

# INTRA-EU MOBILITY OF THIRD-COUNTRY NATIONALS TO BELGIUM

Focused study of the Belgian Contact Point to the EMN (December 2012)



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## EMN FOCUSED STUDY 2012

### Intra-EU mobility of third-country nationals

#### National Contribution from BELGIUM

*Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled EMN Focussed Study. The contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.*

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*The statistics used in this report have been collected and processed by the Belgian NCP EMN.*

*The following abbreviations have been used in this study:*

- Law of 19 February 1965: Law relating to third-country nationals carrying out freelance professional activities
- Law of 15 December 1980: Law relating to access to territory, stay, establishment and removal of third-country nationals
- Law of 30 April 1999: Law relating to the occupation of third-country nationals
- RD of 8 October 1981: Royal decree relating to access to land, stay, establishment and removal of third-country nationals
- RD of 2 August 1985: Royal decree concerning implementation of the law of 19 February 1965
- RD of 9 June 1999: Royal decree concerning implementation of the law of 30 April 1999
- RD of 3 February 2003: Royal decree exempting certain categories of third-country nationals from the professional card needed to perform a freelance professional activity

- RD of 3 August 2012: Royal decree relating to the methods for making requests and issuing authorization for temporary work granted as part of the request made by a third-country national worker to obtain a European blue card
- New arrival: A third-country national coming to Belgium from a third country in accordance with common law
- EC: European citizens
- MS: EU member state
- TCN: third-country national
- LTR: long-term resident

## Top-line 'Factsheet'

### National Contribution

*Overview of the National Contribution – drawing out key facts and figures from across all sections of the Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.*

With the exception of rules benefiting long-term residents from another EU member state, intra-European mobility of third-country nationals has been the subject of few developments in Belgian law, thus reflecting the state of this part of European law which is only in its early stages. However this does not mean that the system is more favourable to long-term residents than to those in other categories.

- Concerning long-term residents from another member State, Belgian legislation scarcely goes beyond the minimum standards required by European law. With regard to salaried work, Belgium has used the right to make an examination compulsory before embarking on a contract of employment, although a more flexible system is applied for shortage professions and a few procedural advantages. Residence for the purposes of a self-employed activity is also subject to previously obtaining a professional card; nevertheless, in comparison with the requirements for new arrivals, no proof of the economic use of the professional project for Belgium is required, simply its economic viability. However this administrative practice needs to be incorporated in order to make sure that its public nature and legal certainty are part of substantive law.
- Holders of the European blue card issued by another member benefiting from a system which is more favourable in the sense that the occupational authorization these persons have to request is always issued without testing the labour market. The aim is less to favour mobility than to attract other highly qualified new arrivals benefiting from the same advantage.
- Although Belgium has not transposed the European standards relating to the mobility of students and researchers, its national law is, however, in line with EU requirements insofar as admission to its territory, even if the student or researcher has left another member State, exercising intra-European mobility, and is subject of more favourable provisions of national law than European law in relation to students. Common law is adequate in relation to admission to ensure mobility of researchers, particularly as it has the benefit of exempting them from a work permit just like European citizens. However, European standards relating to the length of time for issuing residence documents have not been transposed into Belgian law in relation to the mobility of students and researchers in spite of preparatory works for the law indicating that researchers will be given favourable treatment.
- As far as family groups are concerned, the family of the categories of third-country nationals concerned is defined in Belgian law more broadly than in European directives adopted under the immigration policy. However we notice, curiously, that the researcher's family does not benefit from any

relaxation of the family reunification conditions granted to long term residents and Blue Card holders.

- Finally, the possibility of making a request for a residence permit *in situ* in Belgium constitutes the only rule common to all 4 categories of third country national concerned.

## Section 1

### The National Legislative Framework: Visas and Residence Permits

**Groups of third-country nationals who enjoy mobility rights under the EU's migration Directives:**

#### **1.1. Long-term residents in another Member State**

- a) **What national rules and procedures apply to third-country nationals who are long-term residents in another Member State in respect of their access to a visa and/or residence permit in your country?**

#### **I. Basic conditions**

The rules of Belgian law which apply to the rights and conditions for a third country national who has acquired the status of a long term resident staying over three months in another MS, resemble those which apply to the rights and conditions for a new arrival with over three months' residence in several ways.

#### **A. For a third country national who has been a long term resident in another MS**

##### ***A. 1. Residence rights***

A TCN who has acquired the status of an LTR in another MS may come to Belgium for one of the following reasons:

- 1° to perform a salaried or unsalaried occupation;
- 2° to continue studies or professional training;
- 3° to come for other reasons.

If this TCN is able to prove that he meets the conditions fixed for one of these three reasons, authorization for residence of over three months must be granted to him (articles 61/6 to 61/9 of the law of 15 December 1980).

If the residence is based on employment, as referred to in section 1°, or if for other reasons, as referred to under section 3°, the existence of authorization for residence by right distinguishes the LTR from the new arrival who is the subject of discretionary power in relation to granting authorization for residence (article 9 of the law of 15 December 1980), subject to the important reservation of regulations relating to access to the labour market (infra). If the purpose of the residence is study, the new arrival benefits from a residence permit equivalent to an LTR from another MS provided that he fulfils the conditions indicated in article 58 of the law of 15 December 1980 relating to the newly arrived student. However, this right of residence is only acknowledged for the purposes of continuing studies in higher education or carrying out a preparatory year for higher education. The residence right for studies acknowledged for an LTR from another MS is not, however, limited to higher education and also covers professional training (articles 58 and 61/7 of the law of 15 December 1980).

##### ***A. 2. Residence conditions***

With regard to residence for study purposes, the conditions are the same whether this concerns an LTR from another MS or a new arrival (articles 9, 58 to 60 and 61/7 of the law of 15 December 1980).

With regard to residence for salaried employment, an LTR of another MS must previously obtain a work permit in the same way as a new arrival. However he benefits from a more favourable system since:

- If requests relate to shortage professions<sup>1</sup> there is no prior examination of the situation of the labour market whereas in the case of a new arrival this examination will be carried out<sup>2</sup>.
- The request for occupational authorization must be dealt within five days following the request, whereas for a new arrival no period is stipulated (articles 38quater and 38septies of the RD of 9 June 1999).
- Granting occupational authorization to the employer is not limited to workers who are nationals of third countries with whom Belgium is associated through international labour agreements, whereas this is the case for a new arrival (article 11 of the RD of 9 June 1999).
- Granting authorization for occupation to the employer is not subject to the employer and the worker signing the contract of employment referred to in the annexes of the RD of 9 June 1999, as a proposed contract of employment is sufficient unlike in the case of the new arrival (article 13 of RD of 9 June 1999).
- Occupational authorization can be granted to the employer even if a worker has already entered Belgian territory, which is not the case for a new arrival (article 5 of RD of 9 June 1999).
- After the first 12 months of being admitted to the labour market, a new work permit can be granted to him, without taking into account the situation on the labour market and covers all professions, whereas for the new arrival renewal of the permit remains conditional on the prior examination of the situation on the labour market and is only granted with a view to the same profession being continued, either with or without the same employer (articles 31 and 38septies of RD of 9 June 1999).

In principle, on the 31 December 2013, the exemption from the prior examination of the situation on the labour market is to be generalized to any request for prior authorization for residence by an LTR from another State and should no longer be limited solely to requests relating to a profession where there is a shortage or requests to renew permits<sup>3</sup> (articles 9, 20°, 38ter, 38quater, 38quinquies and 38sexies of RD of 9 June 1999).

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<sup>1</sup> Professions where there is a shortage of labour are fixed by the Walloon, Flemish or Brussels-Capital regions as well as the German-speaking Community, as part of their task to implement federal standards relating to the occupation of workers.

<sup>2</sup> There must be no confusion with the exemption from any prior examination of the situation on the labour market (hypothesis in which the employer will have had to request prior occupational authorization and the worker will have had to apply for a work permit) and real cases of exemption from a work permit. As far as this exemption is concerned, a TCN who has acquired the status of an LTR in another MS will be able to benefit if he is covered by application of one of the cases indicated in article 2 of the royal decree of 9 June 1999 under the same heading as the new arrival. If you would like more details about when a work permit is issued, see *infra*, Section 3, Question 3.1.

<sup>3</sup> This exemption is referred to in article 9, 20° of RD of 9 June 1999. This article will come into force on the date when articles 38ter, 38quater and 38quinquies of the RD cease to be valid. These provisions which issue temporary measures applicable to Bulgarian and Rumanian nationals will cease to be valid on 31 December 2013. However they risk being kept in force beyond this date once Croatia joins the EU, which could be 2013.

In order to carry out a self-employed professional job, an LTR of another MS must previously apply to the relevant Belgian diplomatic or consular service<sup>4</sup>, in order to obtain a professional card<sup>5</sup> under the same heading as a new arrival. As with the previous example, he will only be exempted if, given the planned profession, this is covered by one of the cases of exemption listed exhaustively by the regulations. However the LTR of another MS benefits from a less constraining system insofar as:

- The economic profitability of his project will not be analysed, but only an analysis of the market in which he intends to work shall be carried out<sup>6</sup>.
- The need to have the necessary funds will be evaluated more flexibly<sup>7</sup>.

