



European Migration Network

Belgian Contact Point

The organisation of Asylum and Migration Policies in Belgium

April 2009

Executive Summary

This study gives an overview of how the migration and asylum policy is organised in Belgium. The nature of the study makes that it is mostly a description of the various aspects of this policy. However, also some analysis is incorporated.

As becomes clear in *chapter 2* Belgium is a federal state with a complicated structure: the federal level and regional level (Communities and Regions) all have their competences. This is also reflected in the organisation of the migration and asylum policy, where a lot of different levels and actors play their (autonomous) role. One can also observe that Belgium lacks a single government body responsible for migration related issues. However, this does not mean that Belgium has no global approach on migration and asylum issues. The main departments on migration and asylum, as well as the most relevant law (Aliens Act of 15 December 1980) are still a federal competence, which makes a more or less uniform policy possible. On other fields, e.g. integration that is a competence of the regional entities, we can see divergent policies: Flanders has a mandatory integration programme (at least for certain categories of migrants and residents); whereas in the Walloon Region and in the Brussels Capital-Region this is not the case. The fact that in 2008 a Minister for Migration and Asylum policies was appointed for the first time, is an indication that a more coordinated approach is envisaged.

Chapter 3 gives an overview of the evolution of the asylum and migration systems in Belgium. After World War II Belgium was in great need of foreign labour and organised labour migration mainly through bilateral agreements. The economic crisis of the 1970s led to an official labour migration stop that is still standing in 2008. However, this led to pressure on and abuse of other migration channels such as family reunification and asylum. The development of the asylum and migration system in Belgium can be seen as a reaction to deal with these pressures, as well as to adapt it to the growing influence of the European legislation. Nowadays, a more global approach on migration and asylum is undertaken and a more pro-active approach towards migration issues is widely considered as a need, also because it is believed by some that it could keep the prosperity of the country at a high level (ageing problem).

In *Chapter 4* the different aspects of the organisation of the asylum and migration policies are described. Every foreigner who likes to come to Belgium has to go through these procedures to legally enter and reside on the territory. Starting with entry procedures, admission conditions, legal residence and labour market, and finally leading to the return possibilities. However, a migration policy is not standing alone and has links with other policy areas. In the light of a.o. new economic migration possibilities it is obvious that the labour market policy is affected. As the number of migrants residing on the Belgian territory was rising, great concern has also been given to the further development of integration policies. Finally, foreign affairs and development policies have an important role to play in the global phenomenon of migration.

By way of conclusion, *chapter 5* provides some analysis of the ‘lessons learned’ and tries to take a look at the possible future developments of the asylum and migration systems in Belgium. The further development of the European legislation in the field and the transposition of this into Belgian law will remain important.

This study on the organisation of the Belgian migration and asylum policies is a part of a broader study on European level. All of these national studies will be used as basis for a synthesis study by the European Commission. In this way policy makers on the national levels, but also on the European level, can hopefully take into consideration the “best practices” and “lessons learned” of the other member states, when further developing their own migration and asylum systems.

Table of content

1. Introduction : purpose and methodology followed	4
2. Overview of organisation of political, legislative and institutional framework in Belgium	6
2.1 Political organisation in Belgium	6
2.2 Institutional context	7
2.2.1 <i>Federal competence</i>	7
2.2.2 <i>Regional competence</i>	11
2.2.3 <i>Local level</i>	13
2.2.4 <i>Non-governmental organisations</i>	13
2.2.5 <i>Social partners</i>	15
2.3 Judicial context	16
2.3.1 <i>Relevant laws on asylum and migration</i>	16
2.3.2 <i>Judiciary</i>	16
3. Development of asylum and migration systems	18
4. Organisation of policy	23
4.1 Asylum and Migration	23
4.1.1 <i>Entry procedures</i>	23
4.1.2 <i>Admission conditions</i>	27
4.1.3 <i>Legal residence</i>	35
4.1.4 <i>Access to labour market</i>	42
4.1.5 <i>Return</i>	48
4.2 Links with other policy areas	53
4.2.1 <i>Labour market policy</i>	53
4.2.2 <i>Integration policy</i>	53
4.2.3 <i>Foreign Affairs and Development policy</i>	55
5. Analysis of asylum and migration systems	57
5.1 Lessons learned – improvements	57
5.2 Future developments	59
6. Annexes	61
6.1 Publications	61
6.2 Websites	62

1. Introduction : purpose and methodology followed

Before you lies the EMN Study 2008 on “The organisation of Asylum and Migration Policy in Belgium”. This study aims to provide an overview of the organisation of this policy to all actors involved as well as to all persons who show interest in this subject. This Belgian report, together with all other national reports of the EMN-members, will allow the European Commission to draw up a synthesis report on the organisation of the asylum and migration policies in the 26 participating EU Member States.

The EMN Work Programme requires that at least one study be undertaken in 2008. The subject of this study has been decided by the European Commission in collaboration with the National Contact Points (NCPs). This study has a limited scope and a clear focus, primarily to serve to integrate new NCPs without the precondition of having a national network. It also provides the new NCPs an opportunity to gain experience in producing EMN-reports.

This study differs from the Annual EMN Policy Reports on Migration and Asylum in several ways. Firstly is that it studies the content of the policies as opposed to a review of the previous year. Secondly, it is the aim of the EMN to keep this study up-to-date and this study has been designed in that way.

The objective of the European Migration Network (EMN) is to meet the information needs of Community institutions and of Member States' authorities and institutions on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum. It is also the intention of this study to have analysis of the already existing information and to draw the attention to certain aspects that could be of value to those involved in the execution of this policy. In such way, this study will provide a clear and up-to-date overview of the organisation of the migration and asylum policy in Belgium and will have a permanent value. It is a complex subject with different actors involved. In line with the objective of the EMN this study tries to offer clarity in the subject.

The period covered in this study is more or less since the 1990s up till the end of 2008. We only look back in history in so far as it is necessary to be able to describe the current organisation of the policy.

This study focuses on policies for third-country nationals only. Thus, EU nationals undertaking mobility within the EU are not discussed in this study.

The information used for this study comes from already available sources. These sources are listed in the annexes and will eventually be transferred into the EMN's documentation database.

A template has been developed for the individual National Reports, which is used by all EMN NCPs in order to ensure the comparability. Within the different sections of chapter 4 (organisation of policy) a distinction is made between asylum and migration.

While collecting information, the relevance, objectivity, reliability, comparability of the collected information and the possibility to keep it up-to-date, have been taken into account. We have made use of a lot of internet sources (websites of organisations involved in migration and asylum). We have also consulted the services of the Immigration Department, the Office of the Commissioner General on Refugees and Stateless Persons as well as of the Centre for Equal Opportunities and the Opposition Against Racism, in order to find the relevant information and/or to verify it.

Chapter 1 of this report is an introduction regarding the purpose and methodology used in this report.
Chapter 2 offers an overview of the political, legislative and institutional framework of migration and asylum policy in Belgium.
Chapter 3 provides a brief, historical overview of how the migration and asylum policy has evolved in Belgium.
Chapter 4 provides an overview of the different stages of the migration procedures, as well as the links with other policy areas.
Chapter 5 tries to give a brief analysis of migration and asylum policy and looks ahead to the future.
Chapter 6 contains the Annexes with an overview of the publications and sources used to undertake this study.

This report has been produced by the Belgian Contact Point (BE NCP) of the European Migration Network. The BE NCP is composed of experts of the Immigration Department (policy support unit); the migration observatory of the Centre for Equal Opportunities and Opposition to Racism; and the Commissioner General for Refugees and Stateless Persons (international unit). It is the Immigration Department which acts as the national coordinator for the EMN.

It can be contacted by e-mail and phone :

Benedikt Vulsteke : Benedikt.Vulsteke@dofi.fgov.be ; phone +32 (0)2 / 793.92.30
Geert Beirnaert : Geert.Beirnaert@ibz.fgov.be ; phone +32 (0)2 / 205.50.54
Séverine De Potter : Severine.DePotter@cntr.be ; phone +32 (0)2 / 793.92.31

Or by letter at the following address :

EMN Belgian National Contact Point,
Dienst Vreemdelingenzaken, WTC II 23rd floor,
Antwerpsesteenweg 59B,
1000 Brussels

More information about the EMN is available on: www.european-migration-network.org or
www.dofi.fgov.be

April 2009

2. Overview of organisation of political, legislative and institutional framework in Belgium

In this chapter a general overview is given of the political, legislative and institutional framework in Belgium in order to provide a context for the specific issues described in the following chapters. First the political organisation in Belgium will be described. This will be followed by an overview of the institutional context where main governmental institutions and other actors involved in the migration and asylum issues will be highlighted¹.

2.1 Political organisation in Belgium

Belgium is a constitutional monarchy and currently *King Albert-II* is head of state. The King symbolises and maintains a feeling of national unity by representing the country in public functions and international meetings. The monarch also has federal executive powers: the power to appoint and dismiss ministers, and he is responsible for implementation of the laws passed by the Federal Parliament. The monarch approves of and promulgates all laws passed by Parliament. However, the monarch cannot act alone without the countersignature of the responsible minister, who in doing so assumes political responsibility for the action.

Belgium is a *federal state* with a complicated structure: a federal level, three territory-orientated *Regions* (Flanders, the Walloon Region and the Brussels Capital-Region) and three language-based *Communities* (Dutch-speaking, French-speaking, and German-speaking), each with a government and a parliament. The Flemish Community and Region have merged their institutions to create just one government (*Vlaamse overheid /Flemish authorities*) and one parliament. The French (speaking) community and Flemish community in Brussels have competencies for cultural, educational, well-being and health for their respective Brussels' inhabitants. These competences are exercised by the Flemish Community Commission (*Vlaamse Gemeenschapscommissie, VGC*²), the French Community Commission (*Commission communautaire française, COCOF*³), and the Common Community Commission⁴ for matters that are common to both communities.

The Regions and Communities have their own competences, such as transportation, public works, water policy, cultural matters, education, public health, environment, housing, and economic and industrial policy. However regional and federal competences sometimes overlap each other. Therefore, it can be very complicated to single out the competent authority over one given field.

At federal level the *executive power* is exercised by the government that consists of ministers and secretaries of state (*Staatssecretarissen/secrétaires d'Etat*) and is headed by the Prime Minister. The number of ministers is limited to 15 among which 7 at least belong to each of the two main communities. The Prime Minister and his ministers administer the government and the various 'Federal Public Services' (FPS, or a.k.a. ministries). The ministers personally defend their policies and performance before the Chamber. The federal legislative power is vested in both the government and the two chambers of parliament (Chamber of Representatives and Senate).

¹ This overview will be mainly based on "Current immigration debates in Europe : a publication of the European Migration Dialogue"; Belgium; September 2005 : Sonia Gsir, Marco Martiniello, Katrien Meireman, Johan Wets.

² www.vgc.be/Site+structuur/leftnav/situering/paspoortHome.html

³ www.cocofirisnet.be/site/fr

⁴ [www.bruxellesirisnet.be/fr/region/region_de_bruxelles-capitale/institutions_communautaires/cocom.shtml](http://bruxellesirisnet.be/fr/region/region_de_bruxelles-capitale/institutions_communautaires/cocom.shtml)

2.2 Institutional context

Migration policy is a multi-faceted policy. It involves labour migration, asylum, (forced) return, regularisation and other policies targeting illegal migration, integration of foreigners, human trafficking and human smuggling, etc. Belgium is a federal state where the competencies related to migration policy are divided among different departments of the federal state on the one hand and among the federal state and the Communities and Regions on the other hand. The decision-making powers are no longer exclusively with the federal government and federal parliament. The country is run by various bodies, which fulfil their assigned responsibilities autonomously.

