



## Comparative study Immigration 2010-2011

# Contents

---

<b>3</b>	<b>Introduction</b>
<b>4</b>	<b>Country overview</b>
5	U.K.
5	Germany
5	The Netherlands
5	France
5	Spain
5	Italy
5	Belgium
<b>11</b>	<b>Comparative sheet: work permits</b>

---

# Introduction

---

In the absence of an elaborate immigration policy on a larger European level, and following the shortage of highly skilled people on the European labour market, EU Member States have begun a battle for brainpower, as they try to attract as many third country professionals as possible by adapting their immigration rules applicable to highly qualified workers.

This study, which is published by our office on a bi-annual basis, is the result of co-operation between Laga and other foreign law and consultancy firms. It aims to provide an objective overview of the immigration processes with which compliance must be ensured for the employment of third-country highly-skilled workers in:

- The UK
- Germany
- The Netherlands
- France
- Spain
- Italy
- Belgium.

In the first part of the study, we provide a brief overview of the immigration processes in the above countries. In the second part, we compare the necessary requirements. The comparison demonstrates that the Belgian migration (work permit) process is by far the fastest, and the easiest to comply with. Indeed, if we consider both the time it takes to process a work permit application in Belgium (about 2 weeks) and the required conditions for obtaining a work permit for a highly skilled employee (earning at least EUR 36,604 gross on a yearly basis in 2011), we can safely conclude that in contrast to previous years, and to neighbouring countries, it has become easier for third country nationals to be employed in Belgium.

# Country overview



## **U.K.**

In the UK, those who are not British or European Economic Area nationals usually require a working visa to seek employment in the UK. However, under strict conditions and with a passport or business visa, it will be possible for these nationals to make short business trips to the UK without a formal working visa or work permit.

Regular work permits in the UK are issued to employees and not to owners or part owners of companies. A permit needs to be applied for by a UK based entity (so-called “sponsor”) in what is called a “Tier 2 procedure”.

An alternative to obtaining a Tier 2 work permit or business visa, would be for the individual travelling to work in the UK to obtain a visa under the Tier 1 General procedure (the former “Highly Skilled Migrant Programme”). Such individuals are usually at the top of the global labour market. Permission is granted initially for 24 months and extensions can be granted for up to 3 years.

The Tier 1 General procedure is a points-based system. Applicants need to attain at least 75 points and meet the mandatory English Language requirement in order to qualify for the visa. Points are scored in four main areas:

- Qualifications: 30-45 points (depending on the level of qualification achieved)
- Past Earnings: Max 80 points (depending on the level of income and where it was earned)
- Age: 5-20 points (30 years or under – 20 points, 30 to 34 years – 10 points and 35 to 39 years – 5 points)
- UK Experience: 5 points (either UK study or previous UK employment).

Original documents should be provided to support each of the above elements on which the applicant is dependent on.

When required evidence supporting any statements made in the application is not provided or when the presented evidence is not consistent with what is specified on the application form, the Home Office will make a decision based on documentation supplied, which may lead to the refusal of the application.

In practice, many applications are in fact rejected pursuant to the lack of evidence for the number of points claimed by the applicant.

Applications are currently taking 5 to 14 weeks to be processed from the submission of paperwork to the Home Office.



### Germany

The immigration process in Germany has changed significantly since 1 January 2005. We will highlight the most important changes.

Before the new law entered into force, all non-EU citizens seeking employment in Germany needed to send a separate application for a work permit to the labour office in addition to their residence permit application to the immigration office. This old two-tier system has been replaced by a one-tier system.

Non-EU highly qualified employees earning a yearly gross salary of more than EUR 64,800 will now be immediately entitled to permanent residence. Even their dependants have the right to take up work in Germany.

The old requirement for EU-citizens to apply for a particular EU-residence permit is not mandated anymore. Now EU-citizens simply need to register at the local town hall of their place of residence in Germany. However, they are required to obtain an EU-certificate of free movement in case they envisage staying longer than three months.

Non-EU self-employed persons that invest at least EUR 250,000 and create at least 5 jobs in Germany are guaranteed to obtain a residence permit.

Non-EU students who have obtained a university degree in Germany are granted a residence permit for one year in order to look for a job.

Residence permits which allow people to work in Germany are generally issued for a particular job with a particular employer and not for employment in general. This means that, if there are significant changes to any aspect of a job for which a permit was issued, a new permit must be applied for. Such permits are issued for one year and can be extended if the employee is still working for the same company, performs the same job and earns the same remuneration. Permanent residence permits, on the other hand, do not have an expiry date and are valid for any employment in Germany. These are mostly issued to scientists, university professors and highly qualified employees earning at least a yearly gross salary of more than EUR 64,800.

The process time of issuing residence permits is 6 to 8 weeks.