(article 1 of the law of 19 February 1965, article 1 of RD of 3 February 2003 and article 1 of RD of 2 August 1985).

In the case of residence for other reasons, an LTN from another MS must supply proof that he has stable, regular and adequate resources to meet his needs and those of the members of his family in order to avoid becoming a financial burden for the public authorities. He must also prove that he has a health insurance. The new arrival must also be in a position to prove these two aspects; by virtue of the discretionary powers of the relevant authority, he may also be asked to prove other aspects such as, for example, having reliable references in Belgium or having links with Belgium (articles 9 and 61/7 of the law of 15 December 1980).

## **B. For TCNs who are family members of a LTR of another MS**

### ***A. 1. Residence rights***

As is the case for family members of a new arrival, authorization for residence of over three months must be granted to the members of the family of a LTR of another MS provided that the conditions for their residence are fulfilled (article 10bis, §3 of the law of 15 December 1980). Belgian legislation is more generous than directive 2003/109 in its definition of the family since entitlement to a family reunification is acknowledged to an unmarried partner and his or her children as well as a disabled child of the person benefiting from the family policy, or his or her spouse or partner, by complying with certain conditions; however it does not extend to covering direct ascendants as is the case for the family of the EU-national.

### ***B. 2. Residence conditions***

If the family was already established or re-established in the MS where the TCN acquired his status as an LTR, the residence conditions imposed on the members of the family are slightly more flexible than those imposed on the members of the family of a new arrival insofar as:

- The TCN who is rejoined does not need to prove that s/he has accommodation adequate for receiving his family;

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<sup>4</sup> A request for a professional card can in fact only be made in Belgium by LTR with a valid Belgian residence permit. While an LTR from another member State is able to make his request for residence *in situ* as long as his stay is a legal one (*infra*), this anomaly due to a lack of coordination of standards on the subject of employment and residence of third country nationals, should be corrected.

<sup>5</sup> Currently the federal authority is able to issue a professional card for self-employment unlike permits for salaried work which are issued by the Regions under the heading of federal legislation.

<sup>6</sup> One of the criteria for issuing a professional permit to a TCN is the proof of profitability and the economic added value of his project for Belgium: does the project meet an economic requirement, does it create jobs, what are the economic repercussions on businesses, what is the size of the envisaged investments, is the project open to exports, are these innovative activities or even a specialisation? Might the project also be beneficial in terms of social, cultural artistic or sporting advantages?

<sup>7</sup> *Infra*, Section 3, question 3.3.

- With regard to the condition of stable, regular and adequate resources, proof that the family member has these means on a personal level will also be taken into account<sup>8</sup>.

(Article 10bis of the law of 15 December 1981).

If the family was not already established or re-established in the MS where the TCN acquired his status of LTR, the conditions of residence are the same as for the new arrival (article 10bis, §3 of the law of 15 December 1980).

## **II. Procedural rules**

### **A. For a third country national who has been a long term resident of another MS**

It is possible for an LTR of another MS to make his request by either Belgian diplomatic or consular post in the MS where he acquired this status, either directly *in situ* in Belgium via the municipal administration of the place of his residence provided that he is in legal residence (particularly on a short stay of 3 months maximum on the basis of his capacity as an LTR of another member State) or even in illegal residence provided that he is able to prove that exceptional circumstances have prevented him from filing his request via the diplomatic or consular route. In practice, the request is almost always made in Belgium. He also benefits from the following rules:

- The period for processing his request begins as soon as he makes this request even if it is not accompanied by all the supporting documents;
- The decision must be taken as quickly as possible and within four months following the request at the outside, with it being possible to extend this period once only for a period of 3 months if all the documents required in relation to the conditions of residence have not been produced or in exceptional cases associated with the complexity of examining the request;
- On expiry of the period of 4 months, possibly extended by 3 months, if no decision has been taken, residence authorization must be issued provided that the required documents have been produced.

(Article 61/7 of the law of 15 December 1980 and articles 110quater and 110quinquies of RD of 8 October 1981).

### **B. For TCNs who are family members of a LTR of another MS**

It is possible for an LTR who is a member of the family of a TCN of another MS to make his request via either the Belgian diplomatic or consular post in the MS where he resides, either directly *in situ* in Belgium via the municipal administration of the place of his residence or if he is in legal residence (particularly on a short stay of 3 months maximum on the basis of his capacity as an LTR of another member State) or even in illegal residence provided that he is able to prove that exceptional circumstances have prevented him from filing his request via the diplomatic or consular route (article 9, 9A, 10A, 10B of the law of 15 December 1980 and article 26/2 and 26/2/1 of RD of 8 October 1981).

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<sup>8</sup> This also applies for the family members of a student whether or not he is a new arrival (article 10bis, §1<sup>st</sup> of the law of 15 December 1980).

The rules of procedure differ in comparison with the rules applicable to the family members of a new arrival in relation to the following points:

- The period for processing the request begins as soon as it is made it even if his request is not accompanied by all the supporting documents;
- The decision must be taken and notified within four months at the latest following the date of filing the request (and not within 6 months);
- This period, which may be extended by a period of three months under certain circumstances, can be extended once only (and not twice);

(article 10B of the law of 15 December and articles 26/2 and 26/2/1 of RD of 9 June 1999).

**b) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.**

**I. Basic conditions: residence law and conditions**

**A. In comparison with the long-term resident**

The biggest difference relates to access to salaried employment: European citizens are not obliged to have a work permit whereas long-term residents of another MS are, unless an exemption is granted for specific categories of workers. Likewise, a European Citizen who wishes to perform a non-salaried activity is exempt from a professional card whereas a LTR of another MS is obliged to have one unless, in view of his planned profession, he falls into a case of exemption (article 1 of RD of 3 February 2003). Another difference relates to the fact that the European citizen enjoys a right of residence which the LTR does not have when looking for a job (article 40 of law of 15 December 1980).

Other differences relate to the condition of financial resources. A EU citizen who is a student only needs to make a declaration stating that he has the authority to meet his needs whereas an LTR of another MS must personally supply supporting documents certifying that he has adequate means of support, or must provide an undertaking that he will pay a third of the costs, also accompanied by supporting documents certifying that the resources really exist<sup>9</sup>, with minimum thresholds of revenue being fixed for the student and the guarantor (articles 40, 58, 60, 61/7 of law of 15 December 1980, articles 50 and 101 of MD of 8 October 1981). As this is a right of residence for other reasons, assessment of the resources the EC must justify is broader than it is for the LTR of another MS. Independently of his own situation relating to finances and assets (pension, annuity, disability benefit, rents received or even the fact of being the owner of real estate in Belgium, etc.), it is also possible for the EC to claim revenue received from third parties (articles 40 and 61/7 of the law of 15 December 1980 and article 50 of RD of 8 October 1981).

Finally, the EC does not need to supply a character reference, or a medical certificate insofar as he cannot be subjected to checks on these points unless there are any doubts.

**B. In relation to third country nationals who are members of the long-term resident's family**

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<sup>9</sup> On the other hand, the residence right of a TCN who has acquired the status of LTR in an MS is not, as for the rights of the EC, limited to studies in higher education and also extends to professional training, which distinguishes him from a new arrival (see question 1 above; articles 40, 58 and 61/7 of the law of 15 December 1980).

First of all, the “European family” is, with the exception of a student’s family, given a broader definition than the family of an LTR. The right of family reunification is acknowledged to the direct ascendants of the EC and to the direct ascendants of his spouse or partner who are dependent on him, whereas no equivalent right is acknowledged to the direct ascendants of the LTR of another MS or to the direct ascendants of his spouse or partner who are dependent on him. As far as descendants are concerned, the EC can be accompanied or joined by his descendants and the descendants of his spouse or partner, if they are under 21 years old and are dependent on him. In relation to an LTR of a different MS, the descendants who are able to claim residence rights are his descendants or those of his spouse or partner who come to live with them before the age of 18 and who are single (articles 10, 10A and 40A of the law of 15 December 1980).

Subsequently the conditions imposed on family reunification of the European family are less demanding:

- No accommodation condition is required, whereas the absence of any requirement in terms of accommodation for an LTR of a different MS is only valid if the family has been established or re-established in the MS where the TCN has acquired its status as an LTR.
- With regard to residence for other reasons, the proof of adequate resources the EC needs to have for himself and his family is assessed in a much broader way than for a TCN who has acquired the status of LTR in another MS as indicated above.
- The EC student benefits from the system of simplified proof involving a simple declaration about his resources whereas the LTR of another MS must supply proof of this.
- Contrary to the TCN who is an LTR of another MS, the EC need not supply a character reference, or any medical certificate, apart from in really exceptional cases, insofar as they are unable to make these points the subject of any systematic check.