So Belgium has neither a single government body responsible for all migration related issues, such as a ministry of migration, nor an efficient institutionalised consultation structure for migration. In 2008 the position of Minister for Migration and Asylum Policy was created at federal level. It was the first time a Minister (Annemie Turtelboom) became solely responsible for Migration and Asylum Policy. The Minister is the supervising authority of the Immigration Department, Office of the Commissioner General for Refugees and Stateless Persons and the Aliens Litigation Council, as well as for economic migration in consultation with the Minister of Labour. However, as the responsibilities dealing with migration are spread over various actors, the Minister has no exclusive competence on all aspects of migration and asylum and has to rely on cooperation agreements with other departments.

However, it can be stated that the main departments regarding Migration and Asylum Policies are the following : entry policy is the responsibility of the Federal Public Service Home Affairs and the Minister of Migration and Asylum Policy;⁵ social integration and reception of asylum seekers are the responsibility of the Programmatory Public Service Social Integration (and the Minister of Social Integration); labour policy is a shared responsibility between the Federal Public Service “Employment, Labour and Social Dialogue” and the Regions (and the Federal Minister for Employment and the regional ministers). The implementation of the labour policy is the responsibility of the governments at the regional level. Integration of foreigners is the responsibility of the Communities in the Brussels Capital-Region; of the Walloon Region in Wallonia and of the Flemish authorities in Flanders.

2.2.1 Federal competence

1. Federal Public Service Home Affairs⁶

The Federal Public Service Home Affairs hosts different authorities responsible for asylum and migration: the Immigration Department (ID, a.k.a. “Aliens Office”), the more independent Office of the Commissioner General for Refugees and Stateless Persons (CGRS) and the Aliens Litigation Council (ALC), which is an administrative court.

Immigration Department⁷

The Immigration Department is responsible for the management of the entry of foreign nationals to the Belgian territory, their stay, their settlement and the removal of (a.o. undocumented) foreign nationals from the Belgian territory. The service employs approximately 1700 people, in its central administration in Brussels and in the detention centres for undocumented foreigners.

The main tasks of the Immigration Department, in relation to migration policy are:

- To manage migration flows and decide on the validity of applications (such as family reunification and short term stay)
- Adapt and implement national legislation to comply with European law;
- Enhance the struggle against human traffickers in collaboration with other services involved.

⁵ The Minister exerts supervisory power over the Immigration Department, the Commissioner General for Refugees and Stateless Persons and the Aliens Litigation Council

⁶ FOD Binnenlandse Zaken / FPS Intérieur, www.ibz.fgov.be

⁷ Dienst Vreemdelingenzaken / Office des Etrangers, www.dofi.fgov.be

- Apply the Dublin-II Regulation; the registration of the asylum seekers' applications and the management of the applicants' residence requirements throughout the asylum procedure.
- Organise the return of foreigners who do no longer/not comply with the entry- and residence conditions.

Office of the Commissioner General for refugees and stateless people (CGRS)⁸

The CGRS, an independent administrative instance, is the only instance with the competence to examine asylum cases. The CGRS is the competent instance to either grant or refuse the refugee status and to either grant or refuse subsidiary protection. The CGRS automatically examines all asylum applications, first within the framework of the Geneva Convention, then within the framework of subsidiary protection. An appeal against CGRS's decisions on asylum claims can be lodged with the Aliens Litigation Council.

In the case of an asylum application introduced by a subject of an EU member state or a candidate member state, the CGRS can decide not to take the application into consideration when the declaration of the asylum seeker does not clearly show a well-founded fear for persecution or a real risk of serious damage. In such cases a decision must be made within 5 working days.

Others

For the sake of completeness we can mention that the Aliens Litigation Council and the Council of State also have their role as appeal bodies within the asylum and migration procedures (see also 2.3.2 Judiciary).

2. Programmatic Public Service Social Integration¹⁰

Federal Agency for the Reception of Asylum seekers (Fedasil)¹¹

To manage the network of reception centres in an efficient and co-ordinated way, the federal government decided to set up a federal agency for the reception of asylum seekers in 2001. Fedasil falls under the competence of the PPS Social Integration. The agency is responsible for the humane reception of asylum seekers in Belgium. The reception of asylum seekers must be organised efficiently so as to respond in a flexible way to the arrival of newcomers. The agency also stands for the quality of the reception.

The reception network includes 13,000 reception places. The organisation and management of this number of places requires central co-ordination. The reception policy relies to a large extend on co-operation between government bodies, NGOs and non-public partners. The partners include the Red Cross, Vluchtelingenwerk Vlaanderen, Ciré and the Public Centres for Social Welfare (PCSW).

Fedasil also has other competences: the coordination of the voluntary return programs, the observation and orientation of unaccompanied minors and the integration of reception facilities in the municipalities.

3. Federal Public Service of Foreign Affairs¹²

The FPS Foreign Affairs aims to develop, monitor and outline guidelines for the administration, progression, development and coordination of Belgium's foreign policy on asylum and immigration. It also aims to develop guidelines on how to tackle human trafficking and human smuggling. The FPS Foreign Affairs promotes a coherent approach to the external aspects of immigration and asylum policy and identifies the contributions the Belgian migration policy can make towards stabilising certain regions.

⁸Commissariaat-generaal voor de Vluchtelingen en Staatlozen (CGVS)/ Commissariat Général aux Réfugiés et Apatriades (CGRA), www.cgvs.be

¹⁰ POD Maatschappelijke Integratie/ SPP Intégration Sociale, www.mi-is.be

¹¹ Federaal agentschap voor de opvang van asielzoekers/ Agence fédérale pour l'accueil des demandeurs d'asile, www.fedasil.be

¹² FOD Buitenlandse Zaken / FPS Affaires étrangères, www.diplomatie.be

Requests for information about access procedures and any visa requirements for foreign nationals seeking to come to Belgium may also be made to the Visa Section of the Federal Public Service Foreign Affairs or the Belgian Embassies and Consulates General outside Belgium.

4. Federal Public Service Employment, Labour and Social Dialogue¹³

The rules for employment of foreign workers are defined in the law of 30 April 1999 regarding the employment of foreign workers and the Royal Decree of 9 June 1999 on the implementation of this law. On 1 April 2003 a new regulation came into force. The legislation comes under the jurisdiction of the Federal Public Service Employment, Labour and Social Dialogue. While this FPS designs the framework, the implementation of the legislation is, to a large extent, the competence of the Regions (see below).

5. Federal Public Service Justice

The Guardianship Office¹⁵

The Guardianship Office¹⁷ has the mission to design a durable solution for unaccompanied foreign minors arriving or residing in Belgium. The Office assists and trains among other things legal guardians. A guardian is appointed and takes responsibility for the unaccompanied minor throughout his or her stay in Belgium. This guardian will then arrange for the minor's reception, and will also ensure that he or she receives medical care, attends school, etc. The guardian shall, if necessary, find a lawyer who can carry out the procedures necessary to obtain a residence permit in Belgium.

Legislation on Nationality

Within the FPS Justice the "Service Legislation on Nationality"¹⁸ deals with individual files on the obtaining and loss of the Belgian nationality. Besides the operational aspect, the service also handles the legal aspects of nationality at national and international level. The service also provides information on the nationality issue to the wider public.

6. Federal Public Service Economy, SMEs, Self-employed and Energy¹⁹

The Federal Public Service Economy, SMEs, Self-employed and Energy is competent to issue professional cards (which are obligatory for certain categories of foreigners) and is in charge of the implementation of regulations for self-employed workers, liberal professions and businesses. The SPF is also in charge of the Business one-stop shops spread across the country, which are, among other things, responsible for the registration of: commercial firms, self-employed workers, practitioners of an intellectual profession or a liberal profession and other types of service providers.

¹³ FOD Werkgelegenheid, Werk en Sociaal Overleg / FPS Emploi, Travail et Concertation Sociale/, www.werk.belgie.be

¹⁵ Dienst Voogdij/ Service des Tutelles ; www.just.fgov.be/index_fr.htm

¹⁷ More information about the Guardianship Office and the policy towards unaccompanied minors can be found in: Belgian Contact Point to the EMN: Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors in Belgium, 2009.

¹⁸ Dienst Nationaliteitsrecht/Service du droit de la nationalité

¹⁹ FOD Economie, K.M.O, Middenstand en Energie/ SPF Economie, PME, Classes Moyennes et Energie, <http://mineco.fgov.be/>

7. Federal Police

Police services have a migration-related duty during several processes of their daily job. Border control is a first contact moment between law enforcement and migrants. At the external borders of the Schengenzone — a person entering the territory undergoes the check whether he disposes of the necessary documents and meets the entry-conditions.

In several situations people can find themselves controlled by a police force : traffic jam, enquiry of a local policeman, determination of an offence, control of an establishment in aid of an inspection service, ... When it turns out – at such an occasion - that a person is not able to (satisfactory) identify himself, since he is illegally residing or transiting the country, the law enforcement agent will equally draw up a report on illegal stay. Contacting the Immigration Department is one of the duties of the policeman in order to obtain a decision on the further whereabouts of the person in illegal residence.

More specific are the circumstances in which reasonable doubts rise about smuggling of migrants. Regularly groups of people in illegal residence are found in conditions that leave to conclude the offence of human smuggling and the involvement of an organization. Law enforcement then goes beyond the sole unlawful residence. A human smuggling-investigation is initiated at prosecutor's level.

Judicial investigations into facilitated illegal immigration do not only focus on human smuggling (transports) in the narrowest sense of the word; they take as well sight on – less visible – issues of improper use of legal entry and residence modalities, e.g. sham marriages, abuse of visa regimes, manufacturing and obtaining documents, ...

Finally law enforcement guarantees as well the escort of people in illegal residence being removed from the territory towards their countries of origin.

8. Centre for Equal Opportunities and Opposition to Racism²⁰

The Centre for Equal Opportunities and Opposition to Racism (CEOOR) is an autonomous public body; it hosts the Observatory on Migration and is required by law (1) to inform the government about the nature and the extent of migration flows and to safeguard the respect for the fundamental rights of foreigners, irrespective of their administrative status. To this means the CEOOR conducts studies and analyses, visits the detention centres and follows up the evolution of migration and citizenship law; (2) to stimulate, coordinate and follow up the policy with regard to trafficking in human beings. This responsibility was extended to smuggling in human beings by the law of 10 August 2005.

²⁰ Centrum voor gelijke kansen en racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme,
www.diversiteit.be

2.2.2 Regional competence

1. Brussels

Work permits

The Brussels Capital-Region is competent for the distribution of working permits.

Integration

In the field of integration, integration of foreigners²¹ residing on the territory of the Brussels Capital-Region is competency of two local Community instances: the Vlaamse Gemeenschapscommissie (Flemish Community Commission) and the Commission communautaire française (French Community Commission). See also 4.2.2 (Integration) for further information.