## The Netherlands

Immigration formalities in the Netherlands are enforced by the Dutch Foreign Employment Act (“Wet arbeid vreemdelingen” or “Wav”). This law stipulates that an employer is obliged to apply for a work permit in the Netherlands for all nationals from outside the EU, the EEA and Switzerland. For citizens of the recent EU Member States Bulgaria and Romania, a work permit must still be applied for.

The first step in the application procedure is to prove that there are no qualified persons available on the local Dutch and European labour market. Here, the employer must report the vacancy to the Dutch authorities (UWV Werkbedrijf) at least five weeks prior to applying for a work permit. Moreover, the employer must show the efforts made to find suitable local Dutch candidates over a time period of at least three months (e.g. publishing advertisements, involving a head-hunter or an agency, etc.). The employer is only allowed to recruit other persons from outside the EU and apply for a work permit if they were unsuccessful in recruiting a suitable person for the vacancy within these three months.

The procedure to obtain a work permit can take up to five weeks and can, in practice and depending on the circumstances, take up to 10-12 weeks.

Please note that several exceptions apply to this general migration process, depending on certain facts and circumstances such as salary, experience, nature of employment, etc. For example, work permits can be obtained more easily and faster for intercompany transferees and students. These exceptions to the general rule create an advantage for the Dutch employer, as the employer is not obliged to search for qualified employees within the Netherlands and Europe. After filing the completed work permit application, the Dutch authorities (UWV Werkbedrijf) can also make a quick decision to grant the work permit within two to three weeks.



## France

When a non-EU national wishes to work and reside in France, he/she must be in possession of a temporary authorisation to work and a residence permit.

A distinction can be made between:

- Temporary status: an assignee who is seconded to France for a limited period (intra company transfer “salarié en mission”, short term assignee, assignee who performs an activity based on a provision of services)
- Permanent status: an assignee who is transferred for a longer period can obtain the status “cadre de haut niveau” (i.e. long term assignees – depending on the duration of the assignment in France, the remuneration, their mission and their seniority in the company)

The request for a work and residence permit for the temporary status must be submitted by the French host company to the competent Department Labour Office (“Direction Départementale du Travail”). Once approved, the application is sent to the International Immigration Agency in Paris for processing (i.e. “Office Français de l’Immigration et de l’Intégration” or OFII). The application file is forwarded to the appropriate French Consulate once the International Immigration Agency has obtained approval from the French Ministry of Interior. A long term visa should afterwards be applied for by the assignee (and his/her family members) with the French Consulate in the country of residence. Within two weeks after arrival in France, the assignee should apply for a residence permit with the French police authorities. This permit is normally issued for a period of one year and is renewable. However, for the specific status of “salarié en mission”, a residence permit for three years is issued and is only renewable once. Note that upon arrival in France, the assignee (and his/her family members) is obliged to undergo a medical examination by a doctor approved by the OFII.

The work/residence permit application-procedure for permanent status is practically the same as above, except for a few differences:

- Long term assignees must earn more than EUR 5,000 per month
- The residence permit is only valid for one year but can be renewed for an indefinite period
- Long term assignees will be granted only one permit which serves both as a work and a residence permit
- Long term assignees must sign a French employment contract with the host company in France.

The processing time for a work permit takes approximately 6 to 8 weeks. Upon arrival in France, the OFII medical exam and the application for a residence permit take up to approximately one to two months.





## Spain

When a non-EU citizen is locally hired by a Spanish company, he will have to obtain a general work permit and a residence permit. Once these are obtained, the employee will be able to apply for a visa.

In order to apply for the above mentioned permits, an appointment should be made by the employer with the Immigration Authorities (i.e. the Labour Ministry) in order to submit the application documents. The required documents include: a certificate from the National Employment Institute (INEM) showing that no unemployed Spanish or EU-nationals who are legally residing in Spain are applying for the position, a certificate proving the qualifications of the job applicant, the employee's passport, etc. The application for the work and residence permit is made through an official form which must be completed by a member of the employer's Board of Directors, or by an employee with power of attorney, who has to appear in person to submit the documents. All documents should be duly legalised and translated into Spanish. The certificate from the National Employment Institute will not be needed for the following foreign nationals: prestigious artists, executive managers and managers having a position of trust within the company, highly qualified employees and employees working for a company or corporate group in another country and who travel to Spain to render services in the same company or group of companies.

The processing time for the work and residence permit takes approximately up to one to three months.

