogy*; available here: <http://www.rvv-cce.be/sites/default/files/arr/A164629.AN.pdf>

⁴³ C.C.E., 7 January 2015, n° 135 900: Available here: <http://www.rvv-cce.be/sites/default/files/arr/A135900.AN.pdf>

⁴⁴ C.C.E., 29 June 2016, n° 170 860: Available here: <http://www.rvv-cce.be/sites/default/files/arr/A170860.AN.pdf>

⁴⁵ In the EMN common template, there is also a sub-question “If your (Member) State has introduced a private sponsorship program, which requires the beneficiary to be a family member of the sponsor. If yes, briefly elaborate in what ways the requirements, eligibility and access to rights differ.” However, the Belgian law does not organise a “private sponsorship program” as such, but family reunification is made conditional upon a financial requirement (see further in the text).

II. DEFINITION OF SPONSOR AND FAMILY MEMBERS

2.1 Who can be a sponsor to an application for family reunification in Belgium?

Belgian law provides different legal regimes for family reunification, depending on the nationality of the sponsor or its status.

Nationality

First, different legal regimes for family reunification are applicable to sponsors who are third country nationals (TCNs), for those who are EU-citizens, and for those who are Belgian citizens. Since this study concerns sponsors who are third country nationals (TCNs)⁴⁶, the more favourable regimes applicable to EU citizens or Belgian are only mentioned in footnote.⁴⁷

Do note that among TCNs, the law installs a difference between the sponsor who is a beneficiary of a bilateral agreement^{48 49} and others⁵⁰. However, in reality this difference is no longer relevant.⁵¹

Status of the sponsor

In this TCN regime, several categories of sponsors exist. The differences are limited but the categories have a different legal base⁵².

⁴⁶ Art. 10, 2° of Immigration Act.

⁴⁷ - Art. 40 and 40bis of the Immigration Act apply if the sponsor is a European citizen. To be reunified by family members, the European citizen must have the right of residence as an employee, self-employed or retired worker (art. 40, § 4, al. 1, 1°) or have sufficient resources (art. 40, § 4, al. 1, 2°).

- Art. 40ter of Immigration Act applies if the sponsor is a Belgian national. The Belgian national is subjected to a less favourable regime than the EU citizen's but more favourable than the TCN's. The Constitutional Court judged that this difference in treatment was not discriminatory (C.C., 26 September 2013, n° 121/2013, B.53.2; B.54.2). In terms of procedure, family members of a Belgian national follow the same rules as family members of EU citizens.

⁴⁸ Art. 10, § 1, 1° of Immigration Act. Formally, this Article refers to all international agreements but only applies in practice to bilateral agreement since EU law is integrated in another part of the law (Art. 40 and following).

⁴⁹ Bilateral conventions were signed to organise labour migration in the 50s and the 60s with Belgium in order to ensure a labour immigration (Law of 13.12.1976): Morocco (16 July 1964), Turkey (16 July 1964), Algeria (8 January 1970), Tunisia (7 August 1969) and former Yugoslavia (13 December 1976).

⁵⁰ Art. 10, § 1, 2° of Immigration Act

⁵¹ The vast majority of the TCN sponsors are regulated by the common regime for TCN, which is described in more detail below. Where a bilateral agreement is applicable, which is quite marginal, some specific rules are applicable. The conditions to ground an application on those treaties are quite strict. Firstly, the sponsor must have been a worker for at least three months. Secondly, the reform of 2011 adds that he must have arrived in Belgium as a migrant worker and not on another basis such as family reunification or as a student. Following this interpretation, the bilateral agreement may only be invoked by migrants who arrived in Belgium as migrant workers, with a "labour visa" within the framework of these labour agreements. Moreover, the family link must exist before the arrival of the sponsor in Belgium. The cases that fulfil all those conditions are extremely rare.

Concerning the reform of 2011, and according to the Constitutional Court which controls namely the respect of international agreements (C.C., in September 26th, 2013, N 121/2013), Article 15 of the law of July 8th, 2011 does not violate the bilateral agreements. The fact that they were interpreted in the past in a more flexible way does not mean that those agreements are violated (*Doc. parl.*, Ch. repr., sess. ord. 2010- 2011, 53-0443/017, pp. 6-9, and 53-0443/018, pp. 210-212) (B.68.4).

⁵² Previously, the Belgian law set two forms of family reunification with a TCN: either the TCN had an unlimited residence permit (Art. 10 of Immigration Act) or the TCN had a limited residence permit (Art. 10bis of Immigration Act). The distinction between a sponsor with an unlimited permit of residence and the sponsor with a limited one is not as clear since the recent reforms: the residence permit of recognised refugees is not unlimited anymore and subsidiary protection beneficiaries are now integrated in Article 10, 1° (See 1.2.3 on the law of 1 June 2016). Now, Article 10, 2°, regulates TCN sponsors who: have an unlimited residence permit; are recognised as refugees; or are subsidiary protection beneficiaries.

The first category regulates TCN sponsors who:

- have an unlimited residence permit;
- are recognised as refugees; or are subsidiary protection beneficiaries.⁵³

The second category of sponsor includes:

- students whose residence permit is annual⁵⁴;
- every foreigner with a limited residence permit⁵⁵ (this especially concerns workers (independent or under a labour contract));
- long-term residents according to Directive 2003/109/EC⁵⁶; and;
- EU Blue Card holders⁵⁷. The second hypothesis (limited residence permit).

(Section 2 – Q4b of the EMN Questionnaire)

2.2 Which family members can join a sponsor in the framework of family reunification (beyond nuclear/ core members of the family)?

The family members who can reunite with a sponsor are stipulated in article 4 of the Family Reunification Directive: in short it states that the member states must authorize the sponsor's spouse and the minor children of the sponsor and his/her spouse are eligible, including adopted children. Moreover, it says which categories of family members *may* be authorized by the member states, but this is left to the discretion of the member states.

Below, we look into the different categories in detail and we examine if and in which cases Belgium extends the scope of family reunification beyond the nuclear/ core members of the family, i.e. parents, adult children, non-married partners, etc.

In general, one can say that four categories of persons are eligible to join a TCN sponsor in Belgium (with a right to family reunification) if all conditions are being fulfilled:

- a spouse or registered partner;
- a minor child (below age 18) of the sponsor and/or of his/her spouse,
- a dependent, unmarried child aged 18 or older with a disability,
- the parents of an unaccompanied minor benefiting from protection status.

2.2.1. Partners

Married partners have a right to family reunification under the following conditions :

- both the sponsor and the family migrant are aged **21 or older**. This requirement can be reduced to 18 years when the marriage or registered partnership (see below) pre-existed the arrival of the sponsor in Belgium.
- the spouse or partner must come and **live together** with (under the same roof as) the sponsor.

⁵³ Art. 10, § 1, 2° of Immigration Act has been recast to say: even if Art. 10, § 1, 2° concerns foreigners with an unlimited residence permit, for at least twelve months, those conditions of category of residence permit and length do not apply to the refugees (Art. 49, § 1, al. 2 and 3) or to subsidiary protection beneficiaries (Art. 49/2).

⁵⁴ Art. 10bis, § 1 of Immigration Act.

⁵⁵ Art. 10bis, § 2 of Immigration Act.

⁵⁶ Art. 10bis, § 3 of Immigration Act.

⁵⁷ Art. 10bis, § 4 of Immigration Act.

Same-sex partners? Yes. There is no distinction in Belgian law between different-sex spouses or partners and same-sex spouses or partners. Therefore, same-sex partners have a right to family reunification in Belgium under the same conditions as opposite sex partners.

Non-married partners? Yes, Belgian law authorises family reunification of non-married partners if it is a registered partnership. Two different regimes of registered partnerships are covered: registered partnership equivalent to marriage and legal cohabitation.

- **Partnership equivalent to marriage**⁵⁸

Those partnerships are considered equivalent to a marriage because the rights and obligations of the members of the couple are quite the same. This is listed in a Royal Decree⁵⁹ and the Danish, German, Finnish, Icelandic, Norwegian, British and Swedish partnerships are included.

- **Legal cohabitation**⁶⁰

A legal cohabitation is a common life relationship between persons of different or same sex who, under Belgian or a foreign law, are living under the same roof and are formally registered by a public authority (they signed a declaration of legal cohabitation at the municipality and are registered as such in the National Register).⁶¹

To be eligible for family reunification, the partners have to fulfil several other conditions:

- be more than 21 years old (there is an exception if they prove they have been cohabitating for at least one year before the sponsor arrived in Belgium; in that case, the minimum age is eighteen years old);
- be unmarried/single and not be in a long-term relationship with another person;
- they cannot be family members of each other;
- Neither of the partners may have been the subject of an official decision that refused them a previous marriage (notified a negative decision of wedding celebration, either after a definitive decision from the civil judge or because the administrative decision of the civil official was not contested).
- demonstrate a **duly attested stable long-term relationship** – the law provides three ways to prove it:
 - either they have been cohabitating in Belgium or in another country legally and without interruption for at least one year before the application of family reunification;
 - or they have known each other for at least two years and prove that they have regularly kept in touch by phone, by post or email, that they have met three times before the application and that these meetings consisted of forty-five days or more;
 - or they have a child together.

2.2.2. Minor children

Children of the sponsor and the spouse or registered partner, as well as children the spouse or registered partner have separately, have a right to family reunification if they are minor (under the

⁵⁸ Art. 10, § 1, 4° of Immigration Act.

⁵⁹ Art. 12 of Royal Decree of 17.05.2007.

⁶⁰ Art. 10, § 1, 5° of Immigration Act.

⁶¹ Legal cohabitation is a legal device that recognizes two persons as legal cohabitants.

These two persons have to be older than 18 years, not be bound by a marriage or by another legal cohabitation and live together by forming a household at the same address. The legal cohabitation arises from a written statement by the two partners together and against receipt to the Officer of the Registry office of the common place of residence.

age of 18), unmarried and come live together (under the same roof) with the sponsor. In case the child is only from one of the partners (sponsor or spouse/partner) a copy must be provided of the judgement granting sole custody, or a consent document of the other parent that the child can join the other parent in Belgium.

2.2.3. Adult children?

Adult children have no right to family reunification, except in one case : the **disabled adult descendant** of the sponsor or of his spouse or partner⁶². The descendant has to be older than eighteen years old and be single/unmarried. The disability is proven and, because of this handicap, the descendant is not able to cover his own needs⁶³.

2.2.4 Parents ?

Parents have in principle no right to family reunification. There are however two exceptions:

- the **parents of an unaccompanied minor with a refugee status or under subsidiary protection**^{64 65} if the minor is under eighteen years old; arrived on the Belgian territory unaccompanied by an adult legally responsible and in charge of its care; or was left alone after his/her arrival.
- The **parents of an adult Turkish national** could benefit from the right to family reunification under the bilateral agreement. But this concerns only rare situations where the Turkish national arrived in Belgium as a migrant worker (see 2.1).

2.2.5. Other dependent persons (receiving legal, financial, emotional or material support by the sponsor)^{66?}

Other dependent persons receiving legal, financial, emotional or material support by the sponsor) have **no legally grounded right to family reunification** in Belgium, except in the case of an adult disabled descendant^{67 68} (see 2.2.3). The legislator did not want to extend in a general way the right to family reunification to adult descendants, as authorized by Art. 4, § 2, of Directive 2003/83.

Although other family members have no right to family reunification, they can nevertheless ask a permit to reside in Belgium on humanitarian grounds, which is accepted in limited circumstances and only on a case-by-case basis (see text box 2 below).

⁶² Art. 10, § 1, 6° of Immigration Act.

⁶³ Art. 10, § 2, al. 3 of Immigration Act.

⁶⁴ Art. 10, § 1, 7° of Immigration Act.

⁶⁵ To compare, the parents of an EU minor (Art. 40bis, § 2, 5°) or a Belgian minor (Art. 40ter, § 2, al. 1^{er}, 2°). The minor and his/ her parent have to live together or, if not, at least demonstrate emotional and financial links.

⁶⁶ I.e. other than those referred to in Art. 4 of Directive 2003/86/EC.

⁶⁷ As a comparison, the regime of family reunification with EU and Belgian citizens has been modified as follow. According to European law (Art. 2, § 3, Directive 2004/38) and case law (*Rahman*, 2012) and national case law (C.C., 26.09.2013, n° 121/2013), in 2014, the Belgian legislator added to the family members of the European citizen persons who, in the country of origin, are dependent or are part of the household of the European citizen (Art. 47/1, 2°). They have to prove the dependency or the fact that they are part of the household with a document delivered by the national authorities or by any means offered by the law (Art. 47/3, § 2). The legislator also added persons under the absolute and personal care of the European citizen because of serious health problems (Art. 47/1, 3°).

⁶⁸ Art. 10, § 2, al. 3, of Immigration Law.

Text box 2: Visa or residence permits on so-called humanitarian grounds in exceptional cases: no right - discretionary power

Family members who do not have a right to family reunification but are however dependent on a person legally residing in Belgium – like adult children, grandchildren, de facto partners, etc – can apply for a visa or permit on humanitarian grounds on the basis of article 9 or 9bis of the Immigration Act. The result is however uncertain and there are no time limits for the processing time of applications.⁶⁹

Articles 9 and 9bis of the Immigration Act confer to the Minister or Secretary of State competent for asylum and immigration (and the Immigration Office) a **discretionary power** to grant a long-term visa or residence permit on an individual basis. These are often referred to as visa or residence permits issued on the basis of **so-called humanitarian reasons**, although legally this term 'humanitarian reasons' is not foreseen.

- ⇒ **Article 9** of the Immigration Act contains the legal base to ask for a long-term visa from abroad, by an application at the diplomatic post or consulate.
- ⇒ **Article 9bis** of the Immigration Act contains the legal base for the procedure to apply for a residence permit in Belgium, by an application introduced in the municipality of residence.

The Immigration Act does not provide any criteria.⁷⁰ The Immigration Office has a discretionary competence and needs to decide based on a case-by-case analysis whether the specific circumstances of the case justify an authorisation to come to or to reside in Belgium. It has to take into consideration individual and specific circumstances of each case. When family life is at stake, an individualised analysis has to be done under Article 8 ECHR⁷¹.

In practice⁷², one can observe that positive discretionary visa decisions are sometimes issued⁷³ when a very close relationship with Belgium exists; when there is clear emotional and financial dependency; and when the sponsor is able to demonstrate his/her financial ability to take charge of the family members.

🔔 Do note that in certain cases, family members who legally have a right to family reunification also make use of these procedures. This can be the case if they cannot successfully apply for family reunification because they cannot provide all the required documents or because they do not fulfil all the conditions. Instead of a visa based on family reunification, they can in some cases

⁶⁹ For more information on humanitarian visa for family reunification, see the parts on humanitarian visa D (long-term visa) in Federal Migration Centre Myria, *MyriaDocs #4 Visas humanitaires*, May 2017. Also see, Belgian Refugee Council (CBAR-BCHV), *Praktische handleiding humanitaire visumaanvragen voor familieleden van begunstigden van internationale bescherming in België*, April 2016. Both documents are available in Dutch and French.

⁷⁰ In the past, regularization operation had set certain criteria, currently closed.

⁷¹ C.C., 26 June 2008, n° 95/2008, B.6.

"This discretionary power cannot [...] be interpreted in the sense that without express reference to the necessary respect for the conventional fundamental rights, it would authorize the Secretary or his delegate to violate articles 3 and 8 of the European Convention on Human Rights, so that a category of foreigners would be deprived of the profit of the rights which are guaranteed by these treaty obligations".

⁷² For instance, about a visa application introduced by a major brother living in Syria, the judge annuls the decision of refusal grounded on the fact that the applicant has other family members in Turkey. The administration had to take into consideration the close relationship between the brothers. The judge grounds its decision on the violation of the obligation of rigorous exam, more than on a direct application of art. 8 ECHR (C.C.E., 29 February 2016, n° 163.192).

⁷³ For examples, see Belgian House of Representatives, [Question n° 0394](#) of 18 December 2015 to the State Secretary for Asylum Policy and Migration, in charge of Administrative Simplification, attached to the Minister of Security and the Interior, 25 January 2016, QRVA 54 060, pp. 405-410.

receive a visa on humanitarian grounds (discretionary power, no conditions legally defined), with possibly different conditions of renewal.⁷⁴

In 2016, 776 persons received a discretionary visa for long stay from the Belgian authorities (on the basis of article 9 of the Immigration Act). The top-5 nationalities were: Syria (257), Somalia (120), Afghanistan (81), Iraq (54) and Burundi (26).^{75 76}

2.2.6. Other ? Foster children, applicants in polygamous and/ or proxy marriages, etc?

The **children of polygamous parents** are not excluded⁷⁷. They benefit from family reunification in the same way as children born in a "classic marriage". This is however not the case for the second wife of a polygamous man, who is excluded from the right to the family reunification if another spouse is already living in Belgium⁷⁸.

For other family members, such as **foster children**, the only solution is to introduce an application on the basis of Articles 9 or 9bis of Immigration Act (no right, see text box 2). Article 9 is mainly used by members of the family not belonging to the nuclear family, but maintaining narrow links with a person in legal stay in Belgium. It could be the case of the collateral, of the ascendants while presenting a particular link of dependence because of their age or of their health but who have sufficient resources, children welcomed within the framework of a guardianship or of a *kefala*.