Mandated by the Flemish Community, *De Foyer*²² organises training and employment projects for migrants residing in the Brussels Capital-Region (Onthaalcentrum voor Migranten). The French Community Commission, on the other hand, subsidises *CBAI*²³ and *CRACS* as respectively ‘knowledge and training centre’ for the promotion of intercultural dialogue, and ‘support and assessment centre’ for social cohesion in the Brussels Capital-Region.

Accommodation and Guidance Centre for victims of Human Trafficking and Human Smuggling

The Common Community Commission of the Brussels-Capital Region and the federal authorities subsidised one such centre on the territory of the region: the non-profit organisation (Pagasa²⁴). Unaccompanied minors victims of human trafficking are assisted by a specialised organisation (Minor N'Dako²⁵).

2. Flanders

Flemish Ministry for Civic Integration²⁶

This policy is supported by agencies within the administration including:

- Cell integration (cel inburgering). This section of the Flemish administration is created to follow up the newly developed Flemish integration policy
- Inter-departmental Commission for ethnic cultural minorities (ICEM). The Flemish Interdepartmental Commission Ethnic Minorities focuses on five target groups: caravan dwellers, new migrants, migrant youth, irregular migrants and labour migrants. The ICEM supports the Flemish integration policy related to these groups. In addition to integration programmes, the Flemish Community develops a policy with regard to emancipation and social participation of Ethnic and Cultural Minorities. In the framework of the Decree of 28.04.1998 pertaining to the Flemish policy with regard to ethno-cultural minorities,²⁷ key-actors have been officially recognised and receive structural funding.²⁸

²¹ In the 1980s, integration of foreigners became the competence of the three Belgian Communities – the French, the Flemish and the German Communities. Since then, important institutional changes have occurred. In the Brussels-Capital Region, the Flemish Community Commission and the French Community Commission have been competent with regard to integration of foreigners since 1989. In 1994, the French Community transferred parts of its competence with regard to integration of foreigners in the French Community to the Walloon Region and to the French Community Commission of the Brussels-Capital Region.

²² www.foyer.be

²³ www.cbai.be

²⁴ <http://www.pag-aso.be/content.aspx?lang=FR&l=009>

²⁵ www.minor-ndako.be

²⁶ www.inburgering.be

²⁷ Decreet van 28 april 1998 inzake het Vlaamse beleid ten aanzien van etnisch-culturele minderheden, BS 19 juni 1998

²⁸ The dialogue platform for Minorities (*Minderhedenforum*), the Flemish Support Centre for Minorities (*Vlaams Minderheden Centrum, VMC*); five provincial integration centres (with 17 local focal points) and two local integration centres in Ghent and Antwerp.

Flemish administration Employment - Cell Migration

The main task of the Cell Migration of the Section employment of the Administration Employment of the Ministry of the Flemish Region is the distribution of labour cards and labour permits.²⁹

CAW (Centres of general welfare work)

The centres focus on people in need. Two of the target groups are related to the inflow of foreigners. The centres take care of victims of human trafficking and assist asylum seekers with the procedure and with questions of daily life in Belgium: housing, social welfare, income, relations.

Accommodation and Guidance Centre for victims of Human Trafficking and Human Smuggling

One such centre is subsidised by the Flemish Community and the federal authorities: the non-profit organisation Payoke³⁰ is situated in Antwerp. Unaccompanied minors victims of human trafficking are assisted by a specialised organisation (Juna³¹) situated in Aalst.

3. Wallonia French speaking community / German speaking community

Labour cards or working permits are competencies of the Ministry of Employment of the Walloon Region. In the German-speaking community, this is a competence of the Ministry of the German speaking Region.³²

Integration of foreigners residing on the territory of the Walloon Region is competency of Walloon Minister of Health, Social Care and Equal Opportunities (Regional government) and is administered by the Directorate General Local authorities, Social care and Health (DGO5). In contrast to the Flemish Community the French (speaking) Community has not proceeded with a targeted and mandatory integration policy.

Regional Centres for Integration (Wallonia)

Following the transfer of competencies from the French Community to the regional level in the field of integration, the Walloon Government decided in 1996 to develop its integration policy in relation with local political institutions and NGOs.³³ The decree on the integration of foreigners and citizens with foreign origins instituted seven regional centres for the integration of foreigners, whose mission is to develop regional integration policies at the local level. These centres are legally non-profit organisations. Within its respective regional territory, each Integration Centre can develop initiatives such as individual guidance with respect to: training, vocational orientation and integration of foreigners and people of foreign origin (including assistance and orientation with housing, health, employment and social integration); promotion of social and cultural participation of foreigners and promotion of intercultural dialogue; support to public services and non-profit organisations confronted to a foreign public (e.g. through training of the personnel); networking and reflexion with local actors; statistical data collection and creation of statistical indicators; diffusion of useful information (incl. statistical information) for the integration of foreigners and people of foreign origin; evaluation of local integration initiatives subsidised by the Walloon Region. Recently, every regional integration centre has designed a 'Local Integration Plan' that includes clear objectives and a mapping exercise of local stakeholders.

²⁹ www.werk.be/beleid/arbeidsmigratie.htm

³⁰ www.payoke.be/index2.html

³¹ www.vluchtelingenwerk.be/wat_doen_we/juna-aalst.php

³² www.dg1ive.be

³³ Walloon Decree of 04.07.1996 pertaining to the integration of foreigners and people of foreign origin launched the creation of seven Regional Integration Centres in Wallonia (*Centres Régionaux d'intégration*). These regional integration centres are established in Liège, Mons-Borinage, La Louvière-Région du Centre, Charleroi, Verviers, Namur and Brabant wallon

Accommodation and Guidance Centre for victims of Human Trafficking and Human Smuggling

One such centre in Wallonia is subsidised by the French-speaking Community and the federal authorities: the non-profit organisation Surya is situated in Liège. Unaccompanied minors victims of human trafficking are assisted by a specialised organisation (Esperanto).

2.2.3 Local level

Public Centres for Social Welfare (PCSW)

Through their specialised centres for social aid (PCSW), every local authority also offers a relief facility for asylum seekers. An asylum seeker can be assigned to a particular PCSW if they are deemed in need. To guarantee the harmonious spreading of the asylum seekers over the municipalities, a *Distribution Plan* was developed. Each PCSW of the country has to take care of a quota of asylum seekers depending for example on the size of the municipality. It aims to distribute the charge of reception and it encourages the PCSW in creating LIR (Local initiatives of reception) by the principle of double counting. One asylum seeker lodged in a LIR is equivalent to two asylum seekers in the quota assigned to a particular municipality. As soon as they are assigned to a PCSW, they can choose their place of living except if they accept to be lodged in a LIR managed by their PCSW. They are not obliged to live in the municipality of their PCSW. In practice this Distribution Plan is not so efficient as the major cities still receive the bulk of asylum seekers. With the reform of the asylum procedure in 2007 there the distribution plan was no longer effectuated, but the legislation still exists³⁴. Asylum seekers have access to Local Reception Initiatives (1) in function of their individual characteristics (family life, cannot adapt to collective life, etc.); (2) in function of the duration of the processing of the claim: asylum seekers are accommodated in a federal open centre in the first four months of the procedure (cf. infra).

2.2.4 Non-governmental organisations

A lot of NGOs are active in relief work for asylum seekers, refugees and undocumented migrants, etc. Some of them are listed below.

1. Vluchtelingenwerk Vlaanderen and CIRE³⁵

Vluchtelingenwerk Vlaanderen in the Dutch speaking part of the country and CIRE (Coordination et Initiatives pour Réfugiés et Etrangers) in the French speaking part of the country, are umbrella organisations of non-government organisations which specialise in asylum matters. In co-ordination with other member organisations (Caritas International Aid, Social Service of the Socialist Solidarity), Vluchtenlingenwerk and CIRE offer also a relief capacity of several hundreds of beds in private houses, spread across the country. They further provide information and guidance to foreigners and asylum seekers with respect to housing, vocational training, access to the labour market, migration law, etc.

2. Flemish Minorities Centre³⁶

The Vlaamse Minderhedencentrum (VMC) is an expert and support centre for all public and private organisations working on migration and integration issues. It is subsidised and recognised by the Flemish authorities. The centre also supports the integration sector and seeks to contribute to the integration of migrants, asylum seekers recognised refugees, people in the process of family reunion, labour migrants and undocumented migrants in the Flemish society. It advises the Flemish authorities on migration issues including legislative reforms and has a very well-developed website explaining most facets of migration

³⁴ www.vvsg.be/sociaal_beleid/Vreemdelingen/Pages/spreidingsplan.aspx

³⁵ www.vluchtelingenwerk.be and www.cire.irisnet.be

³⁶ Vlaams minderhedencentrum, www.vmc.be

law. Its activities also include the development of methods and instruments to better take into account ethnic and cultural minorities and enhance their participation; the organisation of training sessions; the spreading of information about social cohesion in diverse societies and about migration law; and finally advocacy for improving the legal status of foreigners and minorities.

3. National Centre for Development Cooperation³⁷

The National Centre for Development Cooperation has a three-fold objective: questioning the national and international political stakeholders on cooperation and development issues, providing information on development and cooperation to a wide audience (awareness-raising) and funding development projects (through the 11.11.11 operation among others). Conscious that migrants are also actors of development, the CNCD also has a migration and development platform which is focused on participation and gathers several stakeholders.

4. Medimmigrant³⁸

Medimmigrant is an NGO active in the Brussels Capital-Region that sees to guarantee health care services to undocumented migrants and migrants with precarious legal status. It informs and orients individuals to appropriate care providers in the meaningful and realistic perspective of their administrative status. Two kinds of actions can be distinguished: individual assistance and structural action and advocacy (sometimes in collaboration with other public and private organisations). Medimmigrant provides information on sustainable solutions for migrants in Belgium or in their country of origin. When providing individual assistance in Belgium, Medimmigrant resorts to the official procedure for urgent medical aid (procedure which was created to give access to health care to undocumented migrants). However, if conditions for urgent medical aid are not satisfied, a Medical Fund is available to pay for adequate health care. All care providers and social workers assisting individuals in the name of Medimmigrant have subscribed to the ethical code of the organisation.

5. Red Cross³⁹

The Belgian Red Cross contributes to resolving medical or psycho-social crisis situations by education and training activities or by its presence on the field. The Red Cross fights against human isolation and marginalisation and encourage tolerance and respect for cultural diversity. It also performs structural social work when mandated by the state authorities. Since 1989, the Belgian Red Cross (which is composed of three regional NGOs) has been mandated by the Federal authorities to implement part of the asylum seekers' reception policy in Belgium. The goals of the Red Cross activities in the field of asylum and migration are fourfold. Firstly, the Red Cross gives shelter and information to asylum seekers. Secondly, the Red Cross seeks to improve the integration of asylum seekers into the Belgian society (e.g. organisation of introduction courses to the Belgian society, of language classes, or assistance to asylum seekers in their efforts to find a job). The third and the fourth goals are respectively psychological and medical assistance.

The Tracing Service of the Red Cross⁴⁰ provides assistance in tracing missing persons in the context of family reunification and the assisted voluntary return programs of IOM.

6. Caritas International⁴¹

Caritas International Belgium provides social guidance to asylum seekers, refugees and non-EU migrants. It also provides shelter to asylum seekers to a limited extent: during the admission phase of their asylum claim. It organises and provides tutoring of non-accompanied foreign minors. Finally, it participates to a voluntary return programme for asylum seekers.