A work permit relating to transnational provision of services should be applied for when a foreign company temporarily assigns an employee to render services on behalf of the home company. The assignment must take place in (i) a company operating in Spain and with which the foreign company has an agreement, (ii) in a work centre of the foreign company in Spain or (iii) in

another company located in Spain and belonging to the same group. The employee also needs to be temporarily assigned by the home country to render services in Spain and must have stable and regular residence in his/her country of origin. Furthermore, the employee's professional activity with the foreign company must be regular (i.e. the employee has been working for at least one year with the company and has been working for the foreign company for more than nine months) and he/she must be outside the Schengen Area at the time of filing the work permit with the Immigration Authorities. The term of the work permit should correspond with the period of the assignment. The initial work permit is granted for a one year period with the possibility of another year's extension, unless there is a social security agreement between Spain and the employee's country of origin which allows for a longer period. The application process is the same as that which is mentioned above, except that the Certificate from the National Employment Institute (i.e. INEM) is not required. In addition, the registration with Spanish Social Security is not compulsory and is only necessary when the employee does not obtain a certificate of coverage.

When an application is filed for a highly qualified employee, or one occupying a dependable position (i.e. a person with specific skills or qualification for the job), the work permit can be obtained more quickly since no appointment is necessary before submitting the documents to the immigration authorities. This specific procedure applies if the Spanish company employing a highly qualified employee (with either a general work permit or a work permit related to transnational provision of services) has more than 1000 employees and an investment volume exceeding EUR 200 million or at least EUR 20 million's worth declared in Spain.

Once the work permit is obtained, the employee must apply (in person) for the visa with the Spanish Consulate in his/her country of residence within one month after the notification of the authorisation to work in Spain.



## Italy

A model D work permit for highly qualified personnel should be applied for on behalf of non-EU personnel working for companies with registered offices or branches in Italy or representative offices of foreign companies that have the main location of their activity in the territory of a state that is a member of the World Trade Organization. The employee must fulfil specific conditions regarding skills and education and must hold at least a management position in order to obtain a work permit. The highly qualified employee must not meet a minimum salary threshold but his remuneration must guarantee a reasonable standard of living.

The work permit application process time can take from 6 months to 1 year depending on the region where the employment will take place.



## Belgium

In Belgium, the current regulations (which have been in effect since July 1999) state that any employer wishing to employ a foreign employee (non EEA-citizen) in the country must first apply for and obtain a work permit for that employee.

There are different types of work permits available in Belgium:

- Work permit A, which is issued (provided all the required conditions are met) for an indefinite period and is valid for all employers on Belgian territory. It is granted to foreign nationals who can prove 4 working years that are covered by a work permit type B, during a maximal and uninterrupted residence period of 10 years.
- Work permit B, which is a temporary permit (it is valid for a maximum of 12 months but is renewable) and is strictly limited to one employer.

The employer in Belgium is responsible for requesting the right to employ a foreign citizen and for the work permit B application. If the employer is not established in Belgium, then a person or company based in Belgium needs to be appointed to take care of the application formalities on its behalf.

Special provisions exist for highly skilled Workers. The Belgian immigration rules allow for an easier process for highly qualified employees, provided that their yearly gross salary exceeds EUR 36,604 (indexed salary amount for 2011) and that they are in possession of at least a bachelor's degree. Work permits for highly qualified employees are issued for a period of 1 year and can be extended on a yearly basis.

The work permit processing time depends on the region of employment and is generally between 2 and 3 weeks.

# Comparative sheet: work permits

# Comparative sheet: work permits

	Belgium	Netherlands	UK
<b>Specific work permit for highly qualified personnel</b>	Yes, work permit type B	Yes, for inter-company transferees of multi-nationals with an annual turnover of EUR 50 million	Yes, through Tier 2 Intra-Company Transfers and General Certificates of Sponsorship, or through Tier 1 General (former Highly Skilled Migrant Program)
<b>Specific conditions</b>	At least a Bachelor's degree	The employee should fulfil a key position and should have a diploma of a higher vocational or university level	Specific conditions with regard to, for example: education, earnings, previous work experience, age, English language proficiency, and maintenance
<b>Minimum gross salary</b>	EUR 36,604 per year	EUR 50,138 per year raised annually	Must meet minimum wage relating to the role in the UK, and satisfy the comparative earnings test

France	Germany	Italy	Spain
Yes	Yes Highly qualified personnel can obtain a permanent residence permit allowing work for any German employer	Yes, for managers and highly qualified employees	Yes, however, a new procedure is expected regarding the EU Blue Card
Higher education or university diploma	Higher education or university diploma	Employee must fulfil specific conditions regarding skills and education and must hold a management position  Before transferring the employee to Italy, the employee must have been employed in the same business field for a minimum period of six months	Employee must fulfil specific conditions regarding skills, education and the post to be occupied  In addition, the Spanish company must have <ul style="list-style-type: none"> <li>• more than 1,000 employees, and</li> <li>• an investment volume higher than EUR 200 million or;</li> <li>• have declared in Spain an investment not lower than EUR 20 million</li> </ul> N.B.: in case the above mentioned requirements are not fulfilled, the employee must apply for the work permit through the ordinary procedure.
<ul style="list-style-type: none"> <li>• EUR 2,000 per months in case of transfer in the same group</li> <li>• EUR 5,000 per month for executives</li> </ul>	No minimum gross salary. However, the foreigner has to be granted the same conditions of employment regarding compensation, working time and vacation as those of a comparable German employee	Must not meet a minimum threshold but their remuneration must guarantee a reasonable standard of living	The employee has to perceive a high annual retribution that guarantees a reasonable standard of living for his/her family  According to verbal information provided by the authorities: <ul style="list-style-type: none"> <li>• At least a salary of EUR 2,000 per month (12 monthly instalments) in case the employee is alone</li> <li>• Should the employee come with his/her family, he/she has to earn at least EUR 2,000 per month and an additional EUR 936 per month for each family member</li> </ul>