Here also, one has to recall the decision of the Constitutional court underlining the obligation to make a case-by-case analysis, taking into consideration individual and specific circumstances of each case. When family life is at stake, an individualised analysis has to be done under Article 8 ECHR.⁷⁹

Another issue is *Kefala* – or *kafala* – a traditional form of guardianship (mainly for Morocco and Algeria) applicable in countries where adoption is not authorised because of the influence of Muslim law. *Kefala* does not create a link of filiation between the child (*mafakoul*) and the guardian (*kafil*), and it does not enter into account for family reunification. Also here, the only possibility for the applicants is a procedure on the basis of Article 9 or an Article 9bis of the Immigration Act (see text box 2).

(Section 2 – Q5 of the EMN Questionnaire)

⁷⁴ The case law of the administrative courts does not give information since the control by the judge is a marginal one; the competence is limited to a control of the legality of the administrative decision. Then, the vast majority of the decisions are based on the lack of motivation, more than on substantial grounds. Moreover, positive decisions do not contain any motivation.

⁷⁵ Data analysed by Myria, the Federal Migration Centre on the basis of the visa database of the Federal Public Service Foreign Affairs. See: Federal Migration Centre Myria, *MyriaDocs #4 Visas humanitaires*, May 2017.

⁷⁶ Moreover, In 2016, 931 persons received a residence permit for humanitarian reasons on the basis of article 9bis of the Immigration Act. This concerns all residence permits issued for humanitarian reasons and does not necessarily relate to family reunification purposes. The top-5 nationalities were: DR Congo (176), Morocco (92), Guinea (53), Russia (48) and Armenia (33). Data of the Immigration Office, presented by Federal Migration Centre Myria, *Migration in numbers and in rights 2017*, June 2017, p. 162. Available on www.myria.be in Dutch and French.

⁷⁷ C.C., 26 June 2008, n° 95/2008.

⁷⁸ Art. 10, § 1^{er}, al. 2 of Immigration Act.

⁷⁹ C.C., 26 June 2008, n° 95/2008.

"This discretionary power cannot [...] be interpreted in the sense that without express reference to the necessary respect for the conventional fundamental rights, it would authorize the Secretary or his delegate to violate articles 3 and 8 of the European Convention on Human Rights, so that a category of foreigners would be deprived of the profit of the rights which are guaranteed by these treaty obligations".

III. REQUIREMENTS FOR EXERCISING THE RIGHT TO FAMILY REUNIFICATION

3.1 Material requirements

In principle, the following material requirements are imposed for exercising the right to family reunification:

- Accommodation suitable for the size of the family, as well as meeting the health and safety standards;
- Healthcare insurance;
- Sufficient financial resources to provide for the sponsor and his/her family.

Moreover, a fee needs to be paid.

3.1.0. Fee to apply for a residence permit

When applying for a residence permit on the basis of family reunification, the applicant needs to pay a fee in order to cover the administrative costs related to the processing of the application. This fee amounts to **200 EUR per adult**⁸⁰ and is a condition of admissibility for the application.

There are some exceptions. The fee is per adult – minors are excluded. There is also no fee for applications of family members of beneficiaries of international protection, for family reunification with a dependent adult handicapped child and for beneficiaries of the association agreement between the EU and Turkey. A fee of 60 EUR is applicable for long-term resident third country nationals from another EU country asking for a second residence in Belgium under certain conditions.

Moreover, the fee amounts to 350 EUR if the application is based on the basis of article 9 or 9bis of the Immigration Act (discretionary competence, see text box 2 under 2.2.5).

This application fee is – as said – a formal condition of admissibility. Do note that the applicants have other costs to be able to apply: a visa handling fee of 180 euro per person at the Belgian consulate or embassies abroad, as well as expenses linked to legalization and translation of the civil status records, certificates or acts.

3.1.1. Accommodation suitable for the size of the family

The TCN must have an accommodation suitable to the size of the family.⁸¹ The Royal Decree implementing the Immigration Act explains that such an accommodation is one that is in accordance with the elementary requirements of security, health, hygiene and habitability prescribed by the Civil code⁸².

Having a suitable accommodation can be proved either by a registered rental agreement or proof of ownership of the house or apartment. The proof of a suitable accommodation will not be accepted if the accommodation has been condemned (uninhabitable) by a competent authority.

⁸⁰ Until 28 February 2017 it was 160 EUR.

⁸¹ Art. 10, § 2, al. 2 ("decent" accommodation) and 10bis, § 1 ("sufficient" accommodation) of Immigration Act. Art. 10bis, § 1, al. 1 of the Immigration Act was amended by the Law of 4.05.2016. Previously, art. 10bis of Immigration Law required proof of a "decent accommodation". BERNARD, N., « Le regroupement familial et la délicate notion de "logement suffisant" », *J.T.*, 2010, p. 442.

⁸² Art. 26/3 of Royal Decree implementing the Immigration Act.

3.1.2. Healthcare insurance

The applicant must prove that the sponsor has a healthcare insurance covering the sponsor and his/her family members, including the applicant(s).⁸³

For most sponsors, this condition is not difficult to meet: an attestation from the mutual benefit organisation confirming the possibility to affiliate the family members when they join you in Belgium. Health insurance at a mutual benefit organisation is automatic as a worker or as a person receiving unemployment benefits, ... For a student, it could be more difficult if the sponsor does not have any professional income.⁸⁴

A private health insurance is not usually required. All family members who obtain residence rights in Belgium under family reunification have access to public health insurance through the sponsor. Despite this fact, some family members are forced to take a temporary private health insurance because they need to prove in advance that they are insured in order to obtain a visa.

3.1.3. Sufficient financial resources to provide for the sponsor and his/ her family

The TCN sponsor who wishes to reunite with his/her family member(s) must have **sufficient, stable and regular means of subsistence**. The law foresees that this income must be sufficient to cover the needs of the sponsor as well as those of his/her family members to avoid them becoming a burden on the public authorities.

This condition is the same for most categories of sponsors⁸⁵, with some exceptions: minor child, some beneficiaries of international protection, EU Blue Card holders and Long Term Residents.

We examine this condition in more detail: the income level (that must be sufficient), the stability and regularity of the resources, the individual assessment and the categories that are exempt from the condition.

Sufficient income

⁸³ Art. 10, § 2, al. 2; art. 10bis, § 1 of Immigration Act.

⁸⁴ In some cases, quite rare, students benefit from an insurance provided by their country of origin and must then check if it also covers family members. In other cases, students must register with a health insurance fund (*mutuelle/mutualiteit*) to benefit from health insurance. On this subject, see namely http://www.medimmigrant.be/uploads/Publicaties/Brochure/2013/082013/Overzicht_verblijfsstatuten_en_gezondheidszorg_0813_FR.pdf

⁸⁵ It is interesting to underline that this condition is also applied for EU and Belgian sponsors with some differences.

If the sponsor is a European citizen, they must have sufficient resources so that they and their family members do not become a "charge for the social assistance system" of the country (Art. 40bis, § 4, al. 2 of Immigration Act). The provision about the removal of family members' residence permit uses the expression "unreasonable charge for the social assistance system" (Art. 41ter, § 1 of Immigration Act). This criterion is the one selected in the law and the case law of the EU. The resources are considered in a global way, as regarding the balance to reach to avoid to become a charge for the host country. Then, the incomes taken into account could be the incomes of the sponsor as well as of its family members. The assessment of the resources take into account the personal situation of the European citizen which includes especially the nature and the regularity of their income and the number of family members they are responsible for (Art. 40bis, § 4, al. 2 of Immigration Act). The proof of sufficient resources may be a disability allowance, early retirement allowance, old-age pension, work-accident allowance or insurance against occupational diseases. The personal and third party resources of the European citizen are taken into account (Art. 50 of Royal Decree).

The condition is different for the Belgian sponsor. If he benefitted in the past from free movement of EU citizens, he is submitted to Art. 40bis of Immigration Act. If not, he is subjected to the same condition as the TCN: he must have stable, sufficient and regular resources (Art. 40ter of Immigration Act).

Concerning the level of income, the Belgian legislator chose a threshold that is set at **120% of the social assistance level (or living wage)⁸⁶: this amounts to 1415.58 EUR** (level at 1 July 2017). Text box 3 provides more details on the resources that are taken into consideration.

Text box 3: Resources taken into consideration to prove a sufficient income⁸⁷

The resources taken into account in the assessment of the sufficient resources vary. The rule is to exclude the allocations that are not part of a contributory social security system (see text box 7 for some background).

The following allocations are excluded:

- supplementary social security benefits, such as complementary child benefits;
- financial assistance based on a non-contributory regime such as social integration income;
- social assistance;
- allocation of transition given to a person who does not satisfy the conditions of age to be entitled to the minimal allowance after the death of the spouse;
- allocation for professional transition (occupational allocation);
- child benefits.

Unemployment benefits are taken into consideration if the sponsor can prove that he/she is actively looking for a job⁸⁸, unless he/she is exempted from this obligation⁸⁹.

There are discussions about some categories of social security benefits.

- Guaranteed income for elderly persons: even if this social benefit is not listed in the excluded income, the case law considers that those benefits are similar to social integration income since they are part of a non-contributory social security regime⁹⁰.
- Salary earned under a labour contract with the Public Centre for Social Welfare: Belgian law contains a regime allowing the Public Centre for Social Welfare to hire a person who benefits from social assistance during a certain period of time corresponding to the number of days of work required to receive unemployment benefits or to have an access to some back-to-work assistance plans. In some decisions in the case law, the salary earned is excluded since this worker is supported by a public allowance and is hired for a limited period of time⁹¹. Others accept to integrate this kind of income⁹².
- Allocation for disabled persons: the case law distinguishes between contributory and non-contributory regimes. If the allowance is part of a contributory regime, such as disability allowance, then it opens the right to family reunification; if not, this resource is not taken into consideration⁹³.

Initially, following the entry into effect of the Law of 8.11.2011, allowances for disabled persons provided for by the Law of 27.02.1987 on allowances for persons with disabilities, namely the income replacement allowance, the integration allowance and the assistance

⁸⁶ Art. 10, § 5 and 10bis of Immigration Act.

⁸⁷ For an analysis of recent evolutions in the jurisprudence on the topic, see the website of the Flemish Agency for Integration (*Agentschap Integratie en Inburgering*): <http://www.agii.be/nieuws/bestaansmiddelenvoorwaarde-bij-gezinshereniging-ontwikkelingen-in-rechtspraak>

⁸⁸ The decision on this point must be motivated (C.C.E., 28 July 2015, n° 150.027).

⁸⁹ C.C., 26.09.2013, n° 121/2013, B.17.6.4.

⁹⁰ C.E., 20 November 2012, ord. n° 9227 ; C.C.E., 24 April 2014, n° 122.956 ; 23 September 2014, n° 129.994 ; 22 January 2015, n° 136.780 (pt 4.1) and 5 Augustus 2015, n° 150.455

⁹¹ C.E., 20 November 2012, ord. n° 9224. C.C.E., 13 February 2014, n° 118.827 ; 13 May 2015, n° 145.448 ; 30 June 2015, n° 148.830.

⁹² C.C.E., 28 October 2014, n° 132.287 ; 30 September 2015, n° 153.734.

⁹³ Aussems G., « Les personnes handicapées, discriminées dans leur droit au regroupement familial », *Newsletter ADDE*, October 2016, n° 124, pp. 2-5.

allowance for the elderly, were considered to provide a valid income for family reunification. Indeed, they were not explicitly targeted as being excluded from sources of means of subsistence. However, the Council of State undermined this interpretation in 2015 when it ruled that allowances for people with disabilities were covered by the supplementary welfare system. Until then these allowances were considered to be social security benefits. Although the situation in question related to the residence permit of a European citizen, the classification given by the Council of State was immediately extended in practice to family reunification⁹⁴. Consequently, in the interpretation of the Immigration Office, disability allowances can no longer be used to demonstrate that the sponsor has sufficient means of subsistence to avoid becoming a burden on the welfare system. Some stakeholders oppose this change in practice, arguing the exclusion is discriminatory.⁹⁵

What about the resources of the family member? Are these taken into account?

According to the law, at time of application, the *sponsor* must prove to have the (stable, regular and sufficient) resources *at his/her disposal*. The question arose whether the means of subsistence of the family member applying for family reunification should also be taken into account.

No clear interpretation can be inferred from the legislative work and debates related to those questions. The Immigration Office is reluctant, and only rarely allows it. This is mainly based on an '*a contrario*' interpretation of the law and of the Directive 2003/86 itself, which do not explicitly mention the means of subsistence of the family member at the moment of the first application, but only⁹⁶ at the stage of *renewal* of the permit.⁹⁷

The case law is rather divided.⁹⁸ Certain stakeholders and part of the case law⁹⁹ consider there is no reason to exclude the means of subsistence of the family member as a general rule.

This said, at the stage of renewal, it is clear: when assessing the condition on sufficient, stable and regular resources at the stage of *renewal*, the Immigration Office must take into account the contributions of the family members of the household (as foreseen in article 16, 1a of the Family Reunification Directive).

⁹⁴ The website of the Immigration Office now announces that neither the income replacement allowance nor the integration allowance received by a disabled person are taken into account in assessing the means of subsistence of the sponsor. In addition, the Council for Alien Law Litigation validated this interpretation (i.e.: C.C.E, 8 January 2016, n° 159.604 2016).

⁹⁵ See among others, Federal Migration Centre Myria, *Migration in numbers and in rights 2017*, June 2017, p. 129 and following.

⁹⁶ Art. 16 of Directive 2003/86.

⁹⁷ Note that cases where the family member applying for family reunification is already legally residing and working in Belgium are not extremely frequent in the field of family reunification with TCNs, as the application is normally lodged from the embassy or consulate, unless the family member is already legally residing in Belgium.

⁹⁸ More case law exists with regard to the regime applicable for the family reunification with Belgian nationals: the difference with the present matter is that family reunification with Belgian nationals is not a direct transposition of European legislation. Contra : C.A.L.L., 23.04.2015, n° 230.955 ; C.A.L.L., 20.08.2015, n° 151.100 ; Pro : C.A.L.L., 21.04.2016, n° 166.218, C.A.L.L., 14.07.2014, n° 126.996, *Newsletter ADDE*, September 2014 ; C.A.L.L., 29.07.2015, n° 150.168 ; C.A.L.L., 24.07.2014, n° 127.352, *Rev. dr. étr.*, 2014, p. 400, note E. Bollen ; C.A.L.L., 21.05.2015, n° 145.915, *Rev. dr. étr.*, 2015, n° 183, p. 239 ; C.A.L.L., 20.08.2015, n° 151.113 ; C.A.L.L., 30.09.2015, n° 153.722 ; see also the Guidelines of the Commission, p. 15.

⁹⁹ *Ibidem*, pro.

Sufficient income - obligation of individual assessment

The Immigration Act¹⁰⁰ foresees that, if the condition of sufficiency is not fulfilled, the administrative decision has to explain which would be the means of subsistence that would be considered sufficient (see the case law of the European Court of Justice in the *Chakroun case*¹⁰¹: individualised and *in concreto* assessment¹⁰²). This evaluation must take into account the profile of the family.¹⁰³

Therefore, the Immigration Office should examine, case by case, the means of subsistence necessary so that the family members do not become a burden for the public authorities, according to the needs of the sponsor and of his/her family¹⁰⁴.

In order to do this, the sponsor may provide to the administration all relevant documents and information to determine the resources and needs of the family¹⁰⁵. Belgian case law requires that consideration is given to the specific needs of the family in the statement of reasons for the decision, or at least in the administrative file.¹⁰⁶ The Council of State recalls that the amount of 120% of the social integration income is a reference and not a minimal threshold¹⁰⁷.

However, in practice it is challenging for the Immigration Office to do an individual needs assessment and an assessment of the financial autonomy of the family. Few negative decisions do expose in details the reasoning following which the Immigration Office comes to the conclusion that the means of subsistence are not sufficient and what would be considered as sufficient. The Immigration Office motivates decisions on the basis of the elements at their disposal, but indicates that is extremely difficult to do a global evaluation from what would be needed for the family in their individual case.

A recent change in the legislation (see section 1)¹⁰⁸, implies that the Immigration Office first focuses on the question whether the means of subsistence are stable and regular. If not, no sufficiency assessment is done, nor any individualised assessment aiming at analysing whether those means of subsistence preclude from the risk of burden for the public authorities.

Stability and regularity of the resources

Resources must not only be sufficient but the Immigration Act also requires them to be regular and stable. If the incomes are not stable or regular, the Immigration Act does not require a specific motivation about the means that would be sufficient for the family to fulfil the economic condition.

¹⁰⁰ Art. 10ter of Immigration Act.

¹⁰¹ EU Court of Justice, *Chakroun*, 4 maart 2010, , C-578/08.

¹⁰² The Belgian case law naturally refers to *Chakroun* in family reunification cases concerning Belgian sponsors, when EU law is involved but also for purely internal situations (C.A.L.L., 31 March 2014, n° 121 846; C.A.L.L., 12 February 2015, n° 138 304).

¹⁰³ The Constitutional Court underlined that those 120 % are a reference amount. The administrative authority is obliged to analyse an application even if the income is inferior. This reference amount means that if the incomes are superior, there is no need for a complementary analysis. Otherwise, the administration has to (B.55.2) (C.C., 26 September 2013, n° 121/2013).

¹⁰⁴ This obligation of individual assessment has been underlined by the Belgian Constitutional Court (C.C., 26.09.2013, n° 121/2013, B.55.2) as a guarantee of respect of the right to family life.

¹⁰⁵ Art. 12bis, § 2, al. 4 of Immigration Act.