³⁷ Centre National de Coopération au Développement (CNCD) / 11.11.11, www.cndc.be / www.11.be (Portaal van de Vlaamse Noord-Zuidbeweging)

³⁸ www.medimmigrant.be

³⁹ Croix Rouge de Belgique, Communauté Francophone / Rode Kruis Vlaanderen/ Belgisches Rotes Kreuz – Deutschsprachige Gemeinschaft, www.croix-rouge.be, www.rodekruis.be and www.roteskreuz.be

⁴⁰ tracing.rodekruis.be

⁴¹ www.caritas-int.be

7. L'association pour le droit des étrangers (ADDE)⁴²

This NGO, subsidised by the French-speaking regional and community authorities, seeks to promote foreigners' rights through the defence of the principles of equality, non-discrimination and fundamental rights. It gives free legal counsel via e-mail, telephone or appointments; it organises seminars and training sessions; it publishes a monthly legal newsletter and participates to NGO forums or seminars.

8. Forum Asiel en Migraties⁴³

Forum Asylum and Migration is a NGO platform lobbying for modification of the Belgian asylum and migration policy (in the sense of a more humane policy). The platform is composed of more than 120 participating Flemish and French-speaking organisations. It questions the authorities and tries to raise awareness about asylum and migration issues among the general public.

9. ORCA⁴⁴

The organisation for Undocumented Workers (Organisatie voor Clandestiene Arbeidsmigranten) seeks to better enforce the rights of undocumented workers in Belgium. Even though they work on a non-declared basis, undocumented workers do benefit from a certain level of protection at the workplace. ORCA diffuses information on this issue; it has a helpdesk that can be contacted by undocumented workers, their assistants and anyone else, for concrete advice or general information on the issue of undocumented workers. Awareness-raising and advocacy work are also part of its activities.

10. Others

The UNHCR Representative for Belgium can intervene in every phase of the procedure, with advisory competences. The Belgian Committee for Aid to Refugees (BCAR)⁴⁵ is an operational partner of the UNHCR in Belgium as it prepares proposals for UNHCR's advisory opinion to the asylum authorities, drawing on UNHCR's advisory role as specifically provided for in art 57/23 bis of the Belgian Aliens Act. Together with the UNHCR the BCAR also monitors the quality of the asylum procedure by examining, for example, the procedure in closed centres and the application of the EU Dublin Regulation by the Immigration Department.

Thanks to the international position of Brussels also a lot of different international organisations, NGOs and think-tanks are active in Belgium, a.o. IOM⁴⁶, UNHCR, Migration Policy Group⁴⁷, Centre for European Policy Studies⁴⁸, etc.

2.2.5 Social partners

Both employers' organisations and trade unions participate in the migration debate, mainly but not only with regard to labour migration. They meet one another in the National Labour Council and in the Advisory Board for the employment of foreign workers (*Adviesraad voor de tewerkstelling van buitenlandse werknemers*). The latter is consulted when regulations are modified. However, its advice is not binding. It is composed of employers' organisations, trade unions and representatives of public bodies competent in labour and migration.⁴⁹

⁴² www.adde.be

⁴³ www.f-a-m.be

⁴⁴ www.orcasite.be

⁴⁵ Belgisch Comité voor hulp aan Vluchtelingen, Comité Belge d'Aide aux Réfugiés, www.cbar-bchv.be

⁴⁶ www.belgium.iom.int

⁴⁷ www.migpolgroup.com

⁴⁸ www.ceps.eu

⁴⁹ see www.werk.be/wg/werknemers_buitenlandse_nationaliteit

2.3 Judicial context

2.3.1 Relevant laws on asylum and migration

The most relevant law regarding migration and asylum issues in Belgium is the *Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals*⁵⁰ which has been modified many times since its adoption. The latest major modification took place recently in 2006, by the Law of 15 July 2006. The law of 15 December 1980 also governs the asylum procedure and the competencies of the asylum institutions. The Royal Decree of 8 October 1981 pertaining to entry, stay, settlement and removal of foreign nationals implements the law of 15 December 1980. It has recently been modified by the Royal Decree of 27 April 2007. In addition, many directives or internal regulations have been adopted by the administration for the implementation and the interpretation of the law of 1980 and of the Royal Decree of 1981.

Foreigners' access to work is regulated by the *Law of 30 April 1999* and its *implementation decree of 9 June 1999*.

Belgium is also a signatory party to the *1951 Geneva Convention relating to the Status of Refugees* and the *1967 Additional Protocol*, as well as to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and the *1954 Convention Relating to the Status of Stateless Persons*. The United Nations *Children's Rights Convention* also exerts an effective impact on the actual judicial context.

In addition, a Set of Royal Decrees and Circular Letters complete the legislation, organising diverse crucial matters, such as transporters sanctions, detention centre's organisation, the stay of non-accompanied minors (those who do not apply for asylum) and many aspects of the implementation of the legislation.

Eventually, academic research is currently being conducted to map the impact that European legislation and case law has exerted upon the Belgian judicial context, both legally and on the judiciary.

2.3.2 Judiciary

The Aliens Litigation Council⁵¹

The Aliens Litigation Council (ALC) is an administrative court responsible for person-related decisions made in application of the 1980 Alien Act. (foreigners and asylum-seekers related decisions). On the one hand it has competences in the field of asylum (appeal against decisions of the Office of the Commissioner General on Refugees and Stateless Persons (CGRS)), on the other hand it also handles appeals against decisions of the Immigration Department.

In the field of asylum the ALC is the competent instance to confirm or reform the decisions of the CGRS. Therefore, the Council can grant or refuse international protection. In addition to this, the Council can annul the decision of the Commissioner General because of substantial irregularities or because essential elements are missing so that the Council cannot come to a decision without carrying out additional inquiries. In this latter case, the claim will be re-examined by the CGRS, which will have to make a new decision. The Council does not have the competence to carry out its own examinations. The Aliens Litigation Council is also the competent instance to annul decisions from the CGRS pertaining to EU nationals or citizens of candidate member states. Lodging an appeal will suspend the execution of the contested decision. That is why the asylum seeker cannot be removed before the Aliens Litigation Council ruled.

In the field of other (i.e. non-asylum) issues the ALC has more limited competences as it can only annul decisions due to the violation of the rules of procedure. Three types of appeals can be lodged: an action for annulment, a suspension application and an emergency procedure. These appeals can be lodged against

⁵⁰ a consolidated version of this law can be found on the website of the Immigration Department : www.dofi.fgov.be/nl/1024/frame.htm

⁵¹ Raad voor Vreemdelingenbetwisting/ Conseil du Contentieux des Etrangers, www.rvv-cce.be

following decisions of the Immigration Department: determination of the responsible state, refusal to consider the application, order to leave the territory, decisions of detention, refusal of family reunification, etc.

The Council of State⁵²

The Council of State (CoS) can intervene in the last resort (cassation) against decisions of the ALC. Appeals before the Council of State have no suspensive effect. They must be filed within 30 days of the decision of the ALC. All cassation appeals undergo an admissibility procedure. Cases are inadmissible if they are found to be without cause, to be manifestly inadmissible or to be beyond the competence or jurisdiction of the Council of State. If the Council of State annuls the appealed decision, the case is returned to the ALC for a new hearing and the ALC must observe the judgment that has been rendered. The law provides the Council of State with a screening procedure (leave to appeal) to stop dilatory annulment appeals aimed only at extending procedural time limits.

Tribunal of First Instance

In case the migrant/asylum-seeker is detained, an appeal can be lodged with the Tribunal of First Instance and with the Court of Appeal, so that immediate release of the detained foreign national could be ordered by the judicial instance. An appeal against an infringement of the subjective rights can be brought to the President of the Court of First Instance in summary proceedings. The appeals against the decisions of administrative detention are brought in the first place to the ‘Chambre du Conseil’ of the Court of First Instance and, on appeal, to the ‘Chambre des mises en accusation’ of the Court of Appeal⁵³.

Supreme Court

The Supreme Court or Court of Cassation (Hof van Cassatie/Cour de Cassation) has influenced policies pertaining to the granting of social rights to undocumented migrants and foreigners who lodged legal action to fight administrative decisions taken by the Belgian federal state.

Constitutional Court

The Constitutional Court (Grondwettelijk Hof/Cour Constitutionnelle) has frequently pronounced itself in favour of foreign nationals, in cases in which migrants (with very diverse nationalities and residence statuses) claimed treatment in accordance with the constitutional principles of non-discrimination, equal treatment and protection of goods and persons. These claims are often intertwined with other constitutionally guaranteed rights.

It is fair to say that both the Supreme Court and the Constitutional Court have had a substantial impact on the Belgian migration and asylum policies.

⁵² www.raadvst-consetat.be

⁵³ ‘Raadkamer’ and ‘Kamer van Inbeschuldigingstelling’

3. Development of Asylum and Migration Systems

In this chapter a brief historical overview⁵⁴ is given of how asylum and migration has evolved in Belgium since World War II up till the end of 2008. The relevant social, political and economic evolutions will be included. The role of the regularisation, naturalisation and the relevant European legislation is highlighted. Some indicative statistics on migration and asylum are incorporated.

Phase 1: 1946-1974 : labour migration based on quota

Following World War II, Belgian coal and industrial production was in need for foreign labour. Therefore the government pursued several bilateral agreements: with Spain (1956), Greece (1957), Morocco (1964), Turkey (1964), Tunisia (1969), Algeria (1970), and Yugoslavia (1970).⁵⁵ This labour migration was organised in a controlled manner. From then on the number of Turkish and Moroccan citizens living in Belgium grew to become the largest non-European nationality group in Belgium. This is still the case today. Meanwhile, the European Communities started their integration process. Free movement of workers between the Benelux-countries was granted as early as in 1958 (and in 1968 between the six European Community Member States). With the worsening economic situation and the rising unemployment in the late 1960s the government passed new laws with the goal to control and regulate the flows of non-EC immigrants into the country in line with economic needs. 1974 marks the end of the ‘Thirty Glorious Years’ and the government introduced an official ban on economic migration. Belgium regularised around 9.000 people at the end of this period.

Phase 2 : 1974-1983: migration stop and integration of immigrants

The borders closed between 1974 and 1983 and influxes decreased gradually. In 1983, the migration saldo was negative. Control on migration flows seemed to produce effective results. On 15 December 1980 the Aliens Act on entry, stay, settlement and removal of foreign nationals was adopted. It is the most relevant law regarding migration and asylum issues in Belgium and has since its adoption been modified several times. Integration of immigrants is put on the political agenda. For instance, in 1976, a big social and political support existed to grant voting rights on local level to foreigners.⁵⁶

Phase 3: 1983-1999 : Towards a fortress Europe?

From 1984 the immigration flows towards Belgium started again at full speed. However, the borders were still closed, Belgium was still recovering from the economic crisis and had a massive unemployment and thus there was no need for foreign (low-skilled) labour. However, meanwhile a parallel economy with its own specific needs had come into existence. This upsurge can also be explained by the fact that migration has become a global, sometimes lucrative, phenomenon with easy access to information (internet), democratisation of aerial and other means of transport. These new circumstances led to new individual and also collective immigration strategies. So it was thought that the procedure for family reunification would mainly be used for first generation migrants, however, in practice all generations used this procedure and it became one of the most important channels for legal migration.