## **II. Procedural rules**

### **A. For the third country national himself compared with the European citizen**

While the LTR of a different MS and the members of his family must file a request for a residence permit and may not do this in Belgium apart from in the cases indicated above, the European citizen must simply make a request for registration in the municipality during the first 3 months after entry

There are several cases in which an EC may be given an immediate right of residence for over three months by the municipal authorities<sup>10</sup>; apart from these cases and provided he fulfils the residence conditions, the EC’s right of residence must be acknowledged by the Minister as quickly as possible and 6 months after the date of the request at the latest. For the LTR of another MS, the decision is generally taken by the Minister as quickly as possible and 4 months at the latest after submitting the request, and it only being possible to extend this period by 3 months in these particular circumstances (articles 9, 9A, 40, 42 and 61/7 of the

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<sup>10</sup> Article 51, § 3 of MD of 8 October 1981: this is the case if the citizen has produced all the required documents whether he is a salaried employee or is self-employed, or registered in an educational establishment, provided he has sufficient resources, but in this case alone provided that the proof of these resources tallies with the elements of proof indicated by the provision.

law of 15 December 1980 and articles 23 50, 51 and 110quinquies of the RD of 8 October 1981).

## **B. For TCN who are family members**

A TCN who is the member of an EC's family may file his request for a residence permit *in situ*, even if he is living in Belgium illegally and if this is the case he does not have to prove that there are any exceptional circumstances (article 9, 9A, 10B of the law of 15 December 1980 and articles 26/2 and 52 of RD of 8 October 1981) as required in the case of the members of an LTR's family. These family members must be acknowledged as having a right of residence as quickly as possible and within 6 months after the date of the request at the latest, provided they fulfil the required conditions. With regard to the members of the family of the LTR of another MS, the decision must be made within 4 months at the very latest, possibly extended by 3 months (article 42, § 1<sup>st</sup> of the law of 15 December 1980).

### **1.2. EU Blue Card holders**

#### **1) What national rules and procedures apply to third-country nationals who are long-term residents in another Member State in respect of their access to a visa and/or residence permit in your country?**

As these are basic conditions, subject to the important rules making it easier to issue a work visa (infra, question 3.1 in section 3), in Belgian law no other rule applies to the situation of a holder of a Blue Card issued by another MS requesting a Blue Card in Belgium. His situation is identical to that of a new arrival who wishes to obtain a Blue Card in Belgium<sup>11</sup> (articles 61/26 and 61/27 of the law of 15 December 1980, Section 1bis of RD of 9 June 1999). The provisions applicable to highly qualified workers (articles 61/26 to 61/31 of the law of 15 December 1980) do however allow them to move to Belgium in accordance with chapter 5 of directive 2009/50 of 25 May 2009.

The members of the family of the holder of a Blue Card – which is, as in the case of LTRs of another MS, more broadly defined than the family referred to in directive 2009/50 – issued by another MS and who has obtained a Blue Card in Belgium benefit from two provisions which are more favourable than those applying to the members of the family of a new arrival attempting to obtain a Blue Card, provided that the family is already established or re-established in the other MS where the TCN has obtained a Blue Card. These two provisions are:

- Proof of decent accommodation for housing the member or members of his family need not be supplied;
- With regard to the condition of possessing stable, regular and adequate means of subsistence, proof that the family member has these means on a personal level will also be taken into account.

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<sup>11</sup> The latter's employer must request a temporary work visa, but granting this is not subjected to any labour market test. Regulations indicate the possibility of imposing a test of this type via a royal decree decided upon in the Council of Ministers. The question of knowing whether it is advisable to act in this way is political. In fact, prior to the European Blue Card, in Belgium highly qualified third country nationals already benefited from a system at the end of which no labour market test needs to be conducted. This validity of this system, which requires a lower annual salary than that required for the Blue Card, was continued alongside the new European system. Rather than discussing which of the two systems is most advantageous, we might consider that eliminating the old Belgian system and adopting the Blue Card adheres more closely to European harmonisation, besides being simpler for users and for the administration.

(Article 10bis of the law of 15 December 1981).

As these are rules of procedure, the holder of a Blue Card issued by another MS over 18 months previously and who wishes to exercise his right to mobility may file a request for a Blue Card *in situ* in Belgium. According to the legislator, “In this way the principle of the internal mobility of highly qualified workers is implemented”<sup>12</sup>. (article 61/27 of the law of 15 December 1980 and articles 110quinquiesdecies and 110sexiesdecies of RD of 09.06.99). It is possible for an TCN who is a member of the family of the holder of a Blue Card issued by another MS to submit his request either by Belgian diplomatic or consular post in the MS where he resides, either directly *in situ* in Belgium via the municipal administration of the place of his residence provided that he resides there legally (notably on a short stay of 3 months maximum on the basis of his residence permit in another Member State) or even if his residence is illegal provided that he is able to prove that exceptional circumstances have prevented him from filing his request via the diplomatic or consular route. The administration must reply to this within 3 months.

**2) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.**

Given that neither European law nor Belgian law has any rules specific to highly qualified EC workers, reference must be made to the relevant developments relating to comparing an LTR from another MS with the EC.

**1.3. Researchers**

**1) What national rules and procedures apply to third-country nationals who are resident in another EU Member State who wish to undertake work as a researcher in your Member State?**

In terms of basic conditions, Belgian law does not have any regulatory provisions specific to the situation of a TCN who resides in another MS in the capacity of a researcher and wishes to conduct some of his work in Belgium. The provisions applicable to researchers (articles 61/11 to 61/13 of the law of 15 December 1980) are, however, able to ensure their mobility to Belgium in accordance with chapter 13 of directive 2005/71 of 12 October 2005.

However one point must be raised: article 13, §4 of the directive states that “when relevant [national] legislation makes mobility a condition of obtaining a visa or a residence permit, these must be granted immediately within a period which does not impede the research from continuing, while leaving the relevant authorities enough time to deal with the request”. No period of this nature is indicated in Belgian law. The correspondence table attached to the bill transposing the directive does however contain the following reference, compared with the aforementioned article 13, §4 of the directive, “*Practice: Diplomatic and Consular posts as well as the relevant units in the Immigration Department shall deal with these requests as soon as all the required documentation has been produced. Apart from exceptional cases, the request will not require any in-depth examination and will be limited to noting that there is indeed a hosting agreement signed with an approved research organisation and there is no threat to public order, health or safety*”<sup>13</sup>. In spite of this reference and although the period imposed on the MS by virtue of article 13, §4 of the directive is formulated in an ambiguous

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<sup>12</sup> Doc 53-2077/001, Chambre des Représentants de Belgique [*Chamber of Representatives of Belgium*], Provision of reasons for the bill, p. 20.

<sup>13</sup> Doc 51-2976/001, Chambre des Représentants de Belgique [*Chamber of Representatives of Belgium*], Annex to the bill, p. 54.

way to the point that it does leave them limited assessment powers<sup>14</sup>, its formal transposition would be desirable.

In relation to article 13 of the directive, Belgium has made use of the right indicated in §3 of this provision by requiring a new hosting agreement to be drafted between the researcher and a research organisation approved in Belgium, which places a TCN residing in another MS in the capacity of a researcher and wishing to conduct part of his work in Belgium in a situation identical to that of a new arrival.

As these are rules of procedure, the TCN researcher benefits from article 25/2, §1, 2° of RD of 8 October 1981 because of the fact that he has a real right of residence, which allows him to file his request with the Mayor of the municipality in which he is resident. He is therefore in line, implicitly but nevertheless certainly, with article 13, §5 of the directive indicating that “The Member States do not require the researcher to leave their territory in view of filing his request for a visa or residence permit”.

For family members, article 61/13 of the law of 15 December 1980 refers to the common law applicable to family reunification for a third country national spending a limited period of time in Belgium (article 10 A, §2). This assumes that he is able to meet the following conditions: proving that he has stable, regular and adequate means of subsistence, that he has suitable accommodation and health insurance and that he can produce a medical certificate and a character reference.

**2) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.**

Given that European law does not have any specific rules for EC researchers, reference is made to relevant developments relating to comparing an LTR from another MS with the EC, except for the rules relating to family reunification, as TCN researchers do not benefit from the more advantageous rules granted to the LTR of another MS.

#### **1.4. Students**<sup>15</sup>

**1) What national rules and procedures apply to third-country nationals who are resident in another EU Member State who wish to undertake work as a researcher in your Member State?**

Apart from a LTR from another MS coming to study in Belgium (supra), Belgian law does not have any provisions specific to the situation of a TCN living in another MS wishing to study in Belgium. His situation is therefore identical to that of a new arrival who wants to come to Belgium in order to study.

The provisions applicable to students (articles 58 to 61 of the law of 15 December 1980) have not been amended after adopting directive 2004/114 of 13 December 2004. In particular, article 8 of the directive relating to the mobility of students has not been transposed. Articles 58 to 61 of the law of 15 December 1980, as referred to above, are, however, able to guarantee the mobility of students as indicated in article 8 of the directive, since Belgian law gives students who fulfil the above conditions of admission authorization for legal residence by right, thus taking away from the relevant authorities the discretionary power they enjoy

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<sup>14</sup> Subject to the term “immediately” which is contradicted by the reference “within a period of time which does not hinder continuation of the research but leaves the relevant authorities sufficient time to deal with the request”.