¹⁰⁶ This case-by-case analysis is recalled by the Council of State (Council of State., 19 December 2013, n° 225.915 (pt 1.3)), and by the case law of the Council for Alien Law Litigation.C.A.L.L., 20 February 2014, n° 119.154. The analysis cannot limit itself to an enumeration of the diverse expenses of the family. Here, it has to take into consideration the fact that the brother of the applicant took care of the rent of an amount of 800 EUR (see also C.A.L.L., 26 September 2012, n° 88.251; 31 March 2014, n° 121.965 ; 31 May 2016, n° 168.751).

¹⁰⁷ Council of State., 19.12.2013, n° 225.915, 1.3.

See also: C.A.L.L., 20.02.2014, n° 119.154; 26.09.2012; n° 88.251; 31.03.2014, n° 121.965; 31.05, n° 168.751

¹⁰⁸ [The law of 4 May 2016](#) introducing various provisions regarding migration and asylum, *Belgian Official Gazette*, 26 June 2016. Entry into force on 7 July 2016.

This motivation is only required when incomes are stable and regular but insufficient.

In practice, to evaluate the stability and regularity of the resources, a lot of value is attached to **current and former employment, and the duration and the nature of the contracts**. The Immigration Office requests that ideally, proof of income is submitted for the twelve months preceding the date of application. Moreover, professional income on the basis of limited-time, short-term contracts are problematic.

By way of example, the judge underlines that the resources must be actual and not hypothetical;¹⁰⁹ a labour contract for a limited period of time does not satisfy the requirement of stability;¹¹⁰ but, a replacement contract for an unlimited period of time is sufficient.¹¹¹

A prospective analysis is authorised by the ECJ case law, and looking forward one year delay after the application is considered reasonable.¹¹²

Who is exempt from the income requirement?

For certain forms of family reunification the requirement of having sufficient, stable and regular means of subsistence does not apply.

- Minor child coming alone. The condition is not applicable if the sponsor is only joined by his/her own (or his/her spouse's or partner's¹¹³) minor child¹¹⁴.
- Beneficiaries of international protection (subjected to conditions). Refugees and beneficiaries of subsidiary protection are not submitted to the condition of having means of subsistence (as well as the condition on housing and health insurance) under certain conditions: the family tie must be anterior to the sponsor's arrival in Belgium and the application for family reunification must be submitted within the year following the decision granting international protection. Moreover, it remains up to the Immigration Office to rule out this favourable regime if family reunification is possible in another country with which the foreigner joins or the member of his family has a special connection. However, the Immigration Office must take into account the factual circumstances, the conditions applicable to family reunification and the actual possibility for the family to meet there.

An unaccompanied minor recognized as a refugee or a beneficiary of subsidiary protection is however exempted from these conditions. They cannot be placed under conditions which do not allow them to enjoy the right to be joined by their family members¹¹⁵. This exception applies during the application for family reunification and during period covered by a residence permit of limited duration, but not when the sponsor applies for an unlimited residence permit. Then, the parents must prove that they have a stable, regular and adequate means of subsistence¹¹⁶.

- EU Blue Card holder and long-term resident. Exceptions shall be made to the conditions of accommodation and sufficient income for members of the family of the long-term resident or the holder of a EU Blue Card if the family is already established or reconstituted

¹⁰⁹ C.A.L.L., 24 October 2013, n° 112.727.

¹¹⁰ C.A.L.L., 10 April 2014, n° 122.282.

¹¹¹ C.A.L.L., 20 February 2014, n° 119.238.

¹¹² EU Court of Justice, *Khachab*, 14 April 2016, C-558/14. See also the Guidelines of the Commission, p. 13.

Leboeuf L, « L'évaluation prospective des moyens de subsistance requis pour bénéficier du regroupement familial », *Newsletter EDEM*, avril 2016, pp. 3-6.

¹¹³ According to the Immigration Act, not the ones of his/her cohabitant

¹¹⁴ Art. 10 § 2, al. 3 of Immigration Act.

¹¹⁵ C.C., 6 June 2008, n° 95/2008.

¹¹⁶ Art. 13, § 1, al. 4 of Immigration Act.

This condition applies only after five years at the time of the unlimited stay, so that the Constitutional court ruled that it was not disproportionate (C.C., 26.09.2013, n° 121/2013, B. 28.6)

in another Member State of the European Union. In this case, the personal income of the family members will also be taken into account. For this purpose, family members must produce the residence permit of the long-term resident or the residence permit issued to them by another Member State of the European Union and prove that they resided there as a family member of a long-term resident or a Blue Card holder.

(Section 3 – Q6 and Q15b of the EMN Questionnaire)

3.2 Integration measures

Art. 7(2) of Directive 2003/86/EC stipulates that Member States may require TCNs to comply with integration measures, in accordance with national law. Although integration programs exist in Belgium and are often obligatory (see 3.2.2), granting a residence permit was until recently not subjected to integration requirements.

However, the Belgian Law of 18 December 2016¹¹⁷ inserted two new general conditions (with a lot of exceptions) into the Immigration Act, which also apply to most family migrants of a TCN sponsor.¹¹⁸

3.2.1. Integration requirements for a residence permit

The Belgian national law¹¹⁹ now requires some TCNs to comply with integration measures before and after admission. However, only the dispositions on the condition after admission already entered into force.

The condition applies (among others) to most adult family migrants who want to reunite with a TCN sponsor. Some categories are excluded from the condition: minors, disabled, very ill or protected persons. Moreover, family migrants¹²⁰ of beneficiaries of international protection and of recognized stateless people are also exempted from the integration requirements.

Requirement before admission: signing a newcomers declaration

The law provides that a person who applies for a residence permit in Belgium will need to **sign a declaration indicating that he or she “understands the fundamental values and norms of society and will act accordingly”**. This measure is commonly referred to as the ‘newcomers declaration’. Signing this declaration will be a condition of admissibility for the residence permit. The introduction of this condition in the law was much discussed in public debate.¹²¹

¹¹⁷ [Law of 18 December 2016](#) inserting a general residence condition into the Law of 15 December 1980 on the access, residence, settlement and removal of foreign nationals, *Belgian Official Gazette*, 8 February 2017.

¹¹⁸ These two new conditions are however not applicable to a number of categories, like persons asking for international protection or granted international protection, EU citizens, students, and certain family migrants. Minors, sick and protected persons are also exempted.

¹¹⁹ Ganty S., « Union entre intégration et immigration : un mariage forcé annoncé? », *Newsletter ADDE*, July 2016, n° 122, pp. 2-6; Dawoud S. and Somers E., « Gezinshereniging en taal- of integratievereisten Analyse van het arrest-Dogan van het Hof van Justitie en van de gevolgen ervan voor België en Vlaanderen », *T. Vreemd*, 2014, n° 4, pp. 388-398; Ganty S., « Les tests d’intégration civique sous le contrôle de la Cour de justice de l’Union européenne : un exercice d’équilibriste périlleux entre marge d’appréciation des États membres et protection des ressortissants de pays tiers », *J.E.D.H.*, 2016, pp. 32-56.

¹²⁰ Outside the study scope: also family members of EU citizens and of Belgians that made use of their free movement rights are exempted from the integration requirements.

¹²¹ There was quite a lot of media coverage on the topic. A number of NGO’s criticized the proposal: see among others: Migratiecoalitie, “Coalition on migration worried on the draft law on the declaration for newcomers”, 12 July 2016. Available on <http://www.vluchtelingenwerk.be/nieuws/migratiecoalitie-ongerust-over-wetsontwerp-nieuwkomersverklaring>.; Liga voor de Mensenrechten: “Declaration for newcomers: stigmatizing proposal breaching human rights”.

Do note that this part of the Law has not yet entered into force. In contrast to immigration, integration is not a federal competence. Therefore, an official cooperation agreement needs to be put in place with the Communities and the Regions and this will take a while.

Requirement after admission: proven integration efforts

Since the beginning of 2017¹²², **provable integration efforts are now a condition to maintain a residence permit in Belgium.** The law inserted a general residence condition into the Immigration Act: the foreign national needs to provide evidence of his/her willingness to integrate into society. The Immigration Office will do the verifications and if the person does not make a 'reasonable effort' to integrate, the Immigration Office can put an end to his/her permit to stay.

The Law foresees a number of integration criteria to check the integration efforts: for example, participation in an integration course or studies, economic participation, knowledge of the language of the place of registration on the population register or the register of foreigners, judicial history and active participation in associative life. The list is not cumulative and not exhaustive. The Immigration Office has a discretionary competence to evaluate the efforts.

This condition has already entered into force for all foreigners applying for a residence permit after 25 January 2017.¹²³ They will need to show evidence of their integration efforts by the end of the validity of their temporary residence permit.

Certain stakeholders criticized the new Law arguing that the Immigration Office has no competence to assess integration since this is not a federal competence in Belgium.¹²⁴

(Section 3 – Q7 of the EMN Questionnaire)

3.2.2 Integration measures on the level of the Communities and Regions

Newcomers in Belgium can take part in an "integration program". This program is built up and organised by the Communities and Regions ("*Parcours d'intégration*" – "*Inburgering*"). The content as well as the extent to which the program is obligatory differs, but in general terms one can say they include¹²⁵:

- language courses;
- information about Belgian history and "values", or in others words "training for citizenship" or "social orientation" (residence status in Belgium, housing, education, health, social security, insurance, Belgian and international institutions, daily life);
- socio-professional guidance.

However, in contrast with the requirements described under 3.2.1, fulfilment of the program is not linked with residence rights.

(Section 3 – Q7 of the EMN Questionnaire)

¹²² The Law was first published in the Belgian Official Gazette with a mistake concerning a formal legal requirement. The Law of 24 November 2016 (Official Gazette of 16 January 2017, and entry into force on 26 January) was therefore rectified and replaced by the (same) Law of 18 December 2016 (Official Gazette of 8 February 2017).

¹²³ More information on the website of the Immigration Office: <https://dofi.ibz.be/sites/dvzoe/NL/Gidsvande procedures/Pages/Integratiebereidheid%20en%20bewijzen%20inspanningen%20tot%20integratie%20in%20de%20Belgische%20samenleving%20-%20Nieuwe%20algemene%20verblijfsvoorwa.aspx>

¹²⁴ See among others: *Flemish Agency on Integration*: <http://www.kruispuntmi.be/nieuws/behoud-verblijf-wordt-afhankelijk-van-integratie-inspanningen>; Orbit vzw, "Four fundamental questions on the newcomers declaration", 1 April 2016, available on <http://www.orbitvzw.be/vier-fundamentele-vragen-bij-de-nieuwkomersverklaring/>

¹²⁵ Art. 152 and next of the Walloon Code of Social Action and Health of 29.09. 2011; Decree on the Flemish policy of integration and civic integration of 7.06.2013.

3.3 Waiting period before an application for family reunification can be made

Art. 8 of Directive 2003/86/EC stipulates that Member States can set a **waiting period** before a sponsor's family members can reunite with him/ her: Member States may require the sponsor to have stayed lawfully on the territory for a period not exceeding two years (or three years by derogation in specific circumstances) before having his/ her family members join him/her.

In Belgium, the **law foresees a waiting period**. There are however **many exceptions**.¹²⁶ The provisions on this matter are complex (and sometimes counter-intuitive). It distinguishes between the situation where the sponsor has an unlimited right to stay in Belgium, the situation where the sponsor is a student, and the situation where the sponsor has a limited right to stay "due to the law or the purpose of his/her stay in Belgium".

a) The sponsor has an unlimited right to stay¹²⁷

As a rule, the Immigration Act requires the sponsor who has an unlimited permit of stay to have **legally resided in Belgium for twelve months**. The Immigration Act foresees the following exceptions, where no waiting period applies although the sponsor has an unlimited right to stay:

- the marriage, or equivalent partnership, existed prior to the migration of the sponsor to Belgium;
- the couple has a common child;
- the sponsor benefits from international protection (refugee status or subsidiary protection).

b) The sponsor is a student

No waiting period is required¹²⁸.

c) The sponsor has a limited right to stay "due to the law or the purpose of his/her stay in Belgium"

No waiting period is required¹²⁹.

It is worth mentioning that the **Belgian immigration law restricts subsequent family reunification (cascade)**¹³⁰

As a rule, the Immigration Act foresees that the foreigner who has personally migrated to Belgium following a family reunification procedure with a third country national, cannot be the sponsor for the family reunification with his/her *new* TCN partner (be it on the basis of a marriage or a registered partnership), prior to a **legal stay of two years in Belgium**. This requirement does not apply if the separation with the (first) sponsor is due to domestic violence¹³¹.

¹²⁶ Art. 10, § 1, al. 1, 4° and 5° of Immigration Act.

¹²⁷ Directive 2003/86 does not allow to require an unlimited residence permit in order to benefit from family reunification, article 3 of Directive refers to a residence permit of one year or more, and having "reasonable prospects of obtaining the right of permanent residence" (i.e. the status allowing for unlimited right to stay).

¹²⁸ Art. 10bis, § 1 of Immigration Act.

¹²⁹ Art. 10bis, § 2 of Immigration Act.

¹³⁰ Art. 10, § 3 of Immigration Act.

¹³¹ Art. 11 § 2 of Immigration Act.

3.4 Rejection of an application on grounds of public policy, public security and public health

Art. 6 of Directive 2003/86/EC stipulates that Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

In Belgium, the legislation¹³² provides a rejection of an application for entry and residence of family members on grounds of public order or national security. Every applicant, except for minors, has to include an extract from the judicial records to his/her file¹³³. When an application is lodged, there is also an automatic control through the SIS (*Schengen Information System*). Case-by-case, State security services can be contacted.

Moreover, every applicant has to prove they are not suffering from any of the diseases that may endanger public health¹³⁴. These diseases are cited in the appendix of the Law, namely quarantined diseases (International Health Regulations of the World Health Organization, 2005), tuberculosis and other contagious infectious or parasitic diseases insofar these are the subjects of provisions to the protection of the Belgian nationals.

3.5 More favourable rules for beneficiaries of international protection¹³⁵

Directive 2003/86/EC (articles 9 - 12) sets out more favourable conditions for family reunification of refugees. Belgium applies these conditions for refugees as well as for beneficiaries of subsidiary protection.

3.5.1 Grace period of one year if the family ties existed before the arrival in Belgium

Belgium makes use of the possibility foreseen in the Directive 2003/86/EC¹³⁶ to apply a grace period before the requirements for exercising the right to family reunification apply.

If the application for family reunification is introduced in the year following the decision granting international protection¹³⁷ and if the family ties precede the entry of the foreigner¹³⁸, family members of a TCN who were granted refugee or subsidiary protection **do not have to prove the requirements concerning the accommodation suitable for the size of the family, the healthcare insurance and the sufficient, stable and regular resources.**

3.5.2. Exempt from the application fee and the integration requirements

Family members of beneficiaries of international protection applying for family reunification do not need to pay the retribution and are excluded from the integration requirements (before and after admission), also when the application is submitted after the grace period.

¹³² Art. 11 of Immigration Act; Art. 52 of Royal Decree.

¹³³ art. 12bis § 2, Immigration Law.

¹³⁴ Art. 10, § 2, al. 7 of Immigration Act.

¹³⁵ Art. 9-12 in Chapter V of Directive 2003/86/EC set out more favourable conditions for family reunification of refugees.

¹³⁶ Art. 7(1) of Directive 2003/86/EC.

¹³⁷ Art. 10, § 2, al. 5 of Immigration Act.

¹³⁸ Art. 10, § 2, al. 5 of Immigration Act.

3.5.3. Unaccompanied minors who are beneficiaries of international protection

For unaccompanied minors with refugee or subsidiary protection status, the more favourable conditions apply anyhow: it is not required that the application was submitted within the year following the decision on the protection status.¹³⁹

Moreover, also the parents of the unaccompanied minor (with refugee or subsidiary protection status) can benefit from family reunification (see 2.2.4).¹⁴⁰ No wider definition of family members – going beyond parents – is foreseen in the Belgian Immigration Law. Wider family members only have the possibility to submit an application based on Article 9bis or on article 9 (if introduced from abroad) of the Immigration Act (see text box 2 under 2.2.5).

3.5.4. Recent changes

The alignment of the 'more favourable conditions' for beneficiaries of subsidiary protection with refugees is the result of a judgement of the Belgian Constitutional Court¹⁴¹ in 2013, and applies in practice ever since. In May 2016 a legislative modification was made accordingly.¹⁴²

(Section 3 – Q10 of the EMN Questionnaire)

3.6 Differences in requirements between third country nationals compared to Belgians who did not make use of their free movement rights?

There are some differences in the requirements to be met for exercising the right to family reunification of TCN (under Directive 2003/86/EC or national law in some cases) in comparison to a similar request governed by national law by a **Belgian national who has not exercised his/ her free movement rights** (non-mobile EU nationals).

The Belgian law on family reunification was originally designed with a specific regime for TCNs (art. 10 and following of the law), and another regime for family reunification with a European citizen, including Belgians (art. 40 and following). The political will to restrain family reunification and the lack of any tangible international instrument setting minimum standards as to the family reunification with national citizens has brought changes to the regime that is applicable for Belgians who did not exercise their free movement rights before (the "purely internal situations").¹⁴³ Now

¹³⁹ Art. 10, § 1^{er}, 4^o of Immigration Act.

¹⁴⁰ Art. 10, § 1, al. 1, 4^o to 7^o of Immigration Act.

¹⁴¹ C.C., 2 September 2013, n°121/2013. Verhaegen K., « Juridische onzekerheid over de voorwaarden tot gezinshereniging voor subsidiair beschermde », *T. Vreemd.*, 2012, n°3, pp 219-223.