Also the number of asylum applications reached an all time high in that period. The number of asylum seekers stood at 12.897 in 1990 and reached a peak in 1993 (26.408), 1998 (22.064) and 2000 (42.691). The fall of the Iron Curtain and the wars in the former-Yugoslavia explained a significant part of these figures. The large so-called asylum crises in Belgium were reflecting the instability in the world, but there is also a second analysis. There were large waves of unfounded applications, which tried to exploit the gaps in the asylum procedure. This was then followed by new policy measures of the government, so the number

⁵⁴ This overview is mainly based on the “Jaarverslag Migratie 2008” Centrum voor Gelijke Kansen en Racismebestrijding.

⁵⁵ These bilateral agreements still have an influence on migration to Belgium, as current bilateral conventions with former emigration countries give citizens from these countries more favourable conditions for family reunification in comparison to other non-EU countries.

⁵⁶ The right to vote at local level was finally granted to non-EU foreigners in 2004.

declined again. For example, in 2001 the LIFO (Last In, First Out) principle was applied to have a more efficient procedure, and asylum seekers did no longer receive financial benefits.

At national level people talked about Fortress Europe during this whole period. The integration of migrants was no longer a priority, to deter them to come, was. The law granting the right to vote for foreigners at local elections was eventually passed in 2004.

Phase 4 : 1999-2008 :Towards a more global approach?

In the governmental declaration of the new Verhofstadt I government formed in July 1999, the pledge was made to organise a more balanced migration policy, severe and open at the same time. Severe in the sense that the number of removals had to be driven up; while an example of the openness of the migration policy was the fact that in 1999 the government announced a plan to organise a one-shot campaign to legalise the situations of various non-nationals unlawfully residing in the country. More than 50.000 people have benefited from this policy.

There has thus been a change in mentality that is certainly not the consequence of a decreasing influx. A part of the explanation is that from 1999 on a large part of the levers of the migration policy shifted to the European level. The European Union became competent to harmonise the national policy. The idea of ‘zero migration’ shifted to the idea of a ‘global approach’. The Treaty of Amsterdam aimed at creating a common area of freedom, justice and justice, which includes a common asylum- and migration policy. The European Councils of Tampere and The Hague further developed the idea. Most Member States and also Belgium showed more openness towards an overt economic migration policy. Another part of the explanation is that it becomes more and more clear that the migration stop is nothing else than a myth.

The shift towards a more global approach is reflected in the policy plan of the new Belgian federal government in 2008 and through the fact that Annemie Turtelboom has become the first Belgian Minister ever solely responsible for Migration and Asylum policies.

Asylum and Migration Statistics

In the 1990s most of the asylum applicants came from Europe (Central-and Eastern Europe). The last few years the influx has become more and more international. Most of the asylum applicants originate from countries in conflict or with long periods of instability: e.g. Congo, Russia (Chechnya), Iraq and Serbia are the four most common nationalities. Amongst the most recognised refugees we find Russians (Chechnya), Rwandese, Congolese, Serbs, Iranians, Burundese.

Table 1: countries of origin of asylum applications in 2007 and 2008

Asylum applications 2007		Asylum applications 2008	
Russia	1.436	Russia	1.620
Serbia-Montenegro	1.219	Iraq	1.070
Iraq	825	Afghanistan	879
Congo (DRC)	716	Guinee	661
Afghanistan	696	Iran	614
Guinee	526	DR Congo	579
Iran	411	Serbia	572
Slovakia	364	Kosovo	478
Armenia	339	Armenia	461
Others	1.983	Others	4.951
Total	11.115	Total	12.252

Source : Immigration Department

Out of the 97.888 immigrations (excl. Belgians) into Belgium in 2005, more than 50% was of EU-origin (the neighbouring countries are at the top). Regarding the non-EU immigration, it is mainly the immigration out of Morocco that is on the top, accounting for 26% of the non-EU immigration. It is important to bear in mind that Belgium has a bilateral agreement with Morocco since 1964 and thus grants Moroccan nationals more favourable conditions for family reunification. The Congolese (DRC) immigration is the third largest group of immigration to Belgium, and the colonial past of Belgium is a partial explanation for this.

Africa is the continent that comes second in the statistics of legal immigration. However, it has to be noted that a lot of Africans apply for asylum and thus this is not reflected in the migration statistics. There is also a spectacular rise in the Asian immigration, with large contingents of migrants out of India, Japan, Thailand, Pakistan and the Philippines.

Table 2 Number of immigrants in Belgium between 1997 and 2007 (excl. asylum seekers)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Total	74.578	83.812	91.624	89.388	110.410	113.857	112.060	117.236	132.810	137.699	146.483
Belgians	21.516	24.146	24.556	26.479	28.182	30.489	33.314	33.276	34.922	35.827	36.483
Foreigners	53.062	59.666	67.068	62.909	82.228	83.368	78.746	83.960	97.888	101.872	110.000
Europe	33.508	33.792	39.539	36.806	40.157	40.850	40.839	45.220	50.863	56.263	65.316
EU (27MS)	31.872	32.057	32.991	34.811	37.498	37.944	37.976	42.350	47.917	53.045	61.820
Non-EU	1.636	1.735	6.548	1.995	2.659	2.906	2.863	2.870	2.946	3.218	3.496
Africa	8.190	8.835	9.951	10.794	15.349	17.320	15.854	15.447	14.822	15.339	16.693
Morocco	4.356	4.811	5.464	6.211	7.867	9.319	9.159	8.768	7.892	8.319	8.628
Congo (RDC)	905	963	1.081	1.065	2.222	1.955	1.451	1.428	1.355	1.371	1.542
Asia	5.857	7.067	6.922	8.094	9.864	12.012	11.514	11.206	11.352	11.428	11.783
North-America	3.685	3.324	3.378	3.392	3.471	3.367	3.147	3.227	3.115	3.184	3.122
Latin-America	1.390	1.442	1.764	1.848	2.735	2.603	2.312	2.391	2.706	3.092	3.054
Oceania	260	244	259	272	285	243	261	237	243	216	268
Stateless and unknown citizenship	172	4.962	5.255	1.703	10.367	6.973	4.819	6.232	14.787	12.350	9.764

Source : Population Register/Statistics Belgium

Types of immigration

As mentioned, the ban on labour immigration in 1974 did not stop the immigration, but simply changed it, especially with regard to the types of immigration and national origins of the migrants. Next to the legal stay of foreign workers who have come to Belgium to work for an employer established in Belgium (highly-skilled migrants or migrants for whom the employer applied for a type B work permit), other paths have been used by migrants since 1974 and have contributed to an increase in both stocks and fluxes.

One important type of immigration involves that of nationals from member states of the European Union. The free movement of European nationals account for a significant share of the increasing number of foreigners in Belgium (see table 2).

The most privileged path of immigration of non-EU citizens into Belgium is that of family reunification. Every year, several thousand of foreign nationals receive authorisation to settle in Belgium with their spouse or their parents who have already been living in Belgium. To give an indication: in 2006 almost half of all long term visas issued are for the purpose of family reunification.⁵⁷

Foreign students are another important source of immigration into Belgium. Each year Belgium gives young foreigners the chance to come and study at public universities and technical schools. The candidates receive a residence permit allowing them to live in the country for the period of their studies. In 2006 they accounted for 25% of all long term visas issued⁵⁸.

Labour migration

Although there was an official migration stop, certain labour migration still remains possible, but they will have to apply for a work permit (see 4.1.4). This channel of migration is of lesser importance as the long term visas issued for the purpose of paid employment was around 10%; and for self-employment around 5% of all long term visas issued in 2006⁵⁹.

Regularisation mechanism

As mentioned, the figures of “undocumented foreign nationals” kept on rising in the 1990s and it became a political item. The increasing number of illegal immigrants at that time in Belgium, was due to several factors : the increasing number of asylum applications and the considerable delay in their treatment, the impossibility to effectively remove the refused asylum applicants, the massive influx of certain specific groups of population and the lack of co-ordination at international level. In 1999 the government announced a plan to organise a one-shot campaign to legalise the individual situations of various non-nationals unlawfully residing in the country. More than 50.000 people have benefited from this policy.

Next to this one-shot regularisation, the Aliens Act sets out a procedure for granting a residence permit to persons who, due to “exceptional circumstances”, cannot return to their country of origin. The exceptional circumstances are examined on a case-by-case basis. Situations that may be considered to be “exceptional circumstances” include the following : (1) an unreasonably long asylum procedure (4 years for single persons, 3 years for families with minor children; (2) a pressing humanitarian situation (e.g. a handicap; parents having a child who holds the Belgian nationality ; and (3) serious medical conditions and a lack of proper medical care in the country of origin. Up till 1 June 2007 this was according to article 9§3 of the Aliens Act. Since then it is article 9bis for humanitarian reasons and article 9ter for medical cases. When a positive decision is taken by the Immigration Department, the foreign national will in most cases receive a foreigner card type A of limited duration, which will be prolonged if certain conditions are met. In exceptional cases a foreigner card type B of unlimited duration will be delivered.

Tabel 3 : regularisations based on the Aliens Act

2005	11.630
2006	10.207
2007	11.335
2008	8.369

Source : Immigration Department

⁵⁷ Centrum voor Gelijkheid van Kansen en Racismebestrijding , Migraties en migratiepopulaties in België, Statistisch en Demografisch verslag 2007, pp.57-58.

⁵⁸ Ibidem

⁵⁹ ibidem

Naturalisation

The latest change in the Belgian citizenship law took place in 2000 and it is fair to say that Belgium has one of the most liberal laws on nationality in the European Union. Since 1985 more than 600.000 foreign nationals have acquired the Belgian nationality. Between May 2000, the time that the new law came into force, and January 2001, 60.000 applications were submitted. Belgian nationality poses one interesting statistical challenge: as more and more immigrants and descendants of immigrants today hold the Belgian nationality, they "disappear" from the official immigration statistics, which are primarily based on a distinction between nationalities and not on place of birth.

The gradual loosening of the conditions for acquiring Belgian citizenship has had a large impact. The nationality law of 2000 presented three main novelties: (1) the acquisition of Belgian nationality by a simple declaration is now open for foreigners who have legally resided in Belgium for seven years with an unrestricted permit; (2) Access to naturalisation is made easier. Three years of legal residence for foreigners and two years for refugees are required to apply for naturalisation and the procedure is free; (3) the notion of willingness to integrate has been suppressed as a basic condition to be granted naturalisation.⁶⁰

EU legislation

The EU-legislation has had a growing importance in the Belgian immigration and asylum policy, as important changes in the Aliens Act have mainly been the consequence of the transposition of EU-legislation. Amongst the most important directives:

- 2001/51/EC (Schengen);
- 2003/9/EC (Reception Act);
- 2003/109/EC (EU long-term resident status)
- 2004/38/EC (right of EU-citizens and their family members to move and reside freely within the territory of the Member States)
- 2004/81/EC (victims of human trafficking)
- 2004/83/EC (Qualification Directive)
- 2004/114/EC (third country nationals, students, volunteers)
- 2005/71/EC (Third country nationals, scientific research)
- 2005/85/EC (Procedures on asylum)

⁶⁰ However, in its governmental agreement of 31 December 2008, the current Belgian federal government has expressed its intention to re-introduce an integration condition to the naturalisation procedure as well as to grant naturalisation after five years of legal residence instead of three years.