<sup>15</sup> The statistics already compiled for the study Immigration of International Students to the EU may be used here.

when admitting a TCN in accordance with common law. These provisions of Belgian domestic law which are more favourable than the directive mean that there is no need to transpose article 8 of the directive. However one point must be raised: article 8, § 1<sup>st</sup> paragraph 1 of the directive indicates that the student who fulfils the residence conditions must be admitted “within a period which does not hinder continuation of the studies in question, while leaving the relevant authorities sufficient time to process the application”. No period of time is mentioned in Belgian law. Although the period imposed on the MS is formulated in such a way that it leaves broader powers of assessment than in the case of researchers (*supra*), its transposition would have been desirable.

As these are rules of procedure, the TCN student benefits from article 25/2, §1, 2<sup>o</sup> of RD of 8 October 1981 because of the fact that he has a real right of residence, which allows him to file his request with the Municipal Executive of the municipality where he is residing.

Although this does not concern mobility as defined in this study, it can further be noted that Belgian law attributes a right of residence for the specific case of a cross-border student who normally lives in a neighbouring country, is resident there and returns there in principle each week-end and comes to Belgium to study provided that he produces a valid residence document issued by said neighbouring country (article 102 of law of 15 December 1980).

**2) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.**

With regard to the comparison between the mobile TCN student and the European student, the information which has already been mentioned in this respect should be referred to with reference to the LTR moving to Belgium with a view to carrying out studies.

**1.5. Posted workers**

**1) What national rules and procedures apply to third-country nationals who are resident in another EU Member State who are posted by a service provider for the purposes of cross-border provision of services in your Member State?**

A TCN employed by a company established in another MS who is posted to Belgium to provide services there benefits from a specific and more favourable provision than that applying to a TCN employed by a company which is not established in a MS and who has to visit Belgium for the same reasons. In this way the former is not subject to the obligation to obtain a work permit whereas the latter is, provided that the following conditions are fulfilled:

- In the MS of his residence this TCN has a right or authorization of residence of over three months;
- This TCN is legally authorised to work in the MS of his residence and this authorization is at least valid for the duration of the service to be carried out in Belgium;
- This TCN has a regular employment contract;
- In order to ensure that he returns to his country of origin or his country of residence, this TCN has a passport and a residence permit for a duration equivalent to the duration of the provision of services, as a minimum.

(articles 2 and 3 of MD of 9 June 1999).

Belgian law does not contain any provision about the residence of posted TCNs who are excluded from its field of application by several provisions of the law of 15 December 1980 probably because of the fact that the case law of the European Court of Justice which is at the origins of articles 2 and 3 of the decree of 9 June 1999 relates to the work permit. It also seems possible to apply the reasoning followed by the European Court of Justice to the case of refusal or if there is a delay in issuing residence authorization likely to impede the provision of intra-European services.

**2) Please explain how these national rules and procedures differ from the national rules and procedures that apply to EU citizens.**

Obviously an EU citizen is never subject to the obligation to obtain a work permit.

**Groups of third-country nationals who are not provided for by the acquired EU**

**1.6. Cross-border workers**

**1) Do specific national rules and procedures governing access to a visa and/or a residence permit apply to third-country nationals who are resident in another Member State but are employed as cross-border workers in your Member State?<sup>16</sup>**

Under the terms of the RD of 8 October 1980, a TCN cross-border worker employed in Belgium as a salaried employee while having his residence in the territory of a neighbouring country to which he returns every day in principle or at least once a week, may come into Belgium to work there on presentation of a valid residence permit for the neighbouring country and a valid transport document accompanied, if necessary, by a visa valid for several trips. He must notify the municipal administration in the place where he is working of his initial arrival (articles 106 to 110).

However, a TCN cross-border worker who wants to carry out a salaried activity is subject to an obligation of principle of being issued a work permit provided he has first of all obtained authorization for work<sup>17</sup>. Consequently it seems that in practice he needs to submit a claim for a residence card in Belgium.

As far as a TCN cross-border self-employed worker is concerned he cannot obtain a professional card unless his legal place of residence is in Belgium which means that a request for a residence permit must be made.

**2) If specific national rules and procedures apply to the third-country nationals described in 1.6 (1) above, how do these differ from the national rules and procedures that apply to EU citizens in a similar situation?**

In comparison with the specific rules mentioned above for the TCN, the cross-border worker who is an EU citizen only needs to inform the municipal administration in the place where he

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<sup>16</sup> This question only applies to those Member States that require cross-border workers to apply for a visa and/or residence permit in order to work in their Member State (even if their usual place of residence is in another Member State).

<sup>17</sup> Unless, given the activity he is carrying out, he falls within the field of application of one of the cases of limited exemption from requiring a work permit as indicated by legislation: see supra, Question 1.1., art. 2 and 3 of RD of 9 June 1999.

is working on his initial arrival (articles 106 to 110 of RD of 8 October 1980 and article 2 of RD of 9 June 1999).

### 1.7 Seasonal workers

- 1) Do specific national rules and procedures apply to third-country nationals who are resident in another Member State and who exercise an economic activity as seasonal workers in your Member State in respect of their access to a visa and/or residence permit?**

In Belgian law there are no provisions specific to the situation of a TCN residing in another MS who wishes to carry out seasonal work in Belgium. However, in the Flemish Region seasonal jobs are considered to be shortage professions. The result of this is that a TCN who has acquired the status of LTR in another MS and wishes to carry out seasonal work in Flanders benefits from the special system described above under question 1.1. (no prior examination of the labour market and accelerated procedure taking 5 days for granting work authorization from the employer).

- 2) If specific national rules and procedures apply to the third-country nationals described in 1.7 (1) above, how do these differ from the national rules and procedures that apply to EU citizens in a similar situation?**

The question is irrelevant since there are no rules specific to European citizens who are seasonal workers either in European law or in Belgian law. Reference must therefore be made to the developments relating to the other categories of persons indicated above.

### 1.8. Workers in regulated professions

- 1) Do specific national rules and procedures apply to third-country nationals who are resident in another Member State and who apply to work in a regulated profession in your Member State in respect of their access to a visa and/or residence permit?**

The answer to this question is negative with regard to residence visas and permits; specific rules relating to acknowledging diplomas are studied below.

- 2) If specific national rules and procedures apply to the third-country nationals described in 1.9 (1) above, how do these differ from the national rules and procedures that apply to EU citizens?**

Irrelevant since there are no specific rules in Belgian law.

### 1.9 Any other category of migrant worker not mentioned above

- 1) Are there any specific national rules and procedures that apply to any group of third-country nationals who are resident in another Member State that has not been mentioned above?**

The following parties are authorised to enter and travel through the Kingdom, without a temporary residence visa or authorization, in order to carry out the profession of Rhine boatman, provided their travel documents have the following wording: "Rhine Boatman - Rijnschipper - Rheinschiffer " :

1° nationals of States which border on the Rhine: Federal Republic of Germany, France, Luxembourg, Netherlands and Switzerland;

2° nationals from other countries in Western Europe;  
3° nationals of Turkey and Yugoslavia;  
4° refugees established in a State which borders on the Rhine and who have obtained a valid travel document for refugees;  
5° third country nationals and stateless persons established in a State bordering on the Rhine, who have obtained either a valid passport or travel document for third country nationals, or a valid travel document for stateless persons.  
(article 105 of the law of 15 December 1980).

**2) If yes, please describe how these rules differ from the national rules and procedures that apply to EU citizens.**

The rules are identical insofar as the EU citizen is not subject to any prior request for residence authorization.

**1.10 Common rules and procedures for all mobile third-country nationals**

**1) Does the national legislative framework in your Member State contain rules and procedures that are relevant to all mobile third-country nationals (rather than rules that differentiate between different groups) in respect of their access to a visa and residence permit?**

Belgian legislation follows a category-based approach which is updated according to rules adopted at European level. It does not contain any rule which specifically applies in a general way to all the categories of persons studied above. The only similar rules concern the possibility of filing a request *in situ* in Belgium which is open to all categories of mobile TCNs.

**2) If yes, please describe how these rules differ from the national rules and procedures that apply to EU citizens.**

Not applicable.

## Section 2

### Scale and scope of the phenomenon

#### **2.1. Are statistics on overall intra-EU (work-related) mobility of third-country nationals available in your (Member) State?**

See also further. Only statistics on issued visa (all categories), posted workers, cross-border workers and residence permits issued to TCN with EU LTR-status are available, meaning that no accurate or global picture of the scale of the phenomenon is available. No further information on the profile (MS of previous residence, gender, age...) could be obtained.

2.2. Are statistics based on administrative registrations available in your (Member) State on the following groups of mobile third-country nationals? If they are not available could they in principle be made available from existing registrations?

No statistics on administrative registrations of mobile TCN are available. As “country of previous residence” – meaning here another EU member state – is not an “obligatory field” in the Foreigner’s Register, it implies that it is only partially registered and consequently it would only give a very partial view.