¹⁴² Law of 4.05.2016. Before, the Immigration Act distinguished between family reunification with two kinds of TCN sponsors: those with an unlimited residence permit (article 10 of the Immigration Act) and those with limited residence permit (article 10bis of the Immigration Act). Since 2016 the distinction between persons with refugee and subsidiary protection status became less obvious, since also persons with refugee status do not directly obtain a unlimited residence permit anymore. Concerning the more favourable rules on family reunification, the same rule is now applicable for TCN who obtained refugee status or a beneficiary of subsidiary protection.

¹⁴³ Berneri C., « Protection of families composed by EU Citizens and Third Country Nationals : Some suggestions to tackle reverse discrimination », *E.J.M.L.*, 2014, p. 249 ; Bombois, Th., « La citoyenneté européenne appliquée aux situations purement internes : portée et enjeux des arrêts *Zambrano* et *McCarthy* », obs. sous C.J.U.E., arrêt *McCarthy c. Secretary of State for the Home Department*, aff. C-434/09, 5 mai 2011, *J.L.M.B.*, 2011, p. 1227 ; Carlier J.-Y., *Non-discrimination et étrangers*, in Fr. Fines, C. Gauthier et M. Gauthier (Dir.), *La non-discrimination entre les Européens*, Paris, Pedone, 2012, pp. 161 -179 ; Lys, M., « La nouvelle loi belge sur le regroupement familial : le droit européen et le droit belge autorisent-ils la discrimination à rebours ? », *Rev. b. dr. const.*, 2012, pp. 27 -53.

there are three different regimes for family reunification: one for TCN sponsors, one for sponsors who are EU citizens , and one for Belgian sponsors.

Family reunification standards have been lowered for Belgian citizens (law of 08.07.2011, see 1.2.3) in the direction of the minimum standards set in Directive 2003/86. Attempts by the legislator to downgrade the standards further than those set for TCNs have led to court decisions, requiring Belgian authorities to have at least equivalent standards.¹⁴⁴

Nevertheless, some differences exist because **some advantages for Belgian sponsors remain compared to TCN sponsors**, in terms of the requirements and the procedure. The legal regime of the family reunification with a Belgian sponsor is more favourable than the one for TCNs: it is in fact an intermediate between the regime for TCNs and the one for (mobile) EU-nationals.

1. A larger definition of the family of the Belgian national

In contrast with a TCN sponsor, it is possible for a Belgian child to open the right to family reunification with his/her mother or father. The same rule applies for EU citizens.

The family reunification for the descendant is possible until 21 years old or even later if the descendant is dependant of the sponsor. For TCN the age limit is 18 years old.

On the other hand, family reunification with the adult ascendant of a Belgian sponsor is no longer possible, while it is still possible for a EU sponsor.

2. More favourable procedural rules for family reunification with a Belgian sponsor (equivalent to regime for the EU sponsor)

Worth noticing is the fact that family reunification with nationals is still dealt with under the same title of the Belgian Immigration Act as family reunification with European citizens ("derogatory regime"). Several aspects of family reunification are ruled by common provisions for the two categories, and also national judges continue to refer to the analogy originally installed by the legislator.¹⁴⁵

The more favourable procedural rules for Belgians (and EU citizens) concern the maximum processing time (6 months for EU nationals and Belgian sponsors compared to 9 months for TCN sponsors); the fact that less documentary evidence is required, the right to file the application at the municipality (no "exceptional circumstances" required), the temporary right to stay during the analysis of the application, the right to work during the application process, etc.

(Section 3 – Q11 of the EMN Questionnaire)

¹⁴⁴ C.C., 26 September 2013, n°121/2013, B.64.4. and B.64.5.

¹⁴⁵ C.C.E. n°153722, 30.09.2015; C.C.E. n°166218, 21.04.2016, etc.

IV. SUBMISSION AND EXAMINATION OF THE APPLICATION FOR FAMILY REUNIFICATION

4.1 Procedure for an application for family reunification

4.1.1. Formal party to an application

Directive 2003/86/EC specifies in its article 5 that Member States determine whether, in order to exercise the right to family reunification, an application for entry and residence must be submitted to the competent authorities by the sponsor or his/her (family) members.

In Belgium, the formal party to an application for family reunification in Belgium is the **sponsor's family members**. The application must be submitted by the family member of the sponsor in its country of origin or, in exceptional cases, in Belgium (see 4.1.2).

It is not possible for the sponsor to introduce the application. Only in very exceptional cases, the sponsor can be authorised to introduce the application. This should then be done in the same country as usually foreseen for the introduction of the application by its family members.¹⁴⁶

(Section 4 – Q14a of the EMN Questionnaire)

4.1.2. Place to submit the application

As a general rule, family members who want to reunite with a TCN sponsor¹⁴⁷, need to submit their application **in the Belgian diplomatic or consular post in their country of residence**.¹⁴⁸ They must in principle present themselves there and explain in person the reason and the context of their application.

In case there is no embassy or consulate in the country of residence, they must direct themselves to the competent Belgian diplomatic post for the country in question.¹⁴⁹ Family members of beneficiaries of international protection in Belgium can submit their application at any diplomatic post authorized to issue visas.¹⁵⁰

By way of derogation and **only in specific situations** and under conditions (see text box 4), family members of TCN sponsors who are already in Belgium, can **submit an application at the municipality or local administration of the place of residence in Belgium**.¹⁵¹

(Section 4 – Q14b of the EMN Questionnaire)

¹⁴⁶ C.A.L.L., 29.02.2016, n° 163.309: "March 9th, 2015, son of the applicants, of Belgian nationality, received confirmation which he could, with regard to the impossibility in which his parents are placed, to introduce such application in Syria, to introduce in their names, with the embassy of Belgium for Istanbul, two visa applications, requested on the basis of the article 9. 2.2. June 22nd, 2015, applicants introduced, to the intermediary of their Belgian son, each a visa application with the embassy of Belgium in Istanbul, on the basis of the article 9 of the law of December 15th, 1980".

¹⁴⁷ Remark: If the sponsor is a European citizen or a Belgian national, the application may be submitted from abroad or directly on the Belgian territory. In Belgium, the application is submitted at the municipality (local administration).

¹⁴⁸ Art. 12bis, § 1, al. 1 of Immigration Act.

¹⁴⁹ Available on www.diplomatie.belgium.be.

¹⁵⁰ Belgian Refugee Council (CBAR-BCHV), *Family reunification with beneficiaries of international protection*, Brussels, October 2016, p. 13. Available on: http://www.cbar-bchv.be/Portals/0/Downloads/CBAR-Family_Reunification-EN.PDF

¹⁵¹ Art. 12bis, § 1^{er}, al. 2 Immigration Law.

Text box 4: When can an application for family reunification (exceptionally) be submitted in Belgium?

As a rule, an application should be submitted in the country of residence. However, in the following cases an application may be submitted in Belgium, to the local authorities:

➤ **The applicant (family member) already has a residence in Belgium**

The foreigner has a residence permit of more than three months and presents the document certifying it (for example: students). On the contrary, this hypothesis does not include foreigners who are legally in Belgium with a precarious status, such as international protection applicants or those applying for a permit to stay based on their severe medical situation.¹⁵² The application (with all the required evidence) must be introduced before the term of the permit.¹⁵³

➤ **The applicant (family member) already has an entry permit for Belgium**

The applicant has been authorized to reside in Belgium for less than three months and is in one of the following situations:

- comes from a country whose nationals are exempted from a visa requirement;
- has a residence permit from an EU-country allowing him /her to circulate in the European Union;
- is a minor child joining his/her parents¹⁵⁴;
- is the parent of a recognized minor refugee or minor beneficiary of subsidiary protection¹⁵⁵;
- has a valid visa in order to contract a marriage or a partnership in Belgium. The marriage or the partnership have to be contracted before the date of expiry of this visa and the concerned parties have to present all the required documents for the FR application before the term of this authorization¹⁵⁶.

➤ **When there are “exceptional circumstances” which prevent the applicant (family member) from returning to the country of origin to apply for a visa.**

The application may be introduced in Belgium by a foreigner who is able to prove the existence of exceptional circumstances preventing him/her to return to his/her country of origin¹⁵⁷. In practice the exceptional circumstances are interpreted in a strict sense.¹⁵⁸

The return to the country of origin is the principle; the States do not have the obligation to

¹⁵² C.A.L.L., 22.09.2011, n° 67.076.

¹⁵³ Art. 12bis, § 1, al. 2, 1° of Immigration Act.

¹⁵⁴ Art. 12bis, § 1, al. 2, 4° of Immigration Act.

¹⁵⁵ Art. 12bis, § 1, al. 2, 4° of Immigration Act.

¹⁵⁶ Art. 12bis, § 1, al. 2, 2° of Immigration Act.

¹⁵⁷ Art. 12bis, § 1, al. 2, 3° of Immigration Act.

¹⁵⁸ The disposition on ‘exceptional circumstances’ is in practice applied limited: No “severe difficulties” are taken into account, only “impossibilities” (e.g. when the Belgian consulate is closed due to a war in the region). Moreover, impossibilities cannot be due to circumstances that are not “exceptional” (e.g. a pregnancy is not an “exceptional circumstance” as such, it depends on the case). Also the exceptional circumstances are examined at the time of the analysis of the application, not taking into consideration the circumstances at the moment when the application was lodged. This, combined to the fact that the law does not foresee any compulsory processing time, can lead to the situation where the applicant receives a decision on the admissibility after the “exceptional circumstances” invoked in the application have changed.

authorize TCNs to stay and wait on the territory for the result of an immigration procedure¹⁵⁹. However, the case law recognises some exceptions, notably on the ground of best interests of child¹⁶⁰, education¹⁶¹ or medical elements¹⁶².

4.1.3. Documentary evidence on identity and family relationship

Establishing family or marriage ties is crucial within the family reunification process. These ties must in principle be proven by means of official authentic documents, drawn up in accordance with the rules of private international law, with regard to both substantive and procedural requirements and legalisation.

The documentary evidence required from the applicant to confirm the **identity** is a valid passport.

To prove the **family relationship**, civil status records or judgments are required proving the family relationship established in Belgium or abroad. If they are not established in Belgium, these documents must be recognized according to the rules of private international law. If necessary, they must be legalised, marked with an apostil and translated.

As for any act of civil status or foreign decision, the Private International Law Act provides that they are recognized only if substantive and procedural conditions are met. The formal requirements are based on the authenticity of the documents and the main substantive conditions concern, in the case of authentic acts, respect of the rules and absence of fraud or interference with public order.¹⁶³

The **family members of beneficiaries of international protection** whose parental or alliance links precede their arrival on the territory, benefit from a more flexible regime. On the one hand, the asylum authorities deliver civil status records; on the other hand, the absence of documents cannot be the only reason of refusal of family reunification.¹⁶⁴

Text box 5: Documentary evidence when applying for family reunification

The following list is not exhaustive and the documents that need to be provided differ according to the situation.¹⁶⁵ However, the list gives an idea of the supporting documents that need to be provided in the application for family reunification (visa D application):

- a completed and signed visa application form (in duplicate).
- a travel document into which a visa can be affixed and which is valid for more than 12 months (e.g. a passport)
- a copy of the residence permit and passport of the foreigner being joined, and if this is the case, a copy of the decision granting him or her international protection status

¹⁵⁹ European Court Of Human Rights, *Jeunesse c. Pays-Bas*, § 101 (2014) ; *Djokaba Lambi Longa c. Pays-Bas*, § 81 (2012) ; C.A., 22. 03.2006, n° 46/2006 ; Council of State, 31.07.2006, n° 161.567 ; C.A.L.L., 26.03.2014, n° 121.436 ; C.A.L.L., 30.11.2015, n° 157.297.

¹⁶⁰ C.A.L.L., 29.04.2014, n° 123.190.

¹⁶¹ C.A.L.L., 20.07.2012, n° 84.956.

¹⁶² C.A.L.L., 30.04.2010, n° 39.361.

¹⁶³ Private international Law Act, art. 27.

¹⁶⁴ Art. 11, § 1^{er}, al. 2, art. 12 bis, § 5 of Immigration Act

¹⁶⁵ Source and more information: the website of the Immigration Office: <https://dofi.ibz.be/sites/dvzoe/EN/Pages/home.aspx> and Belgian Refugee Council (CBAR-BCHV), *Family reunification with beneficiaries of international protection*, Brussels, October 2016, p. 13 and following. Available on: http://www.cbar-bchv.be/Portals/0/Downloads/CBAR-Family_Reunification-EN.PDF

- Proof of family ties, as appropriate in the individual case:
 - the birth certificate
 - proof of the tie of marriage or partnership: marriage certificate, certificate of registered partnership, evidence attesting that the relationship etc).
 - As appropriate, proof of the dissolution of a previous marriage or partnership or the death certificate of the spouse/partner; or for minor children, a judgement granting custody, or consent of the person exercising custody, proof that the child is unmarried (if according to national legislation he/she is of marriageable age)
- When it is legally required:
 - a medical certificate attesting that the applicant is not carrying any of the diseases which might endanger public health (no more than 6 months old, obtained from a physician designated by the Belgian embassy or consulate)
 - if the applicant is aged over 18, a certificate attesting to the lack of any convictions for crimes or offences under common law
 - proof that the alien being joined holds health insurance covering the risks in Belgium for himself and the members of his family
 - proof that the alien being joined has sufficient accommodation
 - proof that the alien being joined has stable, regular and sufficient means of subsistence to meet his own needs and those of the members of his family and avoid them becoming a burden on the public authorities.

The applicant must lodge the original documents, plus a photocopy of these documents. The originals will be returned to him or her.

The foreign official documents must be legalized or carry an apostil, unless an exemption is provided in a treaty.¹⁶⁶

The documents drawn up abroad in a language other than German, French or Dutch are to be translated in accordance with the original by a sworn translator. The translation must be legalized as a separate document in line with the procedure laid down in the country of origin, and then by the competent Belgian consulate or Embassy.

(Section 4 – Q14c of the EMN Questionnaire)

4.1.4. Methods of investigation in the absence of (reliable) documents

If the applicant faces difficulties in providing the evidence required by law in order to prove the family relationship, the Minister has the discretionary power to decide to appeal to “other valid forms of proof” than the official (reliable) documentation.

If there is no other valid form of proof, the Immigration Office may proceed to an interview with the applicant or any other inquiry deemed necessary. A complementary analysis, such as DNA testing can be proposed.¹⁶⁷

An administrative instruction of 17 June 2009 explains what kind of evidence of family relationship could be accepted.¹⁶⁸

¹⁶⁶ All the relevant information on this formality is available on the website of the SPF Foreign Affairs: <http://diplomatie.belgium.be>.

¹⁶⁷ Art. 12bis, § 6 of Immigration Act.

Principle: types of proof in a so-called cascade system

The administrative instruction lays down the principle of the cascade system. In other words, the family relationship is established using the following modes of proof (in order): official documents, "other valid proof" or by an interview or a supplementary analysis (e.g. DNA-testing).

1. Authentic documents, drawn up in accordance with the rules of private international law, with regard to both substantive and procedural requirements and legalisation. This is the main rule to which the two other forms of evidence derogate (see 4.1.3).
2. "Other valid forms of proof". They are produced only if it is impossible for the foreigner to produce official documents and are subject to the discretionary assessment of the Immigration Office.
3. Interview or supplementary analysis.

Impossibility to produce official documents

The applicant must prove that he cannot obtain the official documents establishing his family ties. This impossibility can be proven by all legal means. However, the mere lack of production of official documents is not sufficient on its own.

The impossibility must be 'real and objective', that is to say, independent of the will of the applicant. This is the case, in particular:

- when Belgium does not recognize the country as being a State;
- where the internal situation of the country considered is such that it is impossible to obtain the official documents there, either because the official documents have been destroyed and they cannot be supplemented, or because the national competent authorities are dysfunctional or no longer exist;
- where the obtaining of official documents requires a return to the country concerned or contact with the authorities, which are difficult considering the personal situation of the applicant.

The Immigration Office assesses the impossibility on a case-by-case basis of sufficiently serious, objective and concordant evidence, such as elements:

- linked to another application for residence permit;
- from internal reports of missions abroad;
- obtained from (inter)national institutions or organizations having knowledge of the general situation in the State concerned (i.e. diplomatic or consular posts, United Nations High Commissioner for Refugees, NGOs recognized in the European Union or the United Nations).

"Other valid forms of proof"

The examination of "other valid forms of proof" is left to the Immigration Office, which assesses its validity in full discretion, taking into account all the elements that constitute the file of the applicant.

The fact that the documents produced appear in non-exhaustive (illustrative) lists provided by the administrative instruction (see below) do not *de facto* imply the admissibility of their validity as proof of existence of the alleged family tie.

¹⁶⁸ [Circular of 17 June 2009](#) containing certain specifics as well as amending and abrogating provisions regarding family reunification, Belgian Official Gazette, 2 July 2009.

In order to be considered valid, the “other valid forms of proof” of the family tie produced in support of his/her application must constitute a sufficiently serious and consistent body of evidence to establish the existence of the alleged family tie.

Documents produced, as “other valid forms of proof” of the family tie shall not be accepted as such when it appears from the elements of the case that the applicant intended to deceive the competent national authorities. In this regard, the fact that another national public authority (judicial authorities, registrar etc.) or another Member State of the European Union has refused to recognise or dispute the existence of the family tie may also constitute a serious indication, having regard respectively to legal certainty and to legitimate expectations between the Member States.

The “other valid forms of proof” of **parentage** are, in particular: birth certificate; marriage certificate established by the Belgian authorities competent in matters of civil status in which the parentage appears; notarised agreement approved by the competent authority; affidavit; national identity card indicating parentage; marriage contract in which the parentage appears; excerpts from birth registers; supplementary judgment; etc.