4. Organisation of Policy

In this chapter we provide a concise description of how the asylum and migration policies in Belgium is organised as well as how it is linked to other policy areas. Where it is relevant a special attention will be drawn to the influence of EU-legislation and –institutions on these policies. In each of the sub-sections of this chapter a asylum and migration are addressed separately in order to improve the comparability.

4.1 Asylum and Migration

4.1.1 Entry procedures

Every third country national has to pass an entry phase when he/she migrates to another country, whatever the reason. This could be to seek refuge, to visit as a tourist, to work, to receive medical treatment, or for family reunification. This section will elaborate on the actors and legislation involved.

The rights of foreign nationals to enter, reside in and settle in Belgium are governed by the Law of 15 December 1980 and the Royal Decree of 8 October 1981 on entry, residence, settlement and removal of foreign nationals, and by numerous amendments to both the Law and the Royal Decree.

Belgium's rules on entry and residence of foreign nationals take into account its international commitments within the framework of Benelux, the Schengen Agreement, the European Union and the United Nations. International agreements play an important role when it comes to entry procedure. According to the Schengen Agreement and the Schengen Implementation Agreement, border controls only take place at the external borders of the Schengen area. For Belgium this means that six seaports and six airports as well as the Eurostar station in Brussels qualify as an external border.

It is the Minister of Home Affairs⁶¹ who is responsible for the implementation of this legislation. The authorised agent of the Minister in dealing with the policy on foreign nationals is the Immigration Department (a.k.a. Aliens Office). At the level of protection of the external borders, there is close cooperation with the Federal Police (Maritime Police, Air Police Service and Railway Police) and the Ministry of Foreign Affairs. These two departments have been mandated by the Minister of Home Affairs to put into practice a part of the external borders policy (physical control of the external borders and issuing of visas). The visa policy and border controls will be further explained in 4.1.1.2 Migration.

Upon entry into Belgium all foreign nationals (except EU citizens and their family members) whishing to come to Belgium (whether or not they require a visa), must meet the following conditions prior to their entry to Belgium and their stay in the country:

- be in possession of identity or travel documents (passport) that remain valid for at least three months subsequent to their planned period of stay in Belgium.
- be able to produce documents justifying the purpose and conditions of the planned stay
- have adequate means of subsistence, both for the duration of the planned stay and for the return trip
- not have been flagged for non-admission to Belgium (i.e. known criminals)
- not to be considered a threat to public order, national security or the international relations of Belgium or the other Schengen countries.

⁶¹ Minister van Binnenlandse Zaken/Ministre de l'Intérieur

4.1.1.1 Asylum

All people arriving in Belgium without the documents needed to enter the Belgian territory (passport, visa or laissez-passer) will in principle be refused at the border and must be notified of a decision to return. However, in such cases, the person may submit an asylum application to the border police, which will carry out an interrogation to clarify his/her reasons for entering the country. In this case return will be suspended and the case will be examined without triggering a right to enter Belgian territory. In principle the person will be detained in a detention centre for the duration of the asylum procedure (up to a maximum of five months if certain conditions are fulfilled). If the asylum claim is rejected, the asylum-seeker may be removed from Belgium through the responsibility of the carrier (Chicago Convention).

If a person arrives in Belgium with the documents needed to enter the territory, and that person is allowed by the border police to enter the Belgian territory, an application for asylum should be made within 8 working days of arrival on the territory. Asylum-seekers are then accommodated in federal reception centres (up to a maximum of 4 months, after which they are re-directed to individual/single-family reception facilities) and are entitled to material aid during the period needed to process their application (in principle this should be of a maximum duration of 12 months). (See also 4.1.2. Admission conditions).

Belgium does not have a legal procedure in place for persons to make an asylum claim at diplomatic missions.

Belgium does not currently have an annual quota for resettlement, although this could change in the very near future. In the past, Belgium has engaged in ad-hoc resettlement of refugees, upon request by UNHCR and approval by the federal cabinet. Applications for resettlement were processed individually. In 1996, for example, a group of refugees were resettled from Zepa and Sebrenica (former-Yugoslavia).

4.1.1.2 Migration

Visa policy

The first step in the general control of the borders embraces the control of entry to the territory through the issuance of visas by the Belgian embassies and consulates and the Visa Department of the Immigration Department. The consulates are charged to quickly issue bona fide travellers with a visa.

Since the coming into force of the Schengen Agreement the signatory partners of this Agreement do no longer issue national short term visa, but uniform Schengen visa. As a general rule, Schengen visa are valid for the territory of all the Schengen states. Once such a visa has been obtained, a person thus has the right to enter and stay for a short period (maximum of 90 days in one half-year period) in the territory of the Schengen countries. In exceptional circumstances it is still possible to issue a national visa with limited territorial validity, on humanitarian grounds, on national interests or international obligations grounds.

Whether one requires a visa to enter the Belgian/Schengen territory depends on the nationality of the foreign national. These requirements are stipulated in the Schengen Implementation Agreement and more specifically in the Common Consular Instructions. Several exceptions apply to the visa obligation: e.g. certain holders of diplomatic and consular passports, civil aviation personnel, civil naval personnel, refugees and stateless persons.⁶²

Foreign nationals subject to the visa requirement must contact the diplomatic or consular authorities competent for their place of residence or the place of residence abroad. A visa application may also be made to an Embassy or a Consulate in a third country in which the applicant is only passing through, although in such cases, the application will need to be submitted for a prior decision by the Immigration Department (ID).

⁶² More details on : www.dofi.fgov.be/RG/BORDER/NL/Start_NL.htm

If the respective diplomatic or consular authorities have doubts as to the bona fide character of a visa application, they give that specific dossier a negative assessment, following which it will be electronically relayed to the ID for a decision. The decision of the ID is then also in turn electronically relayed to the diplomatic representation that needs to call the applicant to notify the decision. The decision can also be consulted on-line on the website of the ID. The necessary VISION⁶³ consultations are effectuated in collaboration with the Schengen partners.

In recent years, signals that could indicate an increase in the improper use of the migration procedures have multiplied in Belgium. This has become evident at the external borders (diplomatic posts): e.g. bogus students. A good collaboration between the ID and the Federal Public Service of Foreign Affairs is at that level a necessity. The ID dispatches each year several specialised immigration officials to important consular posts in order to provide support. Belgium has several projects: formation of a shared INAD database in Kinshasa (DR Congo); the participation in the BioDev project (biometric visa are issued at Belgian posts in Kinshasa, Lubumbashi, Bamako, Kigali, Bujumbura and Washington), and the setting –up of the VISANET informatics system in which each visa application is entered.

Table 1 : overview of visa applications and visas issued 2005-2008 (all categories)

	visa applications	visas issued
2005	203.122	160.748
2006	221.789	179.910
2007	255.752	210.919
2008	257.495	211.624

Source : FPS Foreign Affairs

Types of visa

There are different visa types for short stays. As elsewhere in the Schengen area, following visa types exist in Belgium:

- **Type A** : Airport transit visa. This visa requirement represents an exception to the general rule allowing individuals to remain without a visa within the international transit area. This document authorises transit solely through the international area of the airport.
- **Type B** : Transit visa. This document authorises transit through several countries starting from a third State and with a third State as destination. The transit period must not exceed five days.
- **Type C** : Short term visa or travel visa, visa for several entries: a visa allowing foreign nationals to enter the territory of the Schengen States for an uninterrupted maximum stay of 90 days or for one or more successive visits over a period of six months, whit the total period not exceeding 90 days. Validity of type C visas issued by the Belgian diplomatic and consular authorities may not exceed one year, i.e. the timeframe within which the authorised visit may be made. The visa may be issued for one or more entries.
- **Type A, B or C collective visa:** It consists of a transit visa for a visit of no more than 30 days that may be affixed to a collective passport and is issued to foreign nationals travelling as a group. The group must have been in existence for a certain time and be organised socially and institutionally; it should be composed of at least 5 up to 50 persons and it must include one individual in charge of the documents. The group must enter the Schengen territory, remain there and leave as a group.

⁶³ Vision is a network between the Schengen countries that enables them to consult each other in a fast and efficient way on certain visa applications from more “sensible” countries.

- **Type D**: National visa for a stay exceeding 90 days that is valid (1) for the territory of the Schengen State that issued it; (2) for transit through the territory of other Schengen States for the purpose of reaching the State that issued the visa. This type of visa can be used for family reunification, studies, employment, etc.
- **Type D + C** : With this type of visa, on arrival in the destination Schengen State, the foreign national in possession of a type D visa for that country is allowed to move freely in the Schengen area for the first three months following his/her arrival, pending the issue of his/her definitive residence document.
- **Visa with limited territorial validity**
Normally a Schengen visa is valid for travel to all Schengen countries. However, in some special cases, Schengen visa may be issued with limited territorial validity. Such persons are authorised to transit or travel only to authorised countries and leave only from authorised countries.
Such visa may be issued on humanitarian grounds or because of national interest and international obligations grounds where it is necessary to issue a Schengen visa to a person who does not comply with the requirements of the regular Schengen visa.
- **Visa declaration**
In case a travel document is not valid for one or more Schengen states, or the passport is issued by a State or authority not recognised by Schengen states, a visa in the form of a visa declaration (separate paper) can be issued.
- **Laissez-passer**
In case a foreigner has a well-founded reason to come to Belgium but he/she is in the impossibility to provide a valid travel document, (e.g. loss or theft of passport) and in the normal circumstances he/she would be able to obtain a visa, the Belgian diplomatic or consular authorities can provide a laissez-passer. This document is only valid for the trip to Belgium.

Border control

As mentioned before, Belgium has 13 external borders: six airports, six seaports, and one international train station (Eurostar-station Brussels).⁶⁴

Belgium has no Border Guard as such. The border control is carried out by police officers who are members of the Federal Police, which is under the same general policing authority as the Maritime, Airways and Railway Police.

In the struggle to combat illegal immigration, the Federal Police carries out external border checks, this in close cooperation with the Immigration Department. With exception of the motorways, the railway system and the port areas (seaports and airports), illegal immigration and illegal residence on the territory is competency of the Local Police.

The Border Control Department within the Immigration Department organises and controls the set-up of border controls in close cooperation with the Federal Police. In this matter, Schengen regulations meticulously apply. Separate border control plans are drawn up with respect to the airports. The infrastructure and the organisation of the control are assessed by the External Borders Commission, which comprises all the partners involved (Ministry of Home Affairs, Mobility, Customs, the Federal Regions, Federal Police, etc.).

⁶⁴ The railway station Brussels-Midi is a Schengen external border insofar as the Eurostar line guarantees a direct connection between St-Pancras station (London, UK) and Brussels-Midi.

4.1.2 Admission conditions

4.1.2.1 Asylum

Refugee status is granted on the basis of the 1951 Geneva Convention. The asylum procedure⁶⁵ and the competencies of asylum institutions are governed by the Aliens Act of 15 December 1980 (Law regarding the entry, residence, settlement and removal of foreign nationals). The Aliens Act also includes provisions for subsidiary protection and for residence permits granted for medical or humanitarian reasons.