#### **Groups of third-country nationals who enjoy mobility rights under the EU’s migration Directives:**

- 1) Long-term residents coming from another Member States (information should be collected by national contact points established under Directive 2003/109/EC on third-country national long-term residents)

In 2011 the Immigration Department received 109 applications from TCN with long-term resident status coming from other MS. From these 109 applications 71 led to a positive decision. From these 71 positive decisions 40 of them were accorded to Moroccan citizens. There is no information available regarding the previous country (MS) of residence.

For the reader’s further information, we present herewith the number of TCN with “EU long-term resident status” (according to the “RP7” table of the residence permit statistics produced under the framework of the “Statistical Regulation” – source: Immigration Department).

2008	859
2009	1774
2010	2406
2011	2386

The top 10 of citizenships with “EU long-term resident status” at the end of 2011 in Belgium (total: 2.386):

Morocco	702	China	51
DR Congo	217	Cameroon	48
Turkey	206	Switzerland	46
USA	112	Brazil	44
Algeria	69	Canada	42

One can deduce from the above-mentioned figures that:

- Moroccan citizens count for almost 1/3th of the total
- The total number has strongly increased during the years 2009 and 2010, has stabilized in 2011 and that the overall number still remains relatively small.

2) EU Blue Card holders (information should be collected by national contact points established under Directive 2009/50/EC on EU Blue Card holders).

The Blue Card regulations are in force since 10<sup>th</sup> of September 2012. So far Belgian authorities have not received one demand yet (on date of 31 January 2013)

3) Researchers: A part from the issued long-term visa, no further information on TCN researchers coming from another MS is available.

4) Students: A part from the issued long-term visa, no further information on TCN students coming from another MS is available.

5) Posted workers

FPS Social Security has detailed statistics on the number of posted workers, thanks to existence and functioning of the LIMOSA (LIMOSA is short for ‘cross-border

information system for migration research at social security level<sup>7</sup>. The aim of it is to provide government bodies with a better insight into the employment of foreign workers in order to prevent abuse and DIMONA (“Déclaration immédiate”, an electronic message system to which employers must announce every recruitment and dismissal) databases, which also serve for the (obligatory) registration of postings.

According to their figures, a total (minimum<sup>18</sup>) of 13.575 TCN (single persons, meaning that each person has only been counted once) have been posted to Belgium during the period 2007-2010.

Year	Posted TCN	Total of postings (EU + TCN)
2007	3.536	70.337
2008	4.590	93.762
2009	3.758	84.423
2010	1.691	42.046
<b>Total</b>	<b>13.575</b>	<b>290.568</b>

Remarkable is the sharp decline during the years 2009 and especially 2010. We may assume that this has to do with the impact of the global financial and economic crisis. Further we notice that the total number of TCN is very limited compared to the total number of postings (DIMONA – LIMOSA registrations): around 4 to 5% of the total postings concern TCN.

The most important nationalities (TCN - 2007-2010, total):

Turkey	4.106	Serbia	560
Croatia	845	Brazil	485
Morocco	781	Former Yougoslavia	457
Bosnia and Herzegovina	737	FYROM	402
Algeria	630	India	380

Concerning age categories, around 70% is between 25 and 50 years old. 12% is younger than 25 and 50+ counts for 18%.

An important concluding side-remark is that the (average) length of the postings is not known. This can vary from half a day to several years.

From other available statistics of the FPS Social Security (file: “Verdeling per land 2007-2011”/own calculations), it appears that most posted workers<sup>19</sup> come from The Netherlands (26, 6%), followed by Poland (17%), Germany (11, 2%), France (10, 6%) and Romania (6, 9%). The first non-EU country is India with 0, 7% of the postings.

<sup>18</sup> Total could be higher, as 3154 persons had the nationality code “unknown”

<sup>19</sup> Used indicator is here the country of establishment/residence of the employer or self-employed person, not the nationality.

As way of example, we give the nationalities of the posting from the Netherlands: 80% of the reported persons had the Dutch nationality, followed by German citizens, Polish, Belgians and Portuguese. The first non-EU nationality were Turkish citizens, with 0,7% of the total reports (absolute number of reports: 290). Also from these statistics it becomes clear that posting remains in essential a matter for EU-citizens.

To conclude, available statistics from 2012 suggest that around 85% of the postings (reports) concerns employees and 15% are self-employed persons. In 2007 this relation was still 90 versus 10%. A possible explanation could be the (still?) rising phenomenon of fake self-employment.

***Groups of third-country nationals who are not provided for by the EU acquis:***

6) Cross-border workers:

<b>NUMBER OF CROSS-BORDER WORKERS</b>		
<b>(on 30/06/2011)</b>		
<b>Working in Belgium and living abroad</b>		
Men	33708	
Female	14801	
<b>Total</b>	<b>48509</b>	
<b>Country</b>		
The Netherlands	7835	
Luxemburg	462	
France	38799	
Germany	1413	
<b>Living in Belgium and working abroad</b>		
Men	50873	
Female	32048	
<b>Total</b>	<b>82921</b>	
<b>Country</b>		
The Netherlands	35217	
Luxemburg	36610	
France	5477	
Germany	5617	
<b>Source: RIZIV - INAMI/own calculations</b>		

7) Seasonal workers: not available

8) Workers in regulated professions: not available

9) Any other category of migrant not mentioned above: /

**2.3. Are there any other/proxy sources of statistics that could provide indications of patterns and trends?**

(i) Number of applications for the recognition of diplomas/certificates acquired in another Member State.

It is not known how many diplomas and certificates acquired in another MS were issued to TCN (or EU-citizens), as statistics per nationality are not available.

(ii) Number of visa applications by third-country nationals who are resident in another EU Member State.

The number of issued visa D gives only a partial view of the phenomenon of intra-EU mobility of TC, as, as described, the demand for authorisation can also be done directly on the territory. An overview of the visa statistics are however presented, as they can give indications of trends and main nationalities and categories.

No further breakdown (profile, gender, age,) is available.

Number of issued long-term visa to third-country nationals by Belgian diplomatic posts in EU-countries (**source: FPS Foreign Affairs – own calculations**)

total	
2008	692
2009	797
2010	932
2011	1.054

By category (total 2008-2011)	Number	%
Au pair	198	5,7
students	967	27,8
self-employed	102	2,9
researchers	168	4,8
family reunification	1091	31,4
labour	647	18,6
trainees	204	5,9
other categories	98	2,8
<b>total</b>	<b>3475</b>	<b>100</b>

The number of issued long-term visa in 2011 (nationality):

Country	total	%
China	100	9,5
India	94	8,9
Moldova	86	8,2
USA	74	7,0
The Philippines	66	6,3
Albania	37	3,5
Pakistan	35	3,3
FYROM	33	3,1
Morocco	32	3,0
Russian Federation	30	2,8

The number of issued long-term visa in 2011 (main categories and nationality):

<b>Au pair</b>	<b>63 of the 88 were Filipinos</b>
<b>Students</b>	<b>329</b>
China	44
Albania	26
Cameroon	22
<b>Researchers</b>	<b>66</b>
India	14
<b>Family reunification</b>	<b>200</b>
India	20
Moldova	38
USA	26
<b>Trainees</b>	<b>67</b>
FYROM	14
<b>Employees</b>	<b>281</b>
USA	33
India	30
China	29

(iii) Number of social security registrations<sup>20</sup> by third-country nationals who were resident in another Member State before arrival?

See above (Limosa and Dimona)

(iv) Information about previous country of residence contained in the latest population census.

<sup>20</sup> A social security registration is normally required on arrival in a Member State before access to employment can be granted.

The last (traditional) census in Belgium was organised in 1991. As mentioned above, previous country of residence is not an obligatory field in the Population Register, consequently this implies that it is (most likely) only partially registered and would only give a very partial view. No statistics could be obtained in order to explore this further.

(v) Any information that might be collected about the motivations of third-country nationals who apply for citizenship in (your) Member State (e.g. as a proxy source of information on the number of third-country nationals wishing to travel within the EU).

No

(vi) Any other proxy sources of statistics.

No

**2.4. Please provide any statistics available on the flows of EU nationals within your (Member) State over the last 5 years in order to provide a comparison with the flows of third-country nationals**

The last year for which data on immigration flows are available is 2010. As there are no (complete) figures on the intra-EU mobility of TCN available, there is no means of comparison neither

Year	EU-15	EU-12	EU-27
2006	37.435	12.138	49.573
2007	38.395	19.578	57.973
2008	48.178	23.830	72.008
2009	42.766	24.089	66.855
2010	44.832	26.189	71.018

Source: Population Register/Statistics Belgium

### Section 3

#### Identified Restrictions to Intra EU mobility of third-country nationals

*Please note that the possible restrictions listed below must be distinguished from the conditions for applying for a visa and/or residence permit reviewed in section 1 above. By 'restrictions' the focussed study has in mind additional provisions in the national legislation of your (Member) State that may affect the decision of third-country nationals to settle in your (Member) State even if they fulfil all the necessary (formal and administrative) conditions for acquiring a visa and/or residence permit.*

*These restrictions are often introduced for reasons of labour market policy or in order to maintain certain professional standards. Examples of such restrictions are provided below. EMN NCPs are asked to comment on the relevance of these examples to their national legislative framework; if relevant, to explain why they have been introduced; and to comment on how they work in practice. They should also indicate, in the space provided, whether there are any additional restrictions in place in their (Member) State that may affect the decision of third-country nationals to settle in your (Member) State.*

#### **3.1. Member States (and Norway) may examine the situation of the labour market and give preference to Union (or EEA/EFTA) citizens when considering applications for work from a third-country national in another Member State or EFTA country.**

A TCN who resides in another MS and requests residence authorization of over 3 months in Belgium in order to carry out salaried work is subject, in the same way as a new arrival, to the obligation of previously obtaining a work permit, unless he falls under the application of one of the cases indicated by article 2 of royal decree of 9 June 1999.