The “other valid forms of proof” of the **marital relationship or partnership** are, in particular: act of customary marriage in the case where a civil marriage certificate cannot be produced; notarised agreement approved by the competent authority; religious act; national identity card indicating the marital relationship or partnership; excerpts from marriage certificate or partnership; supplementary judgment; etc.

Interview or complementary analysis, like DNA-testing

The Immigration Office may legally¹⁶⁹ resort to interviews or any complementary analysis deemed necessary as evidence, but only as a last resort after other forms of evidence have been sought. In other words, in the case a foreigner cannot produce official documents or “other valid forms of proof” to establish family ties, the authorities can make use of other inquiry.

The interview is particularly intended to establish the existence of a conjugal relationship (or partnership) whereas the supplementary analysis, as it happens DNA testing, aims to prove the existence of the filiation or blood relationship.

In practice, in case all other conditions are fulfilled, the Immigration Office can propose a DNA test if there is doubt as to the documents submitted about relatives: a visa will not be issued except on condition of a DNA-test. If the result is positive, the visa will be granted automatically (unless new elements provide evidence of fraud). Text box 6 provides more details on the procedure of the DNA test.

Text box 6: DNA test - procedure¹⁷⁰

The Immigration Office can refuse the application, but propose the voluntary option of a DNA-test. The website of the Immigration Office gives the following examples of circumstances in which a DNA-test is proposed:

- The applicant comes from a country in war or where the civil status acts were destroyed;

¹⁶⁹ Art 12bis §6, 2 of the Immigration Act.

¹⁷⁰ Source and more information : Belgian Refugee Council (CBAR-BCHV), *Family reunification with beneficiaries of international protection*, Brussels, October 2016, p. 25-26. Available on: [http://www.cbar-bchv.be/Portals/0/Downloads/CBAR-Family Reunification-EN.PDF](http://www.cbar-bchv.be/Portals/0/Downloads/CBAR-Family%20Reunification-EN.PDF) and website of the Immigration Office: [https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/ADN-\(information\).aspx](https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/ADN-(information).aspx)

- There are some mistakes or erasures in the civil status act;
- The birth declaration was done too recently, namely through a so-called “ruling supplementing”;
- There are contradictions between the written document produced and the administrative file, e.g. between the family reunification request and the asylum application of the sponsor.

The test will only be performed after the written consent of the adults concerned.

The sponsor is therefore invited to an information session on the procedure organised by the Immigration Office. The cost of the DNA-test, 200 euro per tested persons, needs to be paid in all cases by the applicants, regardless of the status of the sponsor or the result (no reimbursement possible).

Upon receipt of the proof of payment, the Immigration Office will contact the Belgian diplomatic post abroad (embassy or consulate). The latter will organise the blood tests for the family member(s) and the blood samples are sent to Belgium. The sponsor in Belgium will be contacted by the Erasmus Hospital in Brussels to do the test.

The Immigration Office receives the results and contacts the sponsor. The results of the test are available 4 to 8 weeks after the test (4 to 6 weeks when both parents are tested, and 6 to 8 weeks when only one parent is tested).

Statistics

In 2015, 1219 DNA-tests were done in 657 files related to visa-applications for family reunification. In 1139 cases the result was positive, compared to 80 negative outcomes. In 2016, it concerned 1234 tests in 642 files related to visa-applications for family reunification. In 1168 cases the result was positive, compared to 66 negative outcomes.¹⁷¹

The Immigration Office explains the low negative numbers by the fact that a DNA-test is always done after a motivated negative decision has already been taken. People are well informed that it makes little sense to do the test if the family members concerned are for example the children of your brother or sister, because the test will make this clear.

(Section 4 – Q14d of the EMN Questionnaire)

4.2 Procedure applicable to extended family members

The terms “extended family members” are interpreted here as “extended family members such as parents, brothers and sisters, adult children, grandparents, uncles, aunts, nieces and nephews, etc.” who “are financially and emotionally tied” to the sponsor. This amounts to the family members outside of the scope of the nuclear family.

Extended family members

Family members who have a right to family reunification in Belgium are detailed in Section 2. Amongst those, the extended family members are:

- the parents of a minor refugee or minor who is a beneficiary of subsidiary protection. The family tie is proven with a birth certificate or, in exceptional circumstances, a DNA test.

¹⁷¹ Source : Immigration Office.

Applications for family reunification will not be taken into consideration by the consulate or local authority if there is no document aiming at proving the family tie¹⁷²;

- the disabled children aged over 18. They are entitled to reunify with their parents¹⁷³, provided that the said child provides an attestation from a doctor approved by the Belgian consular or diplomatic post indicating that because of his or her disability, he or she is unable to care for him or herself.

Other extended family members do not have a right to family reunification. They can apply for a humanitarian visa from abroad on the basis of article 9 of the Immigration Act (or a humanitarian regularisation on the basis of art 9bis of the Immigration Act, in Belgium). The granting of a visa or residence permit on these grounds is however a favour (discretionary power) and not a right. The procedure can take time and the result is uncertain. For more information, we refer to text box 2 under section 2.

Proof of the respect of the requirements

There is no exemption from fulfilling the family tie condition foreseen by law for family reunification. The other family members have no *right* to family reunification, and fall within the scope of the discretionary competence of the Immigration Office.

Procedural rules

As a general rule, be it for family reunification procedure or an application based on the discretionary power of the Immigration Office, the application is submitted at the consulate or local authority.

As a general rule, the application is made of a bundle of documents gathered by the applicant. The application will be analysed on the basis of those documents, and those documents only.

The applications that are taken into consideration by the consulate or local authority are forwarded to the Immigration Office, regardless of the content of the documents (at least, if the other requirements for such an application are fulfilled, e.g. paying fees).

For an application based on a right to family reunification, the Immigration Office must make a decision within nine months after submission. The Immigration Act foresees the possibility to extend this delay for three months, twice, due to the complexity of the case or if there is an investigation on a suspicion of marriage of convenience¹⁷⁴.

For an application falling within the scope of the discretionary competence, no time period is foreseen.

If the Immigration Office contests the family tie on which the applicant relies, the application is rejected with a motivated decision, which amounts to a decision on the merits of the application.

(Section 4 – Q15a of the EMN Questionnaire)

4.3 Procedure to verify the requirements for family reunification in practice

¹⁷² Art. 25/3 and 26 of Royal Decree executing the Immigration Act.

¹⁷³ TCN authorised for an unlimited period, art. 10 of Immigration Act ; for a limited period, art. 10bis of Immigration Act

¹⁷⁴ Art. 12bis § 2, al. 5 of Immigration Act.

The requirements for family reunification as well as the way they are verified in practice were discussed in detail in section 3. Below we look in more detail to the stage of the examination procedure and the assessment of the individual circumstances.

4.3.1. Stage of the examination procedure

The requirements are verified at the moment the application is introduced. The law provides that the date of the application is the one when the documentary evidence of the fulfilment of the requirements are produced.¹⁷⁵

The conditions must be fulfilled during the first five years of stay. During those five years, the residence permit is annual and its renewal will depend on the respect of the requirements. Moreover, when there is reasonable suspicion of fraud, there can be verifications at any time.¹⁷⁶ After five years, to acquire an unlimited residence permit, the conditions must also (still) be fulfilled.¹⁷⁷ For more information, see 5.1.

(Section 4 – part of Q15b of the EMN Questionnaire)

4.3.2. Assessment of individual circumstances¹⁷⁸

Article 17 of Directive 2003/86/EC states that “Member States shall take due account of the nature and solidity of the person’s family relationship and the duration of the residence in the Member State and the existence of family, cultural ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or member of his family.”

The Belgian Immigration Act comprises a provision on the individual assessment conform article 17 of the Directive concerning the non-renewal of a residence permit for family reunification. The article is however not explicitly transposed with regard to the initial (rejection of) applications, only for non-renewal of an existing (temporary) residence permit.

In practice it is difficult to assess to what extent the individual circumstances are taken into account. Positive decisions are not motivated. As to the assessment of individual circumstances related to the means of subsistence, we refer to section 3.

(Section 4 – Q15d of the EMN Questionnaire)

4.4 Approach towards minors and assessment of the best interests of the child during the examination

A minor child is a person who is less than eighteen years old:

- Under civil law, the national law of the person concerned determines the age of majority, which is set in the Belgian Civil code at eighteen years old¹⁷⁹. The legislator considers that at this age, a person is able to execute all acts of civil life. For foreigners, their national law will determine if they are major or minor.

¹⁷⁵ Art. 12bis, § 2, al. 2 of Immigration Act.

¹⁷⁶ Art. 11 §2, al. 3 of Immigration Act.

¹⁷⁷ Art. 13, § 1er, al. 3 of Immigration Act.

¹⁷⁸ This is laid down in Article 17 of Directive 2003/86/EC, as well as the principles of effectiveness and proportionality (as interpreted by the CJEU in K. and A., paragraph 60 and O.S and L, paragraph 81) and the EU Charter of Fundamental Rights (O.S. and L, paragraphs 77, 78 and 80).

¹⁷⁹ Art. 488 of Civil code.

- In the Immigration Act, and namely for family reunification, there is only made reference to the age and not on the majority or the minority. A minor will be a person who is less than eighteen years old. The age of eighteen years old is the limit to be considered a child for the purpose of family reunification with a TCN sponsor¹⁸⁰. Also in the definition of the UAMs in the Immigration Act, the age is also eighteen years old.

The law provides that the best interest of the child has to be taken into account during the examination of the application for family reunification¹⁸¹. The Immigration Law does not define this principle. When the case law refers to the principle, it is not further defined or no further precisions are given.¹⁸²

One should also note that being an accompanied or unaccompanied minor is a factor of vulnerability under article 1 of the Immigration Act. This concept of vulnerability is mainly relevant in asylum law. For family reunification cases, it has no concrete impact except that “the best interests of the child” must be taken into account in administrative decisions.

Concerning identification, and as mentioned above, if the applicant cannot prove the family relationship with documentary evidence conform to the legislation, the Minister has the discretionary power to decide to appeal to “other valid forms of proof” than the official (reliable) documentation. If there is no other valid form of proof, the Immigration Office may proceed to an interview with the applicant, inquiry or any complementary analysis, such as DNA testing¹⁸³. These kinds of alternative form of evidence, notably the DNA-test, are also applicable where children are concerned (see 4.1.4).

(Section 4 – Q15f en Q15g of the EMN Questionnaire)

4.5 Duration of the procedure

4.5.1. Legal time limit

General rule: maximum processing time of 9 months, with possible extension till 15 months

The law foresees that the decision has to be taken and notified as soon as possible and nine months after the submission of the application at the latest¹⁸⁴. The date of submission is the moment when all necessary documents are provided to the competent consulate or embassy, or the local administration.

The Immigration Office may extend the time limit for a period of three months, and can do this twice, for reasons related to the complexity of the case. The law also allows for such extensions if investigations must be done as to the sincerity of the marriage (i.e. suspicion of marriage of convenience).¹⁸⁵

¹⁸⁰ For the family reunification with a Belgian sponsor or with a EU sponsor, the limit is 21 years old for automatic family reunification. Over 21 years old, the descendant must be “at charge” to have the right to join the sponsor.

¹⁸¹ Art. 12bis, § 7 of Immigration Act.

¹⁸² E.g., C.A.L.L., 29 April 2014, n° 123.190. Best interest of the child has not been taken into consideration by a decision imposing the introduction of the application in the country of origin and not in Belgium. The decision is cancelled because it does appear that the argument based on the best interest of the child has been duly examined and answered.

¹⁸³ Art. 12bis, § 6 of Immigration Act.

¹⁸⁴ Art. 10ter, § 2 and art. 12bis, § 2 of Immigration Act. The law was changed in 2016 in order to extend the time limit from six to nine months with the possibility to extend it twice for three months (see Section 1).

¹⁸⁵ In practice, if the Immigration Office has doubts about the sincerity of the marriage, the application is rejected and the spouses must file a request to the civil Judge in order to have their marriage recognised by the Belgian authorities.

Exceptions

There are a number of exceptions to this general rule:

1. If the **application is submitted at the local authority**, the Immigration Office must decide on the admissibility of the application within a time limit of five months. If the application is admissible, the decision on the merits of the application must be taken in the following four months.

Nevertheless, no time limit applies if the applicant who is illegally staying in Belgium at the moment of the application invokes “exceptional circumstances” in order to justify the introduction of the application at the local authority. In such cases, the Immigration Office must first decide on the admissibility of the application without any time limit set by law for this decision on admissibility. The time limit of nine months will only start after a positive decision on the admissibility. In practice, decisions on the admissibility of those applications are often delayed for more than nine months.

2. Family members of a sponsor who is a **long-term residents and a former Blue Card holder**: the legal time limit is four months and can only be extended once, for three months¹⁸⁶.
3. Although it is not an exception as such, one must recall the **practice of DNA testing** (see 4.1.4). In this case, a first negative decision is taken within the delay, with the possibility to review this decision if the DNA testing is positive. Afterwards it takes months in order to go through the procedure of DNA testing. This does lead to an extension of the delay, although this way to proceed may be faster than having to apply again for a visa once the DNA results are provided.

4.5.2. Duration of the procedure in practice

According to calculations of the Federal Migration Centre Myria¹⁸⁷, most decisions on applications submitted abroad, are taken within 6 months, and in most cases the process lasts for more than 3 months. In recent years the processing times shortened in practice after the legal modification to shorten the maximum processing time from nine to six months (with possible extension). However, one should note that in 2016 the law was modified again in the other direction, in order to extend the maximum time limit again (from six months) to the original nine months (with possible extension).¹⁸⁸ The effects of the processing time in practice will still need to be seen.

(Section 4 – Q16 of the EMN Questionnaire)

¹⁸⁶ Art. 12bis, § 3bis of Immigration Act.

¹⁸⁷ Federal Migration Centre Myria, *Migration in numbers and rights 2016*, July 2016. Available on : http://www.myria.be/files/MIGRA16_FR_AS.pdf

¹⁸⁸ See section 1.

V. CONDITIONS AFTER ADMISSION AND ACCESS TO RIGHTS FOLLOWING FAMILY REUNIFICATION

Persons authorized to stay in Belgium for reasons of family reunification with a TCN, must present themselves to the municipal administration of the place of residence. They are registered in the National Register (Foreigners Register) and are issued a **residence card** ("A-type") of limited duration, each time valid for one year and renewable. In this section we look at the conditions after admission (5.1) and the access to rights of family migrants (5.2).

5.1 Conditions after admission

Checks after admission

As said, during the first five years the residence permit is of limited duration (1 year) and conditional. After this five year period, and if the sponsor has a permit of unlimited duration, a residence permit of unlimited duration is also granted to the family migrant if the conditions are still being fulfilled.

The Immigration Office can verify after admission, whether the requirements set for the family reunification are still being met any time during the stay before the acquisition of an autonomous right to stay. These checks are usually done at the moment of the renewal of the residence permit. However, verifications may be made at any time where there is a well-founded presumption of fraud, or where the marriage, partnership or adoption has been concluded to allow the person concerned to enter or remain in Belgium.¹⁸⁹ The case law provides some guidelines on these checks.¹⁹⁰

The Immigration Office can also receive information, from third parties (local authorities, public institutions, citizens...), related to a change in the situation (conditions no longer met, separation...) or recourse to public funding, and decide to investigate whether the conditions for residence are still met.

¹⁸⁹ Art. 11, § 2, al. 3 of the Immigration Act and art. 74/20, § 4 of the Immigration Act.

¹⁹⁰ About those checks, the case law gives some guidelines:

- The mere fact of finding that the persons concerned are not present during the passage of the agents, without a neighbourhood survey, is not sufficient to conclude that there was no cohabitation (C.A.L.L., 28 November 2007, n° 4130 ; C.A.L.L., 14 April 2008, n° 9886 ; C.A.L.L., 29 April 2008, n° 10.684). However, if the foreigner does not respond to the summonses, it can be inferred that there is no longer cohabitation (C.A.L.L., 4 September 2009, n° 31.159. Moreover, it belongs to the foreigner who has had to leave temporarily the conjugal home because of psychiatric problems to inform the Immigration Office (C.A.L.L., 31 January 2011, n° 55.264).
- Any decision putting a stop to the right to stay must also take into account the existence of family, cultural or social ties with the country of origin, which must be put in a balance with the interests of the State. It follows that the administration must develop an adequate and scrupulous motivation for its decisions (C.A.L.L., 26 March 2014, n° 121.439 ; Art. 74/20 and 74/21 of Immigration Act), but also that the persons concerned must inform the administration of any factor to be taken into account. The case law underlines that the balance of interests must be weighed against Article 8 ECHR.
- Finally, it is not enough to rely on the possibility of a family life in the country of origin of the foreigner to withdraw the residence permit. The need to strike the right balance between the intended purpose and the seriousness of the infringement must be demonstrated. The statement of reasons for the decision must show that a concrete balancing of the interests concerned was carried out with regard to family life (C.A.L.L., 31 March 2014, n° 121.979). This obligation to take account of the interests involved, in the light of Article 8 ECHR, also arises where the refusal of residence permit is based on the absence of stable, regular and sufficient incomes. This is particularly the case where, in addition to the right to family reunification under Belgian substantive law, the applicant invokes Article 8 ECHR to request an exemption from the requirements (C.A.L.L., 31 January 2012, n° 74.258 ; C.A.L.L., 22 January 2014, n° 117.411 ; C.A.L.L., 26 March 2014, n° 121.440).