Institutions involved in the asylum procedure are the following:

- the Immigration Department (ID, a.k.a. Aliens Office), Ministry of Home Affairs, receives asylum claims inside the territory
- the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) is the independent administrative body with the competence to grant or refuse claims for refugee status or subsidiary protection
- the Aliens Litigation Council (ALC) hears appeals of decisions taken by the Immigration Department or the CGRS
- the Council of State hears appeals by cassation of decisions of the Aliens Litigation Council

There are asylum application possibilities at the border, inside the territory, as well as in detention centres and in prisons. All asylum applications inside the territory have to be lodged with the Immigration Department within eight days of arrival on the territory. The ID will first of all register the asylum application, i.e. constitute a file which will be completed by the asylum instances as the procedure progresses. The asylum-seeker is required to complete a form indicating the reasons of the claim; provide relevant information such as identity documents and date of arrival; have his photograph and fingerprints taken; undergo a chest x-ray to detect tuberculosis; and appear at an interview with the immigration officials. The ID will determine whether Belgium is responsible for processing an asylum claim under the Dublin-II Regulation.

Children of asylum-seekers may have their asylum claims included with those of their parents. Persons over the age of 18 must file their own asylum claim. Unaccompanied minors have the right to apply for asylum themselves, but this can also be done by a guardian appointed by the Guardianship Office. The asylum claim will be treated according to the same criteria as for adults, however some specific practical treatment (e.g. heard by specialised case workers) will apply.

If Belgium is responsible, the asylum-seekers' complete file will be forwarded to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS). The CGRS is the central body responsible for the adjudication of asylum claims, and first examines claims within the framework of the Geneva Convention and then considers grounds for subsidiary protection. So Belgium has put in place a single asylum procedure. The asylum-seeker will be heard by a specialised case-worker. The CGRS grants the Convention refugee status if it is proven that applicants have a well-founded reason for fearing persecution, and/or the status of subsidiary protection if they do not meet the criteria of the Convention but run a real risk of serious harm if returned to their country of origin. The CGRS may also exclude asylum-seekers from the refugee status (according to art.1F of the Geneva Convention) and subsidiary protection status.

The Aliens Litigation Council (ALC) has full competence to confirm, annul or change a decision taken by the CGRS. Appeals must be made within 15 days of a CGRS decision; appeals automatically suspend implementation of the decision. If the ALC decides to annul a decision of the CGRS for reasons of substantial irregularities which cannot be repaired by the Council or because essential elements are lacking, which prevents the Council from reaching a decision without additional research, the case is returned to the CGRS for a new decision. The ALC does not dispose of a power of investigation of its own.

⁶⁵ CIRÉ. Guide on the asylum procedure in Belgium. Edition 2008. Can be found on following website : www.cireirisnet.be/ressources/guides/guide-asile-en.pdf

The *Minister of Immigration and Asylum Policy* may appeal a CGRS decision to grant Convention refugee status or subsidiary protection within 15 days of the decision. This appeal is made before the ALC.

Decisions of the Aliens Litigation Council may only be appealed by cassation before the *Council of State*. Appeals before the Council of State never suspend administrative decisions. They must be filed within 30 days of the decision of the ALC. All cassation appeals undergo an admissibility procedure. Cases are inadmissible if they are found to be without cause, to be manifestly inadmissible or to be beyond the competence or jurisdiction of the Council of State. If the Council of State annuls the appealed decision, the case is returned to the ALC for a new hearing and the ALC must observe the judgment that has been rendered. The law provides the Council of State with a screening procedure (leave to appeal) to stop dilatory annulment appeals aimed only at extending procedural time limits.

Recognised refugees are entitled to the following benefits:

- permanent residence in the form of a foreigner card type B
- the right to work and to obtain social security benefits equivalent to those available to Belgian citizens
- a travel document in the form of a “blue passport”
- family reunification for spouses and minor children (in the case of unaccompanied minors recognised as refugees, the mother and father are eligible for family reunification)
- a proof of refugee status certificate issued by the CGRS
- the possibility of naturalisation, after only two years of residence in Belgium

Beneficiaries of subsidiary protection are entitled to the following:

- a residence permit in the form of a foreigner card type A, valid for one year, which can be renewed yearly by the municipality upon instruction from the Immigration Department..
- a permanent residence permit, after five years from the date of the asylum application
- the right to travel abroad; if the person does not have a passport, the Ministry of Foreign Affairs will issue an “passport for foreign nationals” when he/she becomes eligible for a permanent residence permit
- other benefits, such as the right to work and to obtain social assistance, and the possibility for family reunification (social rights identical to those available to recognised refugees).

During the procedure the asylum-seeker is entitled to stay in one of the reception centres under the control of Fedasil. In-kind support is provided to the asylum-seeker for the duration of the procedure. However, asylum-seekers can decide to live at another, private address, but in that case it will be at his/her expenses.

If the asylum application has been definitively rejected, the asylum-seeker is expected to comply with the order to leave the territory received by the Immigration Department within the timeframe mentioned in the decision (in general 30 days). He/she should do this at his/her own initiative, although he/she can claim assistance from the International Organisation for Migration (IOM). (see also 4.1.5 Return).

4.1.2.2 Migration

A distinction can be made between third-country nationals coming for a short stay (less than 3 months) and those coming for a longer stay (more than 3 months). There are no integration measures as prerequisite for admission to the Belgian territory.

Short stay (up to three months)

Foreigners can stay up to three months in Belgium if they have applied for a short stay visa (type C). Certain foreigners are not submitted to visa obligations. Short stay visas encompass a.o. following categories: tourists, businessmen, family visit, medical treatment, etc.

Tourists, businessmen, family visit, sporting or cultural event, journalists

There are a number of basic documents that have to be provided when applying for a visa. Other additional documents may be required by the Belgian diplomatic or consular representation, taking into account the circumstances of the application or the specific context of the applicant's country of origin.

Following documents need to be presented:

- a valid travel document
- a proof of solvency, either of the applicant's own financial means (e.g. hotel reservation, cash, cheques and credit cards accepted in Belgium, an employment contract, bank statements, proof of enrolment on the trade register and/or of professional activity); or the guarantor's financial means (e.g. pledge of financial support from a guarantor of Belgian nationality or a legal foreign resident in Belgium). This document has to be duly certified by the relevant Belgian municipality. An official document, proof of the guarantor's solvency and copies of his/her identity or residence permit are to be attached.
- a proof of subscribing to a travel insurance
- a proof of transport arrangements
- documents justifying the purpose and conditions of the planned stay
 - In case of a *family visit*: documented proof of relationship with the person to be visited.
 - In case of a *business visit*: visa applications are often submitted by business operators and/or representatives of foreign companies invited by companies operating in Belgium to visit them in Belgium. These business visits generally come under the general regulations; however documents applying more specifically to the business sector may also be provided to substantiate the purpose of the trip and to prove the existence of sufficient means of support. The letter prepared by the Belgian company or the Belgium-based company should state the purpose of the visit and the duration, along with the type of business relations between the host company and the foreign business operator or the operator's company. The business operator must also provide evidence that the application is justified.

In certain cases a businessman can apply for a multiple entry visa, with duration of 6 months, a year or even 3 years. This means that a visa can be used multiple times in the course of a year, without the total of the subsequent stays in the Schengen area being more than 90 days.

Since 15 September 2008 a new service was established within the Immigration Department, i.e. the Service for Economic Migration. This initiative was based on a mutual agreement between the Minister of Migration and Asylum Policy and the Minister of Foreign Affairs. The aim is to offer economic migrants a faster visa application procedure and to become an information and contact point for all actors involved.

- In case of a non-related person: a non-transferable invitation explaining the links between the host and the person invited, and the purpose of the visit.
- In case of a minor: a permission to travel issued by both parents of the underage applicant

Within three days of arrival the foreigner needs to register his stay at the municipality of his place of residence (exceptions are foreigners staying in hotels, youth hostels, etc). The foreigner will receive a “declaration of arrival” valid for a maximum of three months. In practice very few foreigners comply with this obligation.

Medical reasons⁶⁶

Foreigners whishing to stay in Belgium for medical treatment should apply for a ‘medical visa’. The visa application will be sent to the Immigration Department, which shall make a decision within three months. The type C visa has the same appearance as a tourist visa. The additional mention “for medical reasons” may be written on the visa.

Following documents are required for the application:

- a medical certificate stating that the treatment is not possible in the home country
- an appointment confirmation with a doctor in Belgium
- evidence that the applicant can pay for the stay and the medical care in Belgium
- a copy of the plane ticket (return flight)

The visa will be of limited duration or for a maximum of three months. If the treatment has not been completed, the person may try to obtain a postponement of departure or an extension of his/her stay for medical reasons.

Persons who are already in Belgium can apply to the Immigration Department for ‘a short delay of departure’ for reasons of short illness. In case of a serious or long illness, one can apply to the Immigration Department for ‘an authorisation of residence’.

When a foreigner cannot leave Belgium for reasons of a short illness or pregnancy, one can apply for a temporary extension of the residence permit. This application can be made to the Immigration Department directly or to the municipality which will transmit this to the Immigration Department. The following documents need to be presented: a copy of the passport and a copy of the declaration of arrival, a copy of the residence permit in another Schengen country and a plane ticket. One also should add a medical certificate as proof that the person concerned cannot travel or that his/her requisite treatment is not available in his/her country of origin or in the country where he/she previously has stayed. One should also prove that the previous medical costs have been paid and that the new medical costs will be paid by a health insurance or that a payment obligation has been signed.

The Aliens Act (art.9 ter) provides also a specific procedure that can lead to an authorisation for residence for more than three months. This will be further explained in this section (under long stay- medical reasons).

Internship

For an internship with a duration of less than three months, the intern will nonetheless have to provide documents proving the purpose of the trip: this is a document from the institution or the company where the placement will take place, giving clear indication on the aim and the duration of the placement, whether or not the intern will be paid and whether or not any other costs will be borne by the institution or company.

In some cases, individuals on an internship are required to have a work permit. The regional employment services should be contacted. For internships lasting longer than three months an application for a work permit B has to be made (see also 4.1.4 access to labour market).

⁶⁶ See also www.medimmigrant.be/mm.publicaties.nl.htm

Long stay (longer than 3 months)

A distinction can be made between foreigners that will in principle have a long stay of limited duration (such as employees, self-employed, au pairs, students and internships) and those that in principle will have a long stay of unlimited duration (family reunification, victims of trafficking in human beings, refugees⁶⁷, most of the regularised persons⁶⁸).

Employees and self-employed

Third-country nationals who wish to come to Belgium for the purpose of employment will need two kinds of permits: on the one hand a residence permit and on the other hand a work permit (employees) or professional card (self-employed). A work permit is not valid without a residence permit/authorisation to stay in Belgium (see also 4.1.4 access to labour market).