If a work permit is required, in the first instance the employer must request prior work authorization from the Region in relation to the territory where the work is to be carried out. This authorization will only be granted under the following conditions:

- On the labour market it is not possible to find a worker able to carry out the envisaged job in a satisfactory way and within a reasonable period, even after receiving professional training (prior examination of the labour market situation, i.e. the three Regions as well as the MSs of the European Economic Area (EEA)). This examination requires proof from the employer of having experienced real difficulties on the labour market when attempting to recruit a worker meeting the requirements of the job offered. The employer must show the steps he has taken in order to recruit a worker (request to regional employment agencies, circulation of the job offer via other channels, etc.) and that these have proved unsuccessful. The regional agency asked shall proceed to analyse the labour market in order to assess the reality of the alleged difficulties with recruitment experienced by the employer (what skills are wanted, what are the labour reserves in the target profession, degree of urgency in making the appointment, ability to provide professional training in order to fill the post, etc.);
- The worker comes from a country outside the EEA with which Belgium is linked by means of an international labour agreement;

- A contract of employment in accordance with the RD of 9 June 1999 is signed by the worker and the employer.
- The worker has a medical certificate;

The regional Employment Minister may, by making a justified decision, depart from the above conditions in individual cases worthy of interest for reasons of an economic or social type. Issuing the employer with authorization to make the appointment means automatically granting the worker a work permit (this is a permit B which lasts a maximum of one year and is only valid in relation to the employer who requested authorization as well as the post for which it was issued).

The only derogating rules on the subject which applies specifically to the situation of a TCN who wishes to carry out paid work in Belgium concern:

- LTRs from another MS who apply for a job where there is a shortage, in relation to which provisional authorization for carrying out the job must be requested, but for whom this will be issued without examining the labour market. Nevertheless, on 31 December 2013, exemption from prior examination of the labour market ought to be generalised to all requests for prior authorization for carrying out a job made by a TCN who has acquired the status of LTR in another State<sup>21</sup>.
- Holders of a Blue Card issued by another member State for whom provisional authorization to carry out a job must be requested. However this is issued without examining the labour market (given that there is no examination of the labour market for the new arrival requesting a Blue Card either).
- TCNs with the status of researcher in another Member State wishing to carry out some of their work in Belgium are exempted from obtaining a work permit (under the same heading as newly arrived researchers).
- Posted workers exempted from the obligation to obtain a work permit by complying with certain conditions resulting from the case law of the Court of Justice<sup>22</sup>.

**3.2. Minimum wages are often specified in the national legislative framework that may affect the decision of a third-country national, who is resident in one Member State (or EFTA country), to settle in another Member State (or Norway).**

In Belgium, the occupation of a worker, whether or not a third country national, must comply with the payment conditions as well as the minimum scales and incomes fixed by the rules in force. The minimum conditions of payment are usually determined in collective labour agreements typical of each sector of activity. These collective agreements contain provisions aimed at determining general conditions for calculating payment according to the various levels of qualification and position. In order to find out what conditions and collective agreements are of application, it is advisable to refer back to the company's main activity. If a worker is posted to Belgium, solely collective agreements which have been rendered obligatory by royal decree (i.e. those which are punishable by law) apply. Moreover, if payment is made in Belgium, this must follow the provisions of the law of 12 April 1965 regarding payment protection for workers.

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<sup>21</sup> See question 1.1. heading I. A. 2. above

<sup>22</sup> See question 1.5 above.

**3.3. If the third-country national who moves from another Member State (or EFTA country) is in a self-employed capacity, Member States (and Norway) may require that they have the appropriate funds which are needed, in accordance with national law, to exercise an economic activity in such capacity.**

With regard to any request to stay over three months in order to carry out a professional activity in a self-employed capacity all TCNs must first of all ask to obtain a professional card. The federal authorities are responsible for granting a professional card.

One of the criteria taken into account for granting a professional card is the requirement to have the funds required for the project to be viable. No minimum amount is prescribed by legislation. Proof that the project meets this requirement is the subject of a case-by-case assessment taking into account the specific nature and the characteristics typical of each project. However, assessing this requirement is, in practice, assessed more flexibly when this involves a TCN who has acquired the status of LTR in another MS, although no written rules exist for this.

**3.4. National rules or procedures governing the recognition of degrees and diplomas may affect the decision of a third-country national, who is resident in one Member State (or EFTA country), to settle in another Member State (or Norway).**

In Belgium, diplomas are not recognised by the federal authorities but by the Communities in charge of education. The need for any TCN to obtain recognition of his diploma for professional purposes under certain circumstances may in fact influence his decision to come to Belgium given the constraints inherent in this recognition: content of the file to be submitted, the duration of procedure, possible costs of the procedure, etc.

The procedure varies according to the Community involved, the level of teaching the diploma for which acknowledgement is sought and the type of teaching involved<sup>23</sup>. However, the national must generally provide proof of the following elements: the name on the diploma, the references and characteristics of the facility which issued the diploma, the conditions for acceptance for training, the content of the training (possibly the programme of classes, the number of hours and if applicable professional courses) as well as whether or not a thesis is required when the studies are complete.

In the French Community, no bilateral agreement to acknowledge diplomas for upper education has been entered into with another EU member state or third State. With regard to diplomas for secondary teaching, an agreement has been signed with Luxembourg. It aims to recognise secondary education study periods and secondary education qualifications. Although this agreement has no legal constraints, it does nevertheless constitute a good working tool aimed at facilitating mutual acknowledgement of diplomas by the two States. In this way TCNs who have a secondary diploma from Luxembourg may benefit from the application of this agreement.

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<sup>23</sup> Currently in both the French and the Flemish Community the procedure generally lasts for approximately 4 to 5 months, although it can be shorter in certain cases. In the German-speaking Community the procedure lasts for approximately 2 weeks. In Flanders, a plan to revise the system aims to reduce the duration of the procedure to two months. Although the procedure requires payment in the French Community (174 euro or 124 euro for applicants who have obtained a diploma whose equivalence is requested in one of the countries which benefit from public aid for development acknowledged by the OECD [*Organisation for Economic Co-operation and Development*]), is it free of charge in the German-speaking Community and in the Flemish Community. However the latter intends to require payment for the procedure as from September 2013. The proposed amounts are 90 euro to acknowledge a level or a secondary-level diploma and 180 euro for complete equivalence. An emergency procedure is also proposed (it would cost 500 euro and would probably take 2 weeks).

In the Flemish Community, a bilateral agreement recognising diplomas has been signed with the Netherlands: this concerns both diplomas for secondary education and diplomas for higher education. TCNs with a Dutch secondary and/or higher diploma may also benefit from the application of this agreement. Moreover the need for a special rule must be stressed in that this facilitates the recognition procedure: when a diploma has already been recognised twice, it will automatically be recognised if any further requests are made (this is particularly true for certain Congolese, Moroccan, Turkish, Iranian and Iraqi diplomas).

In the German-speaking Community, an agreement was reached with the Flemish Community allowing the latter to carry out the procedure for recognising diplomas in higher education on behalf of the former. With regard to secondary education, a bilateral agreement recognising diplomas was signed with the North Rhine-Westphalia, whereby a TCN with a secondary diploma issued by this provincial district may benefit from this.

Moreover these diplomas do not need to be translated:

- In the Flemish and German-speaking Communities provided they are compiled in the French, English or German languages and these are diplomas from secondary education or further education, ;
  - In the French Community, provided these are compiled in the English, German, Dutch, Italian, Spanish or Portuguese languages and concern diplomas in secondary education only.
- This type of measure is obviously capable of facilitating the recognition procedure.

Lastly, the international baccalaureate issued in various places all over the world benefits from being equivalent to the diplomas from secondary education whatever the Community concerned (an office in Geneva is in charge of issuing this international baccalaureate).

**3.5. National rules or procedures governing access to social security and social services for third-country nationals and their families may affect the decision of a third-country national, who is resident in one Member State (or EFTA country), to settle in another Member State (or Norway).**

This matter is dealt with by EU Regulation 1231/2010 of 24 November 2010 aimed at extending regulation (EC) n° 883/2004 and regulation (EC) n° 987/2009 to TCNs who are not already covered by these regulations solely because of their nationality. This regulation extends the application of European coordination of social security systems for third party nationals who are not already covered by said regulations solely because of their nationality, as well as to members of their family and their survivors, provided that they are legally residing on the territory of a MS and are in a situation where all the components are not limited to one single MS alone. Provided that there are European regulations which are of direct application, no standard for transposing this into Belgian law is required.