Possible withdrawal or refusal of renewal of the residence permit

The residence permit may be withdrawn or not renewed if the requirements are no longer met before the autonomous stay is granted. This may happen for example if the condition on sufficient, stable and regular resources (if applicable) is no longer met, if there is no longer an effectively married or family life, or if the marriage, partnership or adoption was concluded solely for the purpose of entry and residence in Belgium.

Moreover, the residence permit may also be withdrawn when false or misleading information was used during the family reunification process or fraud was committed, or where there are founded reasons to suspect that the marriage, partnership or adoption has been concluded to allow the person concerned to enter or remain in Belgium.¹⁹¹

Since the residence of the family members depends on the residence of the sponsor, the residence permit may also be withdrawn or not renewed in case the sponsor loses its residence permit, for example when the international protection status of the sponsor is withdrawn.

Individual circumstances and interests¹⁹²

The Immigration Office needs to **take into account** the nature and solidity of the family relationship, the duration of the residence in Belgium and the existence of family, cultural and social ties with the country of origin before withdrawing or refusing to renew a residence permit.¹⁹³

When the Immigration Office considers to end the residence right of a family migrant, the person concerned in principle has a **right to be heard**.¹⁹⁴ He or she is informed and is asked to provide written additional information that can hinder or influence the decision.¹⁹⁵ There are however exceptions foreseen in the Immigration Act: reasons of national security, specific serious circumstances which hinder this, or if the person concerned is not attainable. Some actors and institutions are of the opinion that this 'right to be heard' is in practice too limited.¹⁹⁶

The residence permit will not be withdrawn when the separation between the spouses or registered partners resulted from **domestic violence**. The Immigration Act refers to the Penal Code and targets cases where separation is the result of rape, attempted murder or bodily harm.¹⁹⁷ In such cases, if the family member is able to prove these facts, the Immigration Office cannot withdraw the residence permit. In other cases of violence, the authority must take into account the facts invoked to justify that there is no family life anymore and that protection is necessary.¹⁹⁸ This provision leaves a wide margin of appreciation to the Immigration Office. The case law stresses the obligation for the administration to pay attention to the information received, and if necessary

¹⁹¹ Art. 11, § 2 of Immigration Act and art 74/20 §2 of the Immigration Act.

¹⁹² Article 17 of Directive 2003/86/EC.

¹⁹³ Art. 11, § 2, al. 5 of Immigration Act. See also and art. 74/20, § 2 and art. 74/21 § 4 of Immigration Act.

¹⁹⁴ This right to be heard is fairly recent. It is a consequence of case law: a number of judgements of the Belgian Council of State in 2015, which largely relies on the case law of the CJEU in this regard. First decisions of the Council of State recognising a « right to be heard » prior the withdrawal of the residence permit, where related to beneficiaries of the national rules which transpose Directive 2004/38, i.e. art. 40 to 47/3 of Immigration Act; C.E., 19 February 2015, n° 230 257 and C.E., 24 February 2015, n° 230 293, which both entail references to the case law of the CJEU and particularly the decision of 5.11.2014, Aff. C-166/13; since then, there are many references to the right to be heard in the case; C.E., 15 December 2015, n° 233 257; C.E., 19 January 2016, n° 233 512; C.C.E., 19 March 2015, n° 141 336; C.C.E., 27 May 2015, n° 146 513; C.C.E., 31 August 2015, n° 151 399; C.C.E., 7 September 2015, n°151 890; C.C.E., 26 November 2015, n° 157 132; C.C.E., 7 September 2015, n° 151 890; C.C.E., 31 August 2015, n° 151 399.

¹⁹⁵ Art. 62 §1 of the Immigration Act.

¹⁹⁶ See among others on the website of the Flemish Agency on Integration ("*Agentschap Integratie en Inburgering*") : <http://kruispuntmi.be/thema/vreemdelingenrecht-internationaal-privaatrecht/verblijfsrecht-uitwijzing-reizen/hoorrecht-en-motivering/hoorrecht#1>

¹⁹⁷ Art. 375, 398, 399, 400, 402, 403 or 405 of Penal Code.

¹⁹⁸ Art. 11, § 2, al. 4 of Immigration Act.

thorough investigations must be done before withdrawing the permit.¹⁹⁹ It is also clear from the case law that domestic violence also includes psychological or verbal violence and that requiring a medical certificate in support of physical violence exceeds the legal requirement.²⁰⁰

(Section 5 – Q20 of the EMN Questionnaire)

5.2 Access to rights after admission

This part of the study provides an brief overview of the rights that follow on from a residence right on the basis of family reunification in Belgium, notably access to education, employment, vocational guidance and training, and the right to apply for an autonomous right of residence for persons admitted for the purpose of family reunification.

5.2.1 Access to education

Education policies are organised in Belgium at the level of the Communities Flanders, French-speaking community (Wallonia-Brussels Federation) and the German-speaking community. There are no specific measures for foreigners entitled to stay for the purpose of family reunification. However, in general the following can be said:

- For **minors**, there is compulsory education for all children between the age of 6 and 18 years, including for newcomers (even independent of their residence status).
- Education for **adults** or higher education is open to foreigners legally residing in Belgium under the general conditions. There is no specific measure targeting “family members” as such. Education institutions determine the conditions for each programme.
- The admission requirements for higher education, application procedure and tuition fees for newcomers are in practice very often the same as those for other international students. For most programmes, an equivalence of the foreign diploma and a good knowledge of the language of the program (often Dutch or French, sometimes English) are required.

Concerning the integration program for newcomers, see section 3).

(Section 5 – Q18a of the EMN Questionnaire)

5.2.2 Access to employment and self-employed activity²⁰¹

Family members of a TCN national have access to the labour market without needing a work permit or professional card once they have a **residence status of unlimited duration**.

As long as the person has a **temporary residence permit** as a family member of a TCN, he or she has also access to the labour market, but he or she must apply for a **work permit C**. This work permit is easily delivered and renewed. If the sponsor has a temporary residence right, there are a few exceptions of categories of family members who **cannot get a work permit C**: in case the sponsor is a student, a worker or belongs to a specific category (Blue card holder, diplomatic staff, etc).²⁰² Do note that the family member of a worker (or another specific category), can apply for a work permit B without having to pass a labour market test.

¹⁹⁹ C.E., 13 July 2012, n° 220.320 ; C.C.E., 25 March 2009, n° 25.007.

²⁰⁰ C.C.E., 28 December 2009, n° 36.610.

²⁰¹ In addition to Directive 2003/86/EC, there are further Legal Migration Directives containing specific provisions on access to employment of family members of certain sponsors, for example, family members of Blue Card holders or ICTs. Please elaborate on such specificities in the above answer.

²⁰² Do note that outside the scope of the right to family reunification, family members who received a visa on the basis of article 9 of the Immigration Law (discretionary visa on the basis of so-called humanitarian reasons) cannot receive a work permit C either.

To be able to engage in self-employed activities, the family member will need to apply for a **professional card**. The main criterion of analysis here is the interest or added value for the Belgian society. It is rather restrictive.

Note that all foreigners legally staying in Belgium also have the possibility to apply for a **work permit B**, i.e. a one-year work permit for a specific job. This application will be analyzed by the Regional authority and includes in principle a labour-market test. Therefore, it is rather restrictive.

If the work permit B or the professional card is granted, the TCN who is entitled to stay as a family member, can decide to opt for a residence permit as a worker or self-employed²⁰³, rather than the residence permit as a family member.

(Section 5 – Q18b of the EMN Questionnaire)

5.2.3 Access to vocational guidance and training

As to vocational guidance and training, there is no specific measure for foreigners entitled to stay for the purpose of family reunification.

Vocational guidance and training is organised in Belgium at the level of the Regions: in Flanders the **VDAB**²⁰⁴ is the responsible public service for employment and vocational training; in Brussels-Capital Region, **Actiris** is the public employment service responsible and **Bruxelles Formation** is the official organization for vocational training;²⁰⁵ in the Walloon region, **Forem** is the public employment service; and in the German-speaking Community ²⁰⁶ the employment and vocational training agency **Arbeitsamt ADG** is responsible.²⁰⁷

These services offer vocational education and training courses and help people to find a job in many ways. Besides offering training courses (learning a certain profession, learning a language,...) they can provide personal assistance and can bring job seekers in contact with potential employers.

The activities of the employment services do not specifically target newcomers but rather target job seekers in general. Although there are **specific courses for people with insufficient language knowledge** (Dutch in Flanders or French in the Walloon Region), these training courses are available to all jobseekers with insufficient language knowledge (European migrants, second generation migrants, etc...).

Vocational training is also part of the “integration courses” for newcomers described in section 3.

(Section 5 – Q18c of the EMN Questionnaire)

5.2.4 Right to apply for an autonomous right of residence independent of that of the sponsor

If the **sponsor** is authorised to stay for a **limited period of time**, the family member will **not** have the possibility to obtain an autonomous right of residence for an unlimited period of time. Both may nevertheless apply for a long-term residence status.²⁰⁸

²⁰³ This change of status can be applied for at the local authority, cfr. Art. 25/2 of the Royal Decree; See also EMN Belgium, *Changes in immigration status and purpose of stay in Belgium*, May 2016.

²⁰⁴ Vlaamse Dienst voor Arbeidsbemiddeling (VDAB). <https://www.vdab.be/>

²⁰⁵ <http://www.actiris.be/>

²⁰⁶ <https://www.leforem.be/>

²⁰⁷ <http://www.adg.be/>

²⁰⁸ Art. 15bis to 16bis of Immigration Act, transposing Directive 2003/109.

If the **sponsor** has a residence right for an **unlimited period of time**, the family member will be entitled to an autonomous right of residence **after five years of stay**. Nonetheless, if, after those five years, all the requirements are not met, the right of residence permit will not become unlimited, but will be renewed for a period of one year, with explicit conditions as to the means of subsistence, health insurance, no offence to public order, ...²⁰⁹

As an **exception**, in case of a separation due to domestic violence before the completion of the five years of stay, there is a possibility foreseen by law for the family member to obtain an autonomous right of residence.²¹⁰

(Section 5 – Q18d of the EMN Questionnaire)

5.2.5 Any other rights granted to family migrants

There is **no distinction** made in law between the rights of the sponsor, the rights of the family member, and the rights of other TCNs legally residing in Belgium. They are treated equally as to those rights, as well as to the right to apply for the Belgian nationality.

As to the “**social rights**”, as a general rule, one may say that social benefits which are “non-contributory”, are not accessible to family members (*themselves*) before they acquire an *autonomous* (or a *consolidated*, i.e. long-term resident or national equivalent) right to stay. For more information, see text box 7 below.

Some particularities are worth mentioning:

- Law of 20.07.1971 on family benefits requires that the child belongs to a household of a person who has been residing for the last five years in Belgium;
- Royal Decree of 09.02.2009 requires the foreigner to have a *consolidated* right to stay (which family members of TCNs can acquire after five years), before being allowed to receive disability benefits.
- Besides, several bilateral agreements, concluded with some other countries in specific sectors, foresee specific regimes for nationals from those countries who are residing in Belgium.

One must know that the recourse to public funds will probably affect the right to stay of the family members, if his/her stay was conditional upon having sufficient resources.

Text box 7: Belgian social security and social aid system

The Belgian **social insurance system** is a work-based, contributory system consisting of a separate scheme for employees, self-employed and civil servants. The 3 schemes differ in terms of contributions and benefits. Foreigners who stay legally in Belgium and who contribute to the system based upon their employment activities in Belgium, enjoy the benefits under the same conditions as Belgian nationals. These benefits include replacement income as well as income supplements to compensate for certain costs (e.g. health care, industrial accidents benefits, old age and death pensions, family allowances, unemployment, etc.). TCNs may however face a number of differences in treatment given the minimum employment period attached to some benefits and the limitation of exportability of benefits²¹¹.

²⁰⁹ Art. 13, § 1, al. 3 of Immigration Act.

²¹⁰ Art. 11, § 1, al 4 of Immigration Act.

²¹¹ A foreign national must have legally worked in Belgium at least 6 months to be entitled to incapacity to work benefits and during a certain reference period (dependent upon age) to be eligible for unemployment benefits. Working periods are under certain conditions waived by virtue of bilateral social security agreements or the

Any foreign national who is in legal stay in Belgium, can register for public health insurance. If one is not working, he/she will have to pay a personal contribution (depending on the level of income) to enjoy health care in Belgium.

If the sponsor is subject to Belgian social security, the family member at charge of the sponsor has “derived” social security rights (e.g. health care). If the family member is working himself/herself, he/she has access to the social insurance system, like Belgian nationals.

Next to this work-based social insurance system, there is the **social assistance system**, which is not work related but which is based on the solidarity principle and financed by the general taxation system. The social assistance system covers a variety of programs such as social interpreters, social aid, guaranteed child benefits, income guarantee for the elderly and disabled persons. The eligibility criteria differ per program. Only in the residual program of social aid, there is a general entitlement for all persons that are legally residing in Belgium. The other programs are reserved to TCNs who have resided in Belgium for at least 5 years or who show a link with the labour market (e.g. income guarantee for the elderly).

⚠ Please note that, even though the TCN might be entitled to social welfare or unemployment benefits, the use of these provisions may have a negative impact on the residency status of the temporary immigrant in Belgium. If the temporary immigrant receives social welfare assistance or unemployment benefits, this is a reason to refuse the renewal of residency rights, while legal residency in Belgium is a requirement for social security rights.

(Section 5 – Q18e of the EMN Questionnaire)

5.2.6 Family members of beneficiaries of international protection

The right to stay of the family member is, as for all other categories, dependant on the right to stay of the sponsor. It is nonetheless quite frequent that the family member of a beneficiary of international protection, once arrived in Belgium, applies for international protection, as he/she may also be entitled to it. In the latter case, the application will be examined in the light of the content of the asylum application of the sponsor.

(Section 5 – Q19 of the EMN Questionnaire)

European Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Publ. C-166 of 30 April 2004. Belgian old age/invalidity/survivor pension rights are as a rule only paid to foreigners that are legal residents in Belgium (exceptions can exist by virtue of bilateral social security agreements and the European regulation 883/2004).

Source: Ninke Mussche, Vincent Corluy and Ive Marx, *Migrant access to social security – Policy and practice in Belgium*, Study for the Belgian national contact point for the European Migration Network, 2014.

VI. STATISTICAL ANALYSIS - FAMILY REUNIFICATION AN AN IMPORTANT ENTRY CHANNEL INTO BELGIUM

To provide a quantitative understanding of the phenomenon of family reunification, the available statistical data on the topic of family reunification are put here in a broader perspective than the study' scope.

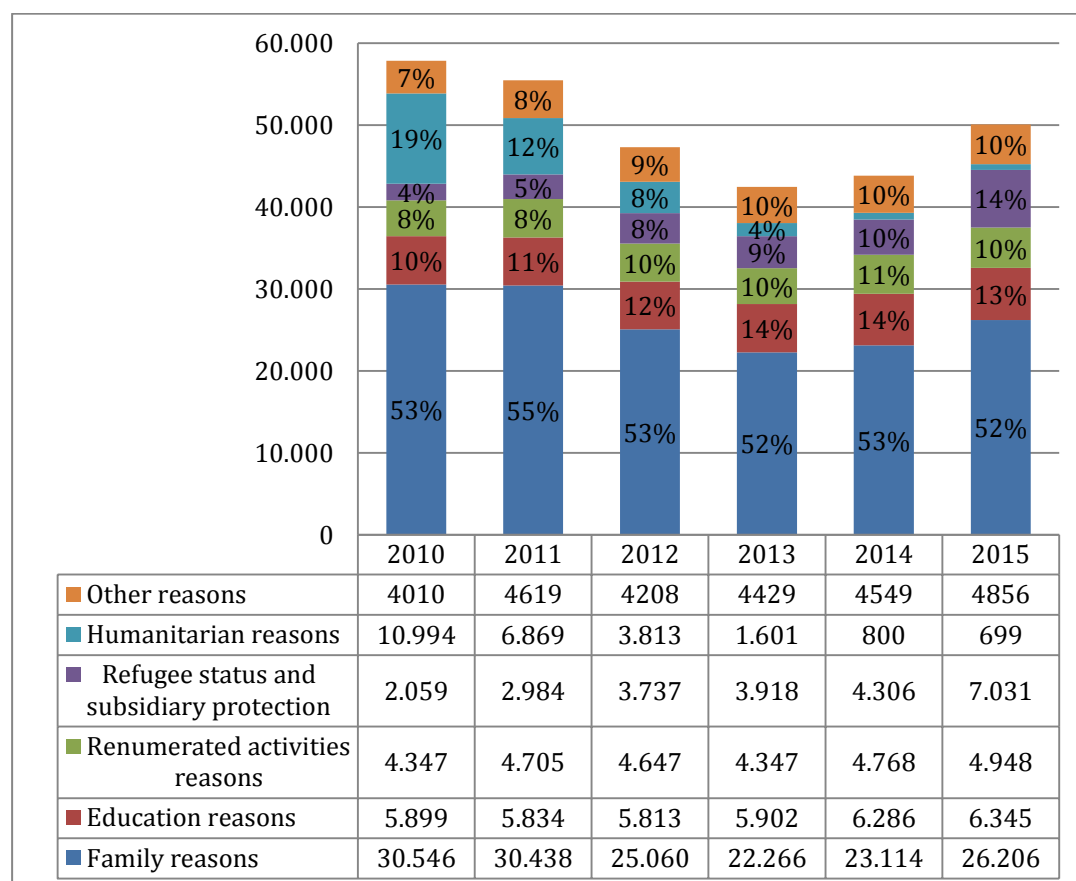
The scope of this study is family reunification of third country nationals (TCN), where the TCN in question refers to TCN-*sponsor*: in other words the TCN who resides in Belgium with a residence permit and makes use of its legal possibility to (re)unite with one or more family members. An important and comparable source of information is the available Eurostat-data on first residence permits issued to TCN for family reasons. Here the TCN refers in the first place to the TCN-family members.