	Belgium	Netherlands	UK
<b>Business trip without work permit</b>	Yes, persons attending client meetings or internal meetings in closed circles, for up to 5 working days per calendar month per meeting	Yes, in the framework of business meetings or negotiations on behalf of an employer established abroad for a maximum period of 4 weeks within a timeframe of 13 weeks	Yes, under certain conditions  Permissible activities include: attending meetings or conferences; arranging deals or negotiating or signing trade agreements or contracts; undertaking fact finding missions; and conducting site visits  Timeframe: maximum six months in any 12 month period provided that the worker is not employed or paid in the UK
<b>Work permit application processing time</b>	2 to 3 weeks (depends on the region)	2 to 5 weeks	5 to 14 weeks depending on the immigration category the applicant will be applying under
<b>Work permit validity</b>	1 year, can be extended on a yearly basis	3 years, can be extended (under restricted conditions)	Depends upon the type of work permit and possible restrictions: <ul style="list-style-type: none"> <li>• Tier 2 – Maximum 3 years</li> <li>• Tier 1 – Maximum 2 years</li> <li>• Sole Rep’ – Maximum 3 years</li> </ul>

France	Germany	Italy	Spain
Yes, persons attending client meetings or internal meetings, for up to 90 days per six month period	Yes, for typical irregular business activities performed for the home country employer that require traveling to Germany (i.e. to visit a trade fair, attend a conference or a client meeting for acquisition purposes  N.B.: regular work performance (which requires a residence permit allowing work) is assumed if the performed activity is a typical part of the regular work organisation of the German employer	Yes, when the non-EU national remains in Italy for a period which does not exceed 3 months	Yes, when the non-EU national remains in Spain for a period not exceeding 90 days within a 6 month period  The non-EU National must obtain a temporary residence permit (i.e. "business visa") in the Spanish Consulate of his/her country of origin or place of residence  With this "business visa" the employee can reside in Spain and attend business meetings but is not allowed to work
<ul style="list-style-type: none"> <li>• 6 to 8 weeks for highly qualified personnel</li> <li>• 3 to 5 weeks for executives</li> </ul>	6 to 8 weeks	From 6 months to 1 year depending on the region	1 to 3 months, depending on the workload of the authorities
3 years in case of transfer in the same group otherwise 1 year, can in principle be extended each year	1 year, can, in principle, be extended each year	Depending on the duration of the employment period <ul style="list-style-type: none"> <li>• No more than 9 months for seasonal work</li> <li>• No more than 1 year for fixed-term employment contracts</li> <li>• No more than 2 years for unlimited employment contract</li> </ul>	1 year, can be extended (depending on the type of work permit)

# Contacts

**For more information, please contact:**

**Erwin Vandervelde**

Advocaat-vennoot / Avocat associé  
Employment, social security & immigration law  
Tel. + 32 2 800 70 76  
Fax + 32 2 800 70 03  
Mobile + 32 497 51 53 43  
evandervelde@laga.be

**Matthias Lommers**

Advocaat / Avocat  
Employment, social security & immigration law  
Tel. + 32 2 800 70 69  
Fax + 32 2 800 70 03  
Mobile + 32 479 20 53 96  
mlommers@laga.be

**Visit our website at [www.laga.be](http://www.laga.be)**

A top legal practice in Belgium, Laga is a full service business law firm, highly recommended by the most authoritative legal guides. Laga comprises approximately 100 qualified lawyers, based in Brussels, Antwerp and Kortrijk. Laga offers expert advice in the fields of banking & finance, commercial, corporate/M&A, employment, IT/IP, public/administrative, insolvency and reorganisations, real estate, tax law and litigation. Where appropriate to ensure a seamless and comprehensive high-quality service, Laga lawyers work closely with financial, assurance and advisory, tax and consulting specialists, and with select EU and US law firms.

Laga provides thorough and practical solutions tailored to the needs of clients ranging from multinational companies, national large and medium-sized enterprises, and financial institutions, to government bodies.