## Section 4

### Conclusions

*With regard to the aims of this Focussed Study, what conclusions would you draw from your findings? What is the relevance of your findings to (national and/or EU level) policymakers?*

The main rules which have been analysed successively may be summarised in the following way using a horizontal approach covering the 4 categories of third country nationals who are the subject of this study because of their mobility.

- First of all with regard to access to the labour market<sup>24</sup>. The system which favours mobility most is that of researchers. They are exempted from the requirement of having a work permit, whereas long-term residents and holders of a Blue Card must obtain a work permit for jobs where there is considered to be a shortage in Belgium. However this permit will be issued for them without any examination of the labour market. The authors of the report legitimately wonder about the sense behind maintaining the need for a work permit without examining the labour market.
- With regard to family reunification: Although the mobility of the family of the different categories of third country nationals is defined more broadly in Belgian law than in European directives adopted for new migrants within (the common) immigration policy, its definition remains below that of a European citizen. We can see that above all the researcher's family does not benefit from any relaxation of the conditions of family reunification granted to long term residents and holders of a blue card. The problem is less to do with Belgian law than to European law which strangely has not brought the researcher's family reunification into line with that of a Blue Card holder even though it also concerns a highly qualified worker for whom the European Union has a particular need. The problem really comes from the classification by category by European immigration law where various rules conceived at different times without considering the matter as a whole are not always consistent with each other. The authors of the report hope that eventually the Commission will present the proposal for the European immigration code which has been announced.
- With regard to the possibility of introducing a residence permit *in situ* in Belgium. These only concerns rules which are not identical, but are at least similar to the 4 categories of third country national concerned and are clearly capable of facilitating their mobility.
- Finally, the period given to the administration to respond to a residence request is shorter for long-term residents and holders of a Blue Card than for European citizens. The paradox is only apparent insofar as the right of

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<sup>24</sup> The fairly limited access of students who are nationals of third countries to the labour market is not covered by this analysis because European rules relating to their mobility do not govern this matter.

residence of third country nationals stems from their residence permit which means they can find themselves in an unsure position during the procedure, whereas that of European citizens comes directly from EU law and they are considered to be residing legally in Belgium throughout the procedure for examining their situation. So Belgian law needs to establish a period of time for issuing residence permits for students and researchers in order to meet the requirements of the directives governing the mobility of these two categories of third country nationals.

- All in all, the four categories of third country nationals concerned definitely seem to constitute an intermediate category between newly-arrived third country nationals and European citizens. Although this result is hardly astonishing, it is nevertheless advisable, according to the authors of the report, to check whether the aim of the Tampere conclusions adopted by the European Council in 1999 “*to ensure fair treatment for third country nationals legally residing on the territory of its member States and to offer them rights and obligations comparable to those of citizens of the European Union*” has been met. Beyond the case of the researcher’s family reunification, to which attention has already been drawn, some doubts remain about this particularly with regard to maintaining the requirement for a work permit for long-term residents of another member State for jobs where there is a shortage in Belgium and the requirement of authorization for occupation for Blue Card holders. As a result they do not benefit from the freedom of movement of European workers, which seems anachronistic in a European Union which wishes to encourage the mobility of workers and ought to be doing this independently of their nationality. In this respect, the impact of the principle of European preference should be analysed in depth and its application by the member States studied from a practical point of view.

**Summary tables**

**Residence authorization (for over three months) by right – provided that the residence conditions are fulfilled –**

	TCN – LTR in another MS	TCN – New arrival	EU citizen
<b>To perform a salaried or unsalaried occupation</b>	- Yes	- No: discretionary power of the minister	- Yes
<b>In order to look for a job</b>	- No: the right of residence for this reason is not acknowledged	- No: the right of residence for this reason is not acknowledged	- Yes
<b>For study purposes</b>	- Yes	- Yes	- Yes
<b>For other reasons</b>	- Yes	- No: discretionary power of the minister	- Yes

**Access to the labour market**

TCN - LTR in another MS		
TCN - LTR in another MS	TCN – New arrival	EU citizen
<p>- Work permit with examination of the labour market<sup>25</sup></p> <p>- <u>However, for shortage professions:</u> work permit <u>without</u> examining the labour market and accelerated procedure involving 5 days</p> <p>In addition for granting authorization for occupation for an employer:</p> <p>- <u>No</u> condition for signing an international labour agreement<sup>26</sup></p> <p>- <u>No</u> condition for having signed an employment contract<sup>27</sup></p> <p>- The worker may be in the territory<sup>28</sup></p> <p>&gt; Difference compared with a new arrival</p>	<p>- Work permit with examination of the labour market</p> <p>- <u>No</u> equivalent rule</p> <p>- Condition of having signed an international labour agreement</p> <p>- Condition of having signed an employment contract</p> <p>- The worker may <u>not</u> be in the territory (although important exceptions exist)</p>	<p>- A work permit is <u>never</u> required</p>
Blue Card		
TCN – Blue Card – Mobility within the EU	TCN – Blue Card - New arrival	EU citizen
- <u>No</u> work permit <u>but</u> authorization for work <u>without</u> examining the labour market	- <u>No</u> work permit <u>but</u> authorization for appointments <u>without</u> examining the labour market	- No specific rules applicable to highly qualified EU citizens : see before comparing with TCN – LTR : - A work

<sup>25</sup> Apart from cases where no work permit is required which the TCN – LTR may enjoy in another MS although under the same heading as the new arrival: see note 2 of the report.

<sup>26</sup> granting occupational authorization to the employer is not limited to workers who are third country nationals with whom Belgium is associated through international labour agreements whereas it is required in the case of a new arrival.

<sup>27</sup> Granting authorisation for appointment to an employer is not subject to signing the employment contract referred to by legislation, a proposed contract of employment is sufficient whereas this is not the case for a new arrival

<sup>28</sup> work authorization can be granted to the employer even if a worker has already entered Belgian territory, which is not the case for a new arrival

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- Gross annual wage of 49,995 euro > No difference compared with a new arrival	- Minimum gross annual wage of 49,995 euro (2012)	permit is <u>never</u> required
<b>Researcher</b>		
<b>TCN – Blue Card – Mobility within the EU</b>	<b>TCN – Researcher - New arrival</b>	<b>EU citizen</b>
- <u>No</u> work permit <u>but</u> hosting agreement with an approved organisation > No difference compared with a new arrival	- <u>No</u> work permit <u>but</u> hosting agreement with an approved organisation	- No specific rules applicable to EU citizens who are researchers: see above for comparison between TCN – LTR : - A work permit is <u>never</u> required
<b>Posted Worker</b>		
<b>TCN – Posted Worker – Mobility within the EU</b>	<b>TCN – New arrival</b>	<b>EU citizen</b>
- <u>No</u> work permit <u>subject to fulfilling</u> certain conditions > Difference compared with a new arrival	- Work permit with examination of the labour market	- No specific rule applicable to EU citizens employed by a company established in a MS: see above for comparison between TCN – LTR: - A work permit is <u>never</u> required
<b>Cross-border worker</b>		
<b>TCN – Cross-border worker</b>	<b>TCN – New arrival</b>	<b>EU citizen</b>
- Work permit with examination of the labour market <sup>29</sup> > No difference compared with a new arrival	- Work permit with examination of the labour market	- No specific rules applicable to EU citizens who are cross-border workers: see above for comparison between TCN – LTR: - A work permit is <u>never</u> required
<b>Seasonal Worker</b>		
<b>TCN – Seasonal Worker – Mobility within the EU</b>	<b>TCN – Seasonal worker – New arrival</b>	<b>EU citizen</b>
- Work permit with examination of the labour market - <u>Nevertheless in the Flemish Region:</u> Seasonal jobs are considered to be jobs where there is a shortage; the result of this is that the TCN, LTR in another MS who is applying for a seasonal job in Flanders is <u>not</u> subject to an examination of the labour market – see LTR below – > Difference compared with a new arrival in Flanders	- Work permit with examination of the labour market	- No specific rules applicable to EU citizens who are seasonal workers: see above for comparison between TCN – LTR : - A work permit is <u>never</u> required

**Access to a self-employed professional activity**

<b>TCN – LTR – Mobility within the EU</b>	<b>TCN – New arrival</b>	<b>EU Citizen</b>
- Prior obtaining of a professional card requested via diplomatic or consular post - <u>Nevertheless</u> , the system of obtaining a <u>less constraining</u> professional card – no analysis of the economical advantages of the project and requirement for necessary funds assessed more flexibly – > Difference compared with a new arrival	- Prior obtaining of a professional card requested via diplomatic or consular post	- No professional card

<sup>29</sup> Apart from cases where no work permit is required which the TCN or cross-border worker may enjoy under the same heading as the new arrival: see note 2 of the report.