The data on first residence permits available in Eurostat is complemented by the national data on the issue, as well as information on visa.

6.1 First residence permits issued for family reasons

6.1.1. Eurostat: First residence permits issued to TCN for family reasons (TCN = family member)

Figure 1 and Table 1: First residence permits issues to TCN, by reason (Eurostat data, provided by the Belgian Immigration Office – Presentation by Myria, Federal Migration Centre)



The data on first residence permits issued to third country nationals (TCN) for family reasons are available in Eurostat and are comparable data on the EU-level.

In **2016, 26.325 first residence permits were issued to third country nationals (TCN) in Belgium for family reasons**. This is more or less the same number as in 2015.

For 2016 the total number of residence permits issued in Belgium (for all motifs together) is not yet available in Eurostat yet. However, in 2015, 26,206 first residence permits were issued to third country nationals (TCN) in Belgium for family reasons. This was 52% of all first TCN residence permits (50,085) in 2015. These numbers show the importance of family reasons as an entry channel to Belgium.

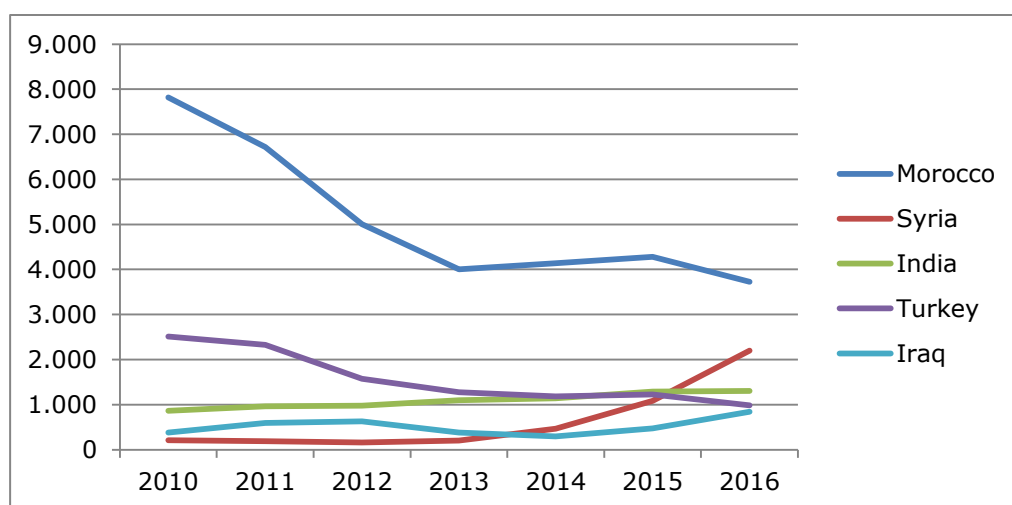
Noteworthy in these data is the **sharp decrease in 2012 and 2013 of the (absolute) number of first residence permits issued to TCN for family reasons**: 30,546 in 2010 versus 22,266 in 2013 (minus 27%). This decline can (partly) be explained by the legal changes in 2011, which introduced stricter criteria related to family reunification in the Belgian Immigration Act. It is however important to point at the fact that this general downward trend hides very different realities according to the nationalities looked into.

Since 2013, the number of first residence permits for family reasons rose again. However, in 2016, it remained however stable compared to 2015, and the total number remains a lot less than in 2011 (a little more than 30.400 in 2011). Due to the inflow of asylum applicants and the high number of recognition rates, the increase of permits issued for protection reasons will probably lead to an increase in the number of **family reunification requests for family members of beneficiaries of international protection**. Starting from 2016, in the framework of Eurostat data will be collected on first residence permits for family reunification with beneficiaries of international protection: for 2016, it concerned 5.557 first residence permits for Belgium. However, on the basis of the data first residence permits we cannot compare over time.

Morocco on top, Syria second most important nationality in 2016

Morocco is the first nationality among TCN-benediciaries of first residence permits for family reasons, followed in 2016 by Syrians, as the second most important nationality. The number of Indian nationals, the third nationality, slowly but steadily increased over the past seven years.

Figure 2: First residence permits issued to TCN for family reasons, 2010-2015, according to the nationality of the beneficiary (= the family member) (Source : Eurostat /Immigration Office – Presentation by EMN Belgium). Selected nationalities: top 5 nationalities in 2015.



A remarkable recent development is the pronounced increase that can be observed in Figure 2 in the number of **Syrian** family members reuniting with a sponsor in Belgium: a tenfold increase since 2013, **from around two hundred in 2013 to over two thousand in 2016**. Also the evolution in Iraqi and Afghan family migrants is noteworthy (see Table 2). An obvious explanation for this evolution is the relatively high number of beneficiaries of international protection of these nationalities, especially Syrians.

Morocco and Turkey were traditionally the highest TCN-beneficiaries of first residence permits for family reasons in Belgium. The observed drop in numbers mentioned earlier is especially pronounced for citizens of these two nationalities: between 2010 and 2013 a downfall of 49% less first permits issued to family members of these nationalities is noted (see figure 2 and table 2 below).

Notwithstanding this decrease, **Morocco remains in 2016 the number one nationality among the non-EU beneficiaries of family reunification**, with 3727 first residence permits for family reasons. Meanwhile, since 2015, Turkish citizens are no longer the second most important nationality. In 2016, Turkey comes at the fourth place, after Syria and India.

Table 2 : First residence permits issued to TCN for family reasons, 2010-2015, according to the nationality of the beneficiary (= the family member) (Source : Eurostat /Immigration Office). Selected nationalities: top 10 nationalities in 2016.

	2010	2011	2012	2013	2014	2015	2016
Morocco	7.816	6.715	5.002	4.005	4.142	4.280	3.727
Syria	212	186	161	206	464	1.084	2.198
India	864	963	979	1.100	1.142	1.293	1.302
Turkey	2.515	2.328	1.576	1.278	1.184	1.227	983
Iraq	383	592	628	379	297	474	842
USA	849	1.217	1.029	907	967	932	831
D.R. Congo	1.038	1.206	1.057	944	947	1.029	745
Guinea	495	728	602	708	725	832	714
Afghanistan	223	310	267	410	511	846	650
Cameroon	681	703	712	588	623	695	610

61% of TCN family members joined a TCN sponsor

In total, out of the 26.325 TCNs who received a first residence permit in for family reasons in 2016, **16.067 joined a sponsor who was himself/herself a TCN**. This is 61%. In the other cases, the sponsor was Belgian or EU-citizen. The rate differs a lot depending on the nationality, for example Syrian and Indian TCN in most cases joined a TCN sponsor in Belgium.

77% of the TCN family members who joined a TCN sponsor were children. Less than 23% were spouses or partners, and very little were other family members.

Table 3: First residence permits issued in 2016 to TCN for family reasons, joining a TCN sponsor in Belgium, 2010-2015, according to the family relation of the beneficiary (= the family member) with the sponsor (Source : Eurostat /Immigration Office). Selected nationalities: total and top 3 nationalities in 2016

TCN joining a TCN sponsor in Belgium				
Family relation with the TCN sponsor	Total	Morocco	Syria	India
Total	16.067	1.565	2.148	1.186
Spouse/partner	3.635	342	559	576
Child	12.392	1.223	1.566	610
Other family member	40	0	23	0

6.1.2 National data: first residence permits for family reasons

As said, the *national* data²¹² on first residence permits for family reasons include both EU and non-EU family members. The national data are available till 2015. **Besides the 26.206 first residence permits issued to TCN (see supra), about 28.973 first permits were issued in 2015 to EU-citizens on the basis of family reasons.**

In this dataset, information on the first residence permits for family reasons is also available disaggregated by **the nationality of the sponsor** as asked for in the (scope of the) study. Before going into the data for TCB-sponsors, we show some general trends on the different categories.

Table 4 shows that most first residence permits for family reasons are issued in cases where the sponsor is an EU-national. This number increased over the last years, from 26.655 in 2010 to 32.016 in 2015. This is important information in order to interpret the data. Table 5 sets the information apart involving the TCN sponsors, which is the study scope.

In 2015, **16.209 first residence permits for family reasons were issued for cases involving a TCN-sponsor.** Over the 2010-2015 period, this is the highest number.

Table 4: First residence permits or documents issued in the framework of family reunification according to the nationality of the sponsor, 2010-2015 (Data source: Immigration Office)

Nationality of the sponsor	2010	2011	2012	2013	2014	2015
Belgian	13.623	12.052	7.842	7.023	6.961	6.954
EU-national (non-Belgian)	25.411	26.655	26.594	26.092	31.731	32.016
Third country national	13.698	15.252	14.462	12.864	13.794	16.209
Total	52.732	53.959	48.898	45.979	52.486	55.179



See Table 5

²¹² Belgian Immigration Office, <https://dofi.ibz.be/sites/dvzoe/NL/Statistieken/Pages/Gezinshereniging.aspx>

Family relation with the sponsor: Spouse/partner, child or ascendant?

Table 5: First residence permits issued in the framework of family reasons to family members of a TCN-sponsor, disaggregated by the family relation to the sponsor, 2010-2015 (Data source: Immigration Office)

Family relation with the sponsor	2010	2011	2012	2013	2014	2015
Spouse	3.382	4.042	3.152	2.858	2.916	3.360
Children born in Belgium	5.491	5.391	6.018	5.409	5.831	6.795
Children born outside Belgium	4.813	5.813	5.287	4.584	5.038	6.039
Ascendant	12	6	5	13	9	15
Total	13.698	15.252	14.462	12.864	13.794	16.209
Total excluding children born in Belgium	8.207	9.861	8.444	7.455	7.963	9.414

It is important to notice that a certain number of first residence permits for family reasons (both in the national and the Eurostat-data) is not issued in the framework of migration *sensu stricto*: also children of legally staying foreigners born in Belgium receive a first residence permit in Belgium. In the *national* data on first residence permits for family reasons, which include both EU and non-EU nationals as family members, the number of children born in Belgium can be distinguished from other cases of family reunification (see below).

When **excluding the children born in Belgium** (from non-EU parents living in Belgium), **9.414 first residence permits were issued in 2015 to family members of TCN sponsors.**

Descendants, or children are by far the most important beneficiaries: 6.039 descendants (or 12.834 when including children born in Belgium), versus 3.360 spouses and a very rarely related to ascendants (15).

EU or non-EU family members?

Third country national sponsors, who open the right to family reunification, **almost always (97%) (re)unite with family members who are themselves TCN. This is not the case when the other way round:** TCN family migrants (re)unite 'only' in 60% with a TCN sponsor. In 40% the sponsor is a Belgian national or EU-citizen living in Belgium.

Table 7: First residence permits issued in the framework of family reasons to family members of a TCN-sponsor, disaggregated by the family relation to the sponsor and the EU or non-EU nationality of the beneficiary, 2015 (Data source: Immigration Office)

Family relation with the TCN sponsor	Nationality of beneficiary of family reunification (family migrant)		
	EU	non EU	Total
Spouse or partner	44	3.316	3360
Descendant	420	12.414	12834
Ascendant	0	15	15
Total	464	15745	16209

We look again, from this angle, to the **4280 Moroccan family migrants in 2015** (data described above), which is the number one nationality in the TCN permits for family reasons. Interestingly, 'only' 43% of these Moroccan family migrants were linked to a TCN-national sponsor (family reunification on the basis of article 10/10bis of the Immigration Act). In 35%, the sponsor was a

Belgian national (family reunification on the basis of article 40ter of the Immigration Act) and in 21% the sponsor was an EU-national (non-Belgian). These numbers are without doubt linked to the high number of Moroccan citizens who acquired Belgian nationality or another EU-nationality over the years.

Gender

In total, 57% of family migrants who joined a TCN sponsor were women. Especially the high percentage of women amongst spouses or partners joining a family migrant is noteworthy: 88% in 2015, which was in line with the percentage in recent years.

Table 8: Percentage of women among the family migrants of a TCN sponsor (in the first residence permits issued for family reasons), disaggregated by the family relation to the sponsor, 2010-2015 (Data source: Immigration Office)

Family relation with the sponsor	2010	2011	2012	2013	2014	2015
Spouse or partner	83%	83%	88%	86%	88%	88%
Children born in Belgium	50%	49%	49%	48%	48%	49%
Children born outside Belgium	48%	49%	49%	49%	48%	47%
Ascendant	92%	83%	60%	54%	56%	40%
Total	57%	58%	57%	57%	56%	57%

6.2 Visa for family reunification

First residence permits are the most complete source of information to study the phenomenon of family reunification in Belgium. However, statistics on visa for family reunification are still complementary: they give a picture of an earlier stage in the procedure compared to the data on first residence permits, they can be disaggregated by the status of the sponsor, and moreover, besides the positive decisions, also the number of applications, and the number of negative decisions can be looked into.

This said, when comparing with the data on first residence permits, one should keep in mind the limits of the visa data:

- 1) The visa statistics do not include the people who applied for family reunification in Belgium. This is especially important for family reunification with a Belgian or EU sponsor.
- 2) It happens that a person who received a visa for family reunification does not receive a residence permit on this basis, for example because they apply for asylum when arriving on Belgian soil.
- 3) As said, the data on first residence permits also contain data on TCN children born in Belgium.

In 2016 21.172 persons applied for a visa for family reunification, including 14.238 applications for family reunification with a TCN sponsor.²¹³ Below the data for visa on family reunification with TCN sponsors are presented for 2012 till 2016, disaggregated by the ground of residence of the sponsor.

²¹³ The 14.238 visa applications in 2016 for family reunification with a TCN sponsor concerns 11.566 visa applications on the basis of article 10 of the Immigration Act, 2.465 visa for partners/spouses of a TCN worker (on the basis of article 10bis §2 of the Immigration Act), and 207 visa with a TCN student (on the basis of article 10bis §2 of the Immigration Act). The rest of the 21.172 visa relate to 6.799 visa applications with sponsors who are Belgian or EU-citizen (article 40 and 40bis), 26 "other" family members of EU-citizens on the basis of article 47/1 of the Immigration Act and 109 visa applications relate to adoption.

The data clearly confirm that the number of applications of family members of beneficiaries of international protection (with refugee status or subsidiary protection) increased significantly in 2016 compared to 2015, as well as the number of positive decisions taken for this category.

*Table 9: Total number of **visa applications** for family reunification with a TCN sponsor in Belgium, 2012-2016, disaggregated by the status of the TCN sponsor (Data source: Immigration Office).*

Year/ Status of the sponsor	2012	2013	2014	2015	2016
- TCN Beneficiaries of international protection	N/A	N/A	N/A	3.992	7.019
- TCN admitted for remunerated activities	2.064	2.128	1.915	2.265	2.465
- TCN admitted for study purposes	276	247	300	287	207
- Other TCN categories of migrants	6.938	6.764	7.119	4.667	4.547
TOTAL TCN sponsor	9.278	9.139	9.334	11.211	14.238

*Table 10: Total number of **successful visa applications** for family reunification with a TCN sponsor in Belgium, 2012-2016, disaggregated the status of the TCN sponsor (Data source: Immigration Office).*

Year/ Status of the sponsor	2012	2013	2014	2015	2016
- TCN Beneficiaries of international protection	1.037	1.289	1.386	3.023	4.749
- TCN admitted for remunerated activities	1.839	1.901	1.839	2.062	2.340
- TCN admitted for study purposes	216	190	246	229	192
- Other TCN categories of migrants	3.668	3.114	3.152	3.464	3.245
TOTAL TCN sponsor	6.760	6.494	6.623	8.778	10.526

An analysis of Myria, the Belgian Federal Migration Centre, shows that Syria is in 2016 for the first time the nationality with most visa applications (more than 3.600) and with most successful visa applications (more than 2.600) for family reunification, leaving Morocco and India behind.²¹⁴

²¹⁴ Federal Migration Centre Myria, *Migration in numbers and rights 2017*, June 2017, p. 116 and following. The analysis is done on the basis of a different source, not the Immigration Office, but the Federal Public Service Foreign Affairs.

*Table 11: Total number of **rejected visa applications** for family reunification with a TCN sponsor in Belgium, 2012-2016, disaggregated by the status of the TCN sponsor (Data source: Immigration Office).*

Year/ Status of the sponsor	2012	2013	2014	2015	2016
- TCN Beneficiaries of international protection	966	780	680	977	1.449
- TCN admitted for remunerated activities	213	162	81	125	83
- TCN admitted for study purposes	100	44	30	45	31
- Other TCN categories of migrants	3.069	1.696	1.447	1.482	981
Total TCN sponsor	4.348	2.682	2.238	2.629	2.544

(Section 1 – Q3 of the EMN Questionnaire)

VII. CONCLUSIONS

Family migration in Belgium: statistics and recent changes

In 2016, **26.325 non-EU citizens** (also: third country nationals (TCNs)) received a first residence permit for family reasons.

Morocco and Turkey were traditionally the highest TCN-beneficiaries of first residence permits for family reasons in Belgium. However, after the legal reform in 2011 a drop was observed in the number of family migrants of these nationalities. Although **Morocco** remains in 2016 the number one nationality among the non-EU beneficiaries of family reunification (more than 3700 first residence permits for family reasons), **Syria** becomes second. A tenfold increase can be observed in the number of Syrian family members reuniting with a sponsor in Belgium since 2013: from around two hundred in 2013 to over two thousand in 2016. The number of Indian nationals, the third nationality among TCN beneficiaries of first residence permits for family reasons in Belgium, slowly but steadily increased over the past years. In 2016, Turkey comes at the fourth place, after Morocco, Syria and India.

Out of the total of 26.325 first residence permits issued to TCN, 16.067 joined a **sponsor who is himself/herself a TCN**: this concerned **mostly children** (12.392), but also 3.635 spouses or partners joined and 40 other family members. It is important to point out that part of the first residence permits for family reasons do not relate to migration in the strict sense of the word, since children born in Belgium from foreign nationals (legally residing in Belgium) also receive a first residence permit for family reasons.

Several **legal changes were made in recent years, mostly restricting the right to family reunification**. Among others, in 2011 an income requirement was introduced, the fight against marriages and partnerships of convenience was stepped up and today the fight against false declarations of parenthood is the political agenda. Also an obligatory financial retribution (fee) was introduced when applying for family reunification, as well as an integration requirement at the renewal of a temporary permit. Moreover, the period to control the fulfillment of all conditions for family reunification was extended to five years, and the maximum processing times for an application were lengthened from six to nine months (with possible extensions).

Who can be a sponsor for family reunification in Belgium?

Over the years, the legislation on family reunification in Belgium has become a **complex legal framework**. The legislation for family reunification with third country national sponsors differs from the (more favorable) legislation applicable to sponsors who are EU-citizens on the one hand and Belgian sponsors on the other hand. The study focuses on the legislation and practice for TCN sponsors. However, also in the regime for TCN sponsors, there are many differences depending on the status of the sponsor and the family member joining him/her.

Which family members can join a TCN sponsor in Belgium?

When looking at the family members who can join a third country national sponsor in Belgium, this concerns in the first place the core family of a TCN sponsor, as foreseen in the European Directive 2003/86 on family reunification: the **spouse or registered partner** and the **minor children** (below age 18) of the sponsor and/or of his/her spouse. Parents or ascendants of TCN sponsors do not have a right to family reunification, except the **parents of an unaccompanied minor with protection status**. Belgium also grants a right to family reunification in a case where the Directive does not foresee it, namely for the **adult child suffering from disabilities which make**

him/her dependent of the sponsor. Also note that in Belgium that same-sex spouses and partners have the same right to family reunification as opposite sex partners, and partners registered as legal cohabitants under specific conditions can reunite as well.

Other (dependent) persons besides the ones described above, do not have a right to family reunification in Belgium. The only possibility for them is to ask for a humanitarian visa (from abroad) on the basis of article 9 of the Immigration Act, or a residence permit for humanitarian reasons (from in Belgium) on the basis of article 9bis of the Immigration Act. However, the granting of a visa or permit on the basis of these dispositions is a favor not a right.

Requirements for exercising the right to family reunification in Belgium

In general, the following requirements are imposed for exercising the right to family reunification:

- The applicant needs to **pay a fee to apply** for a residence permit of in principle **200 euro** per adult;
- The TCN sponsor must have an **accommodation suitable for the size of the family**;
- The TCN sponsor must have **healthcare insurance**, covering the sponsor and their family members;
- The TCN sponsor must have **sufficient, stable and regular means of subsistence**.
- Since January 2017, and after admission: the family member needs to provide evidence of his/her **willingness to integrate into society** and if the person does not make a 'reasonable effort' to integrate, the Immigration Office can put an end to his/her permit to stay.
- Moreover, an application can be rejected on grounds of **public order or national security** and every applicant needs to prove not to suffer from any of the diseases that may endanger **public health**.

The income requirement certainly is a requirement with a lot of impact for those who want to exercise their right to a family life. It implies that the sponsor needs to prove to have sufficient, stable and regular means of subsistence, to cover his/her needs as well as the family members to avoid them becoming a burden on the public authorities. The level of income is set at 120% of the social assistance level (or living wage): this amounts to 1415.58 EUR. Allocations that are not part of the contributory social security system are excluded. The impact is especially high for sponsors affected by a handicap, sickness, unemployment or working under temporary labor contracts. The Immigration Law imposes a case-by-case analysis, but in practice a global analysis of the financial autonomy of the whole family with regard to public assistance, beyond the conditions of sufficiency and stability is challenging. Do note that the income condition does not apply when the sponsor is only joined by a minor child. The impact of the financial retribution and certainly of the recently introduced integration requirements, will still need to be seen.

Sponsors who are **beneficiaries of international protection** were overall much less touched by the restrictions introduced in recent years. Family members of beneficiaries of international protection applying for family reunification do not fall under the recently introduced income requirements and are exempt from paying the retribution. Moreover, they do not need to prove the requirements on housing, income and health insurance if they can introduce their (complete) application in the year following the recognition of their protection status and if the family tie existed before they came to Belgium. Unaccompanied minors who are beneficiaries of international protection are exempt of these conditions anyhow (also when introducing the application after this year). This said, we should note that also for beneficiaries of international protection the maximum processing times lengthened to nine months (with possible extensions). One should also be aware that there are anyhow many practical obstacles for people coming from conflict regions to introduce an application for family reunification.

Submission and examination of the application for family reunification

In terms of **procedure**, the formal party to an application for family reunification in Belgium is the sponsor's family members. As a general rule, family members who want to reunite with a TCN sponsor, need to submit their application in the Belgian diplomatic or consular post in their country of residence. They must in principle present themselves there and explain in person the reason and the context of their application. By way of derogation and only in specific situations, family members of TCN sponsors who are already in Belgium, can submit an application at the municipality or local administration of the place of residence in Belgium.

Establishing **family or marriage ties** is crucial within the family reunification process. These ties must in principle be proven by means of official authentic documents, drawn up in accordance with the rules of private international law, with regard to both substantive and procedural requirements and legalization. In the absence of these documents, and only when it is impossible for the foreigner to produce official documents, Belgian legislation foresees that "other valid forms of proof" are produced are they are subject to the discretionary assessment of the Immigration Office. If there is no other valid form of proof, the Immigration Office may proceed to an interview with the applicant or any other inquiry deemed necessary. A complementary analysis, such as DNA testing can be proposed.

After admission

When the family reunification is approved, the family migrant receives during the first five years, a residence permit of limited duration (1 year), which is conditional. During this period the fulfillment of the requirements will still be checked. After this five year period, and if the sponsor has a permit of unlimited duration, a residence permit of unlimited duration is also granted to the family migrant if the conditions are still being fulfilled.

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- Katleen Goris, Federal Migration Centre Myria

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(Section 3 – Q13 of the EMN Questionnaire)

Annex 2: Definitions

The following terms are used in the EMN Common Template. The definitions are taken from the EMN Glossary v3.0²¹⁵.

'Adoption of convenience': is defined as "an adoption (of a child) contracted for the sole purpose of enabling the person adopted to enter or reside in a Member State".

'Adult': is defined as "every human being aged 18 years or more unless, under the law applicable to the adult, majority is attained later".

'Applicant for international protection': is defined as "a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken".

'Application for international protection': is defined as "a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU, that can be applied for separately".

'Beneficiary of International Protection': is defined as "a person who has been granted refugee status or subsidiary protection status".

'Civil Partnership of Convenience': is defined as "a civil partnership contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State".

'False declaration of parenthood': is defined as "an untruthful declaration of a relationship of parenthood which does not actually exist either (a) between a minor who is an EU citizen or settled third-country national and a third-country national adult, where the adult claims to be the parent in order to obtain or legalise their residence in a Member State, or (b) between a third-country national minor and a union citizen adult or a settled third-country national adult where the adult declares themselves parent of the minor in order to obtain or legalise the residence of the child and / or possibly the residence of the other parent".

'Family formation': is defined as "the entry into and residence in a Member State of a third-country national on the basis of the establishment of a family relationship either (a) after their third-country national sponsor has gained legal residence in a Member State; or (b) with an EU national".

'Family member': is defined as "in the general migration context, a person either married to, or having a relationship legally recognised as equivalent to marriage, to a migrant, as well as their dependent children or other dependants who are recognised as members of the family by applicable legislation. In the context of the Family Reunification Directive, a third country national, as specified in Art. 4 of Directive 2003/86/EC (normally members of the nuclear family – i.e. the spouse and the minor children), who has entered the territory of the European Union for the purpose of family reunification".

'Family migration': is defined as "in the global context, a general concept encompassing family reunification, family formation, and migration of an entire family at the same time. In the EU context, a concept which refers explicitly to family reunification and family formation".

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Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf

'Family reunification': is defined as "the establishment of a family relationship which is either: (a) the entry into and residence in a Member State, in accordance with Council Directive 2003/86/EC, by family members of a third-country national residing lawfully in that Member State ('sponsor') in order to preserve the family unit, whether the family relationship arose before or after the entry of the sponsor; or (b) between an EU national and third-country national established outside the EU who then subsequently enters the EU".

Synonymous: family reunion.

'Forced marriage': is defined as "the union of two persons, at least one of whom has not given their full and free consent to the marriage".

'Highly qualified migrant': is defined as "in the global context, a person falling within ILO ISCO-88 Classes 1, 2 and 3, e.g. a person qualified as a manager, executive, professional, technician or similar, who moves within the internal labour markets of transnational corporations and international organisations, or who seeks employment through international labour markets for scarce skills. In the EU context, a third-country national who seeks employment in a Member State and has the required adequate and specific competence, as proven by higher professional qualifications".

'Integration': In the EU context, a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States.

'Intra-corporate transferee': is defined as "a third-country national subject to a temporary secondment from an undertaking established outside the territory of a Member State and to which the third-country national is bound by a work contract to an entity belonging to the undertaking or to the same group of undertakings which is established inside this territory".

'Labour market test': is defined as a "mechanism that aims to ensure that migrant workers are only admitted after employers have unsuccessfully searched for national workers, EU citizens (in EU Member States this also means EEA workers) or legally residing third-country nationals with access to the labour market according to national legislation".

'Long-term resident': is defined as "a third-country national who has long-term resident status as provided for under Arts. 4 to 7 of Council Directive 2003/109/EC or as provided for under national legislation".

'Marriage of convenience': is defined as "a marriage contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State".

'Refugee': is defined as "in the global context, either a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned before, is unable or, owing to such fear, unwilling to return to it. In the EU context, either a third-country national who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Art. 12 (Exclusion) of Directive 2011/95/EU does not apply".

'Researcher': is defined as "in the EU migration context, a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is

selected by a research organisation for carrying out a research project for which the above qualification is normally required”.

‘Right to family life’: is defined as “a principle enshrined in Arts. 7, 9 and 33 of the Charter of Fundamental Rights of the European Union and Art. 8 of the European Convention on Human Rights (ECHR)”.

‘Right to family unity’: is defined as “in the context of a refugee, a right provisioned in Art. 23 of Directive 2011/95/EU and in Art. 12 of Directive 2013/33/ EU obliging Member States to ensure that family unity can be maintained”.

‘Seasonal worker’: is defined as “a third-country national who retains their principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State”.

‘Sponsor’: is defined as “in the global context, a person or entity which undertakes a (legal, financial or personal) engagement, promise or pledge, on behalf of another. In the EU context of family reunification, a third-country national residing lawfully in a Member State and applying, or whose family members apply, for family reunification to be joined with them”.

‘Student’: is defined as “in the EU migration context, a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as their main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees, which may cover a preparatory course prior to such education according to its national legislation”.

‘Subsidiary protection’: is defined as “the protection given to a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin, or in the case of a stateless person to their country of former habitual residence, would face a real risk of suffering serious harm as defined in Art. 15 of 2011/95/EU, and to whom Art. 17(1) and (2) of Directive 2011/95/EU do not apply, and is unable or, owing to such risk, unwilling to avail themselves of the protection of that country”.

‘Unaccompanied minor’: is defined as “a minor who arrives on the territory of the Member States unaccompanied by the adult responsible for them by law or by the practice of the Member State concerned, and for as long as they are not effectively taken into the care of such a person. It includes a minor who is left unaccompanied after they have entered the territory of the Member States”.

‘Third-country national’ (TCN): is defined as “any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code”.

The following abbreviations and national terms are used in this study:

Immigration Office	French: Office des étrangers Dutch: Dienst vreemdelingenzaken
Council for Alien Law Litigation (C.A.L.L.)	French :Conseil du contentieux des étrangers (C.C.E.) Dutch : Raad voor Vreemdelingenbetwistingen (R.v.V.)
Council of State	French: Conseil d'Etat Dutch: Raad van State
Constitutional Court (C.C.)	French: Court constitutionnelle Dutch: Grondwetelijk Hof
Immigration Act	French: Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers / Dutch: Wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen
Royal Decree implementing the Immigration Act	French: Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers Dutch : Koninklijk besluit van 8 oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen
Public Centre for Social Welfare	French: Centre public d'Action Sociale (CPAS) Dutch: Centra voor Maatschappelijk Welzijn (OCMW)
Social assistance level	French : Revenu d'intégration sociale Dutch : Sociaal leefloon

Annex 3: Studies and reports of the Belgian Contact Point of the EMN (2009-2017)

The present annex lists the national studies and reports published by the Belgian Contact Point of the EMN between 2009 and 2017. The other EMN National Contact Points (NCPs) produced similar reports on these topics for their (Member) State. For each study, the EMN Service Provider, in cooperation with the European Commission and the EMN NCPs, produced a comparative Synthesis Report, which brings together the main findings from the national reports and places them within an EU perspective.

The Belgian reports mentioned below are available for download on www.emnbelgium.be
The reports from the other NCPs as well as the Synthesis Reports are available on http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm

2009

<i>April 2009</i>	The Organisation of Asylum and Migration Policies in Belgium
<i>June 2009</i>	Annual Report on Asylum and Migration Policy in Belgium – 2008
<i>July 2009</i>	Unaccompanied Minors in Belgium - <i>Also available in French and Dutch</i>
<i>October 2009</i>	Programmes and Strategies in Belgium Fostering Assisted Voluntary Return and Reintegration in Third Countries - <i>Also available in French and Dutch</i>
<i>December 2009</i>	EU and Non-EU Harmonised Protection Statuses in Belgium

2010

<i>January 2010</i>	Annual Report on Asylum and Migration Policy in Belgium – 2009
<i>August 2010</i>	Satisfying Labour Demand Through Migration in Belgium

2011

<i>January 2011</i>	Temporary and Circular Migration in Belgium: Empirical Evidence, Current Policy Practice and Future Options
<i>March 2011</i>	Annual Report on Asylum and Migration Policy in Belgium – 2010
<i>May 2011</i>	EU and Non-EU Harmonised Protection Statuses in Belgium (update)
<i>October 2011</i>	Visa Policy as Migration Channel in Belgium

2012

<i>January 2012</i>	Practical Measures for Reducing Irregular Migration in Belgium
<i>March 2012</i>	Annual Report on Asylum and Migration Policy in Belgium – 2011
<i>April 2012</i>	Misuse of the Right to Family Reunification : Marriages of Convenience and False Declarations of Parenthood in Belgium - <i>Also available in French and Dutch</i>
<i>September 2012</i>	Establishing Identity for International Protection: Challenges and Practices in Belgium - <i>Also available in French and Dutch</i>
<i>September 2012</i>	The Organization of Migration and Asylum Policies in Belgium (update)
<i>October 2012</i>	Migration of International Students to Belgium, 2000-2012
<i>December 2012</i>	Intra-EU Mobility of Third-Country Nationals to Belgium - <i>Also available in</i>

2013

May 2013	Annual Report on Asylum and Migration Policy in Belgium – 2012
July 2013	Attracting Highly Qualified and Qualified Third-Country Nationals to Belgium
August 2013	The Organisation of Reception Facilities in Belgium
October 2013	The Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures in Belgium

2014

February 2014	Migrant Access to Social Security – Policy and Practice in Belgium - Also available in French and Dutch
June 2014	Good Practices in the Return and Reintegration of Irregular Migrants: Belgium's Entry Bans Policy and Use of Readmission Agreements
June 2014	The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Belgium
July 2014	Annual Report on Asylum and Migration Policy in Belgium – 2013
October 2014	Policies, Practices and Data on Unaccompanied Minors in Belgium (2014 Update)
December 2014	Admitting Third-Country Nationals for Business Purposes in Belgium

2015

June 2015	Determining Labour Shortages and the Need for Labour Migration from Third Countries in Belgium - Also available in French
July 2015	Annual Report on Asylum and Migration Policy in Belgium - 2014
August 2015	Dissemination of Information on Voluntary Return: How to Reach Irregular Migrants not in Contact with the Authorities in Belgium

2016

May 2016	Changes in Immigration Status and Purposes of Stay in Belgium
May 2016	Integration of Beneficiaries of International Protection into the Labour Market in Belgium
June 2016	Annual Report on Asylum and Migration Policy in Belgium - 2015
December 2016	Returning Rejected Asylum Seekers: Challenges and Good Practices in Belgium
December 2016	Resettlement and Humanitarian Admission in Belgium

2017

June 2017	Annual Report on Asylum and Migration Policy in Belgium - 2016
July 2017	Family Reunification of Third Country Nationals in Belgium

<i>Upcoming</i>	Illegal Employment of Third Country Nationals in Belgium
<i>Upcoming</i>	Challenges and good practices for establishing applicants' identity in the migration process in Belgium
<i>Upcoming</i>	The effectiveness of return in Belgium: challenges and good practices linked to EU rules and standards
<i>Upcoming</i>	The changing influx of asylum seekers in 2014-2016: Belgium's responses