**Family reunification**

<b>TCN - LTR in another MS</b>		
<b>TCN - LTR in another MS</b>	<b>TCN – New arrival</b>	<b>EU citizen</b>
<ul style="list-style-type: none"> <li>- Family <u>more restricted</u> excluding the ascendants by right of the family group</li> <li><u>If</u> family (re)established in the 1<sup>st</sup> MS: <ul style="list-style-type: none"> <li>- <u>No</u> proof of accommodation</li> </ul> </li> <li>- Resources of the <u>family member</u> taken into account <ul style="list-style-type: none"> <li>&gt; Difference compared with a new arrival</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Family <u>more restricted</u> excluding the ascendants by right of the family group</li> <li>- Proof of accommodation</li> <li>- Resources of the person applying for reunification <u>only</u></li> </ul>	<ul style="list-style-type: none"> <li>- <u>Broad</u> determination of the family including in particular the ascendants</li> <li>- <u>No</u> condition of accommodation</li> <li>- Resources of the <u>family member and even third parties</u> taken into account</li> </ul>
<b>Blue Card</b>		
<b>TCN – Blue Card – Mobility within the EU</b>	<b>TCN – Blue Card - New arrival</b>	<b>EU citizen</b>
<ul style="list-style-type: none"> <li>- Family <u>more restricted</u> excluding the ascendants by right of the family group</li> <li><u>If</u> family (re)established in the 1<sup>st</sup> MS: <ul style="list-style-type: none"> <li>- <u>No</u> proof of accommodation</li> </ul> </li> <li>- Resources of the <u>family member</u> taken into account <ul style="list-style-type: none"> <li>&gt; Difference compared with a new arrival</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Family <u>more restricted</u> excluding the ascendants by right of the family group</li> <li>- Proof of accommodation</li> <li>- Resources of the person applying for reunification <u>only</u></li> </ul>	<ul style="list-style-type: none"> <li>- No specific rules applicable to highly qualified EU citizens : See above before comparing with TCN – LTR</li> </ul>
<b>Researcher</b>		
<b>TCN – Researcher – Mobility within the EU</b>	<b>TCN – Researcher - New arrival</b>	<b>EU citizen</b>
<ul style="list-style-type: none"> <li>- Family <u>more restricted</u> excluding the ascendants by right of the family group</li> <li>- Proof of accommodation</li> <li>- Resources of the person applying for reunification <u>only</u> <ul style="list-style-type: none"> <li>&gt; No difference compared with a new arrival</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Family <u>more restricted</u> excluding the ascendants by right of the family group</li> <li>- Proof of accommodation</li> <li>- Resources of the person applying for reunification <u>only</u></li> </ul>	<ul style="list-style-type: none"> <li>- No specific rules applicable to EU citizens who are researchers: See above for comparison with TCN – LTR</li> </ul>
<b>Student</b>		
<b>TCN – Student – Mobility within the EU</b>	<b>TCN – Student - New arrival</b>	<b>EU citizen</b>
<ul style="list-style-type: none"> <li>- Family <u>more restricted</u> excluding the ascendants by right of the family group</li> <li>- Proof of accommodation</li> <li>- Own resources <u>only</u> <ul style="list-style-type: none"> <li>&gt; No difference compared with a new arrival</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Family <u>more restricted</u> excluding the ascendants by right of the family group</li> <li>- Proof of accommodation</li> <li>- Own resources <u>only</u></li> </ul>	<ul style="list-style-type: none"> <li>- <u>More restricted</u> family excluding the ascendants from the right to family reunification<sup>30</sup></li> <li>- <u>No</u> condition of accommodation</li> <li>- Resources of the <u>family member and even third parties</u> taken into account</li> </ul>

<sup>30</sup> The right to reunification of the descendants of the person applying for reunification, his spouse or partner is more restricted for the EU citizen who is a student than for any other EU citizen but broader than that recognised for the TCN who is a student whether he is a new arrival or an LTR.

**Procedure relating to a request for residence of over three months: Request *in situ***

<b>TCN - LTR in another MS</b>		
<b>TCN - LTR in another MS</b>	<b>TCN – New arrival</b>	<b>EU citizen</b>
- Yes as long as this is a legal stay or involves exceptional circumstances > Difference compared with a new arrival	- No except for exceptional circumstances	- Yes
<b>Blue Card</b>		
<b>TCN – Blue Card – Mobility within the EU</b>	<b>TCN – Blue Card - New arrival</b>	<b>EU citizen</b>
- Yes as long as this is a legal stay or involves exceptional circumstances > Difference compared with a new arrival	- No except for exceptional circumstances	- No specific rules applicable to highly qualified EU citizens : See above for comparison with TCN – LTR
<b>Researcher</b>		
<b>TCN – Blue Card – Mobility within the EU</b>	<b>TCN – Researcher - New arrival</b>	<b>EU citizen</b>
- Yes as long as this is a legal stay or involves exceptional circumstances > Difference compared with a new arrival	- No except for exceptional circumstances	- No specific rules applicable to EU citizens who are researchers: See above for comparison with TCN – LTR
<b>Student</b>		
<b>TCN – Student – Mobility within the EU</b>	<b>TCN – Student - New arrival</b>	<b>EU citizen</b>
- Yes as long as this is a legal stay or involves exceptional circumstances > Difference compared with a new arrival	- No except for exceptional circumstances	- No specific rules applicable to EU citizens who are students: See above for comparison with TCN – LTR

**Procedure relating to a request for residence of over three months: Period for responding to the authorities and consideration of the request**

<b>TCN - LTR in another MS</b>		
<b>TCN - LTR in another MS</b>	<b>TCN – New arrival</b>	<b>EU citizen</b>
<i>Period for the authorities to respond:</i> - As quickly as possible and within <u>4 months</u> at the latest – one extension for a period of <u>3 months</u> in certain circumstances –  <i>Request taken into account:</i> - The documents required must <u>not</u> be produced at the time of making the request so that this can be taken into consideration > Difference compared with a new arrival	- <u>No</u> time period  - All the required documents <u>must</u> be produced for the request to be taken into consideration	- In some cases <u>immediately</u> or as quickly as possible and within <u>6 months</u> at the latest  - The documents required must <u>not</u> be produced at the time of making the request so that this can be taken into consideration
<b>Blue Card</b>		
<b>TCN – Blue Card – Mobility within the EU</b>	<b>TCN – Blue Card - New arrival</b>	<b>EU citizen</b>
<i>Period for the authorities to respond:</i> - As quickly as possible and within <u>ninety days</u> at the latest – extension once only for a period of <u>30 days</u> if additional documents must be produced	- As quickly as possible and within <u>ninety days</u> at the latest – extension once only for a period of <u>30 days</u> if additional documents must be produced	- No specific rules applicable to highly qualified EU citizens : See above for comparison TCN – LTR

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<p><i>Request taken into account:</i></p> <ul style="list-style-type: none"> <li>- All the documents <u>must</u> be produced for the request to be taken into consideration</li> <li>&gt; No difference compared with a new arrival</li> </ul>	<ul style="list-style-type: none"> <li>- All the documents <u>must</u> be produced for the request to be taken into consideration</li> </ul>	
<b>Researcher</b>		
<b>TCN – Blue Card – Mobility within the EU</b>	<b>TCN – Researcher - New arrival</b>	<b>EU citizen</b>
<p><i>Period for the authorities to respond:</i></p> <ul style="list-style-type: none"> <li>- <u>No</u> time period but referral to the preparatory work for the law for transposing to practice aiming for <u>rapid processing</u></li> </ul> <p><i>Request taken into account:</i></p> <ul style="list-style-type: none"> <li>- <u>No</u> specific mention regarding taking the request into consideration in relation to producing the documents</li> <li>&gt; No difference compared with a new arrival</li> </ul>	<ul style="list-style-type: none"> <li>- <u>No</u> time period but referral to the preparatory work for the law for transposing to practice aiming for <u>rapid processing</u></li> <li>- <u>No</u> specific mention regarding taking the request into consideration in relation to producing the documents</li> </ul>	<ul style="list-style-type: none"> <li>- No specific rules applicable to EU citizens who are researchers: See above before comparing with TCN – LTR</li> </ul>
<b>Student</b>		
<b>TCN – Student – Mobility within the EU</b>	<b>TCN – Student - New arrival</b>	<b>EU citizen</b>
<p><i>Period for the authorities to respond:</i></p> <ul style="list-style-type: none"> <li>- <u>No</u> time period</li> </ul> <p><i>Request taken into consideration:</i></p> <ul style="list-style-type: none"> <li>- <u>No</u> specific mention regarding taking the request into consideration in relation to producing the documents</li> <li>&gt; No difference compared with a new arrival</li> </ul>	<ul style="list-style-type: none"> <li>- <u>No</u> time period</li> <li>- <u>No</u> specific mention regarding taking the request into consideration in relation to producing the documents</li> </ul>	<ul style="list-style-type: none"> <li>- No specific rules applicable to EU citizens who are students: See above for comparison with TCN – LTR</li> </ul>