Au pair

An au pair is defined as a young person between 18 and 26 years old who lives temporarily in a host family. The au pair is provided with accommodation and meals in return for carrying out simple household tasks. The aim of the arrangement is for the au pair to improve their language skills and discover life in Belgium through involvement in the life of the host family. The Belgian host family must request an employer permit (autorisation d'occupation/arbeidsvergunning) and a type B work permit (permis de travail B/arbeidskaart B) for the au pair. (see also 4.1.4 Access to Labour Market)

The issuance of a work permit B depends on the following conditions:

- the compliance with the conditions by the au pair and the host family (see below)
- the host family has no valid work permit for another au pair
- the validity of the work permit and of the employer permit regarding the au pair may not exceed 1 year
- the work permit and the employer permit regarding the au pair can only be renewed once, in so far as the placement period does not exceed 1 year
- a change of host family is only possible once, in so far as the total duration of the placement of the au pair does not exceed 1 year and all other conditions are met

For an au pair the following conditions apply: the au pair

- must be between 18 and 26 years, with an additional condition that the au pair receives a work permit before turning 26;
- is not allowed to take any other work in Belgium than that of au pair;
- must have finished secondary school. In case the au pair applies before obtaining a secondary education diploma, a certificate by the school, stating that the au pair is currently finishing the last year of secondary school is sufficient;
- must have a basic knowledge of the language of the guest family or commit oneself to follow an intensive language course immediately after arrival in Belgium;
- must attend a language course regularly. The school attended by the au pair must provide a 3-month certificate, proving that the au pair has completed the course;
- cannot have previously obtained a work permit of any kind in Belgium.

For the guest family the following conditions apply: the guest family must

- assure that the au pair has a well accommodated, private bedroom;
- provide insurance for the au pair throughout the entire duration of the stay. Insurance must cover illness, hospitalisation and accidents;
- provide one day off per week minimum, and one full week-end off per month;
- provide pocket money of at least 450€ per month. Pocket money will be put in a bank account specifically for the au pair;
- at least have one child under the age of 13.

⁶⁷ See 4.1.2.1 admission conditions, asylum

⁶⁸ See 3. Development of Asylum and Migration systems; regularisation mechanism

Students

Besides the basic entry conditions⁶⁹ following documents have to be provided by higher education students:

- an admission or enrolment certificate for one of the recognised higher education establishments, grant-maintained or organised by the authority, or an application for an equivalence certificate for a diploma or certificate conferred abroad (only required for higher education establishments in the French Community). The entry certificate or enrolment certificate must cover a full-time course of study (fewer hours are acceptable if the interested party can prove that this course of study will represent his/her main activity and will be used to prepare or complement another full-time course of study);
- or an enrolment certificate concerning examinations for entering university when these examinations represent the condition for admission to the course in question;
- or an entry or enrolment certificate for a teaching establishment appearing on the list of approved establishments updated each academic year by the Immigration Department;
- a pledge of financial support. If the guarantor resides in Belgium, this document may be obtained from his/her municipal authorities in Belgium. If the guarantor does not reside in Belgium, he/she may request the document from the embassy or consulate responsible for his/her country of residence.

A special procedure applies for primary and secondary school education

- the applicant must have family ties (up to the 3rd degree, i.e. grandparents, brother, sister, uncle, aunt, cousin) with a person who is a legal resident in Belgium;
- the interested party must be unable to pursue the same type of education in his/her own country or in a neighbouring country.

Family reunification/formation

Family reunification means the entry into and residence in the Member State by family members of a third-country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after (family formation) the resident's entry.

Family members of third-country nationals legally residing in Belgium entitled to benefit from reunification are the spouse or registered partner, provided both spouses or partners are over 21 years of age (this is reduced to 18 year if the partnership already existed before arrival in Belgium) and their children upon the condition that they are less than 18 years old and single. Two conditions have to be fulfilled when submitting a visa application: the sponsor must have a medical insurance that covers himself and his family in Belgium and he must have sufficient accommodation for the entire family. With respect to the latter, accommodation is regarded as sufficient if it complies with the requirement concerning security and health applied in the concerning Region.⁷⁰ The right of family reunification is not limited to third-country nationals having an unlimited right to stay in Belgium, but also benefits those admitted for a limited period.

However, if the sponsor has limited right to stay (e.g. students), he must have stable, regular and sufficient financial resources. Except in the special case of a disabled child, financial resources are not required for family reunification with a foreigner with unlimited right to stay. Persons not meeting the above criteria do not have a right to family reunification, but may apply nevertheless (art 9 Aliens Act). Allowing or refusing their stay in Belgium is at the discretion of the relevant authorities.

For recognised refugees, conditions of accommodation and medical insurance do not apply if on the one hand the family ties already existed before entry into Belgium and on the other hand the demand for family reunification was made within the year after the granting of the refugee status (the latter does not apply to non-accompanied minors as a consequence of a judgement of the Constitutional Court)..

⁶⁹ see 4.1.1 entry procedures

⁷⁰ Implementation of this legal provision and verification of accommodation compliance with regional regulations has proved to be extremely complicated, partly because such procedure involves tight cooperation between different levels of power: local authorities, regional authorities, federal authorities. Therefore, the condition of sufficient housing has been suspended by Circular Letter of the Immigration Department, in expectance of a modification of the legislation.

More favourable conditions can apply for third-country workers, whose country of origin has a bilateral agreement with Belgium. E.g. workers of Turkish nationality can have a family reunification with ascending family members; or with a spouse younger than 18.

For family reunification of third-country nationals with EU-citizens (art. 40bis) and with Belgians (art. 40ter) more favourable conditions apply based on Directive 2004/38 (no minimum age for partners or spouses, no accommodation condition, possibility of family reunification for ascendants and children older than 21).

Victims of trafficking in human beings⁷¹

In line with the EU Directive 2004/81/EC, Belgium can issue a residence permit to third-country nationals who are victims of trafficking in human beings or who have been subject of an action to facilitate illegal immigration. In order to benefit from the system, victims have to meet three conditions:

- breaking off contact with the suspected offenders;
- obligatory guidance by specialised and approved reception centres for victims of trafficking in human beings
- cooperation with the judicial authorities by making a statement or by instituting legal proceedings against the offenders.

The type of residence permit obtained by the victim depends on stage of progress of the legal proceedings:

- 1) During a reflection period of 45 days, the victim can decide to either file a complaint, make a statement or return to the country of origin. This first phase is materialised through the issuance of an order to leave the territory which is valid for 45 days.
- 2) The victim then receives a certificate of Immatriculation type A valid for 3 months if the following conditions are met: a complaint has been filed, the person is willing to cooperate, the person can still be considered as a victim of trafficking in human beings, the person concerned has broken off all contacts with the suspected offenders. A prolongation of three months is possible.
- 3) The victim can receive a foreigner card type A valid for 6 months on the conditions that: the legal procedure is still pending; the person is cooperating to the legal procedure; the person has broken off all contacts with the suspected offenders; and the person cannot be considered as a potential threat to public order or to national security.
- 4) The competent minister can grant the victim an foreigner card type B for an unlimited duration on the following conditions : the complaints or the statements have led to a conviction; the Public Prosecutor or the Labour Auditor's charges include elements linked to the traffic of human beings or a serious form of smuggling in human beings; and the victim either has submitted an identity document or has legitimately proved the impossibility to obtain this document in Belgium.

It is fair to say that since long Belgium has done pioneering work in the struggle against human smuggling and human trafficking.

Medical reasons

The foreigner who suffers from an illness that constitutes a real risk to his life or his physical integrity or for which there is a real risk of inhuman or degrading treatment should there not be an adequate treatment in his country of origin or his country of residence can apply for an authorisation of residence. This is a procedure according to art.9 ter of the Aliens Act, also known as “regularisation for medical reasons”.

Legal as well as illegal residents in Belgium can apply for an authorisation of residence by submitting it to the Immigration Department. The following documents and information should be provided: a copy of the national passport or identity card or reasons for exemption of this condition; a medical certificate; other useful information or evidence regarding the illness.

⁷¹ See also EMN Belgian reply on NL Ad hoc query on anti human trafficking policies requested on 12 September 2008

When the declaration is declared admissible, one receives a *Certificate of Immatriculation type A* that will be extended until there is a decision on the grounds of the claim. Once this decision is positive one obtains a foreigner card type A of limited duration. After 5 years of stay for medical reasons, one receives a foreigner card B for an unlimited duration.

Long term residents⁷²

A third country national who's been for five years in the possession of a residence permit of unlimited duration (except for recognised refugees and refugees who have the status of subsidiary protection) can receive the status of a long term resident according to Directive 2003/109/EC. This Directive has been transposed into Belgian legislation and came into force on 8 September 2008. The status allows the third country national to receive a long-term residence permit (more than three months) for another EU-Member State for reasons of e.g. employment or study. Thus, also third country nationals who have received the status in another EU-Member State have the right to a residence permit for a limited duration (foreigner card type A) in Belgium. The duration of the permit depends on the purpose of the residence.

Stateless Persons⁷³

Persons who want to be recognised as a stateless person will have to start a procedure with the Tribunal of First Instance. The Tribunal will investigate whether the person has a right to a nationality of one of the countries with which he has certain ties (e.g. because he lived there). The fact that a candidate-stateless person has started the procedure does not change anything on his situation of residence. In case the person's statelessness is recognised, he/she should make an application for regularisation on grounds of art.9 bis of the Aliens Act (i.e. the impossibility to return). Meanwhile the Immigration Department can issue a prolongation of the order to leave the territory or grant a temporary stay. In case the regularisation procedure is successful, the stateless person will receive a foreigner card type B of unlimited duration.

⁷² This status for third country nationals does not strictly fall within the scope of this study, but is mentioned for the sake of completeness. More information can be found on : www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=6014

⁷³ www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=113

4.1.3 Legal residence

In this paragraph the legal residence status in any kind of a third country national is described. What kind of residence permit is involved? What conditions have to be fulfilled to obtain a residence permit and how can one obtain the Belgian nationality?

All foreigners legally residing in Belgium need a valid residence permit. There are different kinds of resident permits depending on the different resident statuses. All foreigners who have received the authorisation to reside on the Belgian territory are registered in the Foreigner's Register (*Vreemdelingenregister/Registre des Etrangers*) and receive a certificate thereof (BIVR/CIRE: *Bewijs Inschrijving Vreemdelingenregiste/Certificat d'inscription au Registre des Etrangers*). These permits are delivered by the Immigration Department.

- foreigner card type A : BIVR/CIRE for limited duration
- foreigner card type B, : BIVR/CIRE for unlimited duration
- foreigner card type C, : non-EU/EEA citizen with a right of establishment
- foreigner card type D : EU residence permit for long-term residents
- foreigner card type E : (residence permit) for more than three months for EU citizen
- foreigner card type E+ : right to remain permanently for EU citizen⁷⁵
- foreigner card type F : family member of EU citizen
- foreigner card type F+ : right of residence for family member of EU citizen

A residence permit for foreign nationals in the form of an “identity card for foreigners” is issued to all foreigners over the age of 12, who have acquired a right or permission of residence in Belgium. The resident cards used to be in a paper form, had different colors and were produced at municipal level. As this way of issuing cards was out-dated, often targeted by criminals, and prone to falsifications, the federal government decided to issue electronic foreigner identity card in a centralised way. In 2008 the replacement of the old cards was still in progress. The electronic foreigner identity cards have a lot in common with the Belgian electronic identity cards, as they also have the size as a bank card and they have a microchip incorporated in the card. In the future, biometric data can be incorporated. This microchip will also allow the foreigner to participate in all kind of applications of the e-government (tax on web, electronic signature for on-line transactions, etc). The new cards are in principle valid for 5 years, unless otherwise indicated. The issuing fee is between €10 and €25, although there is also a more expensive express procedure.

Next to the electronic foreigner cards, there is also the so-called “certificate of immatriculation/registration” (*immatriculatie attest, attestation d'immatriculation*). This document is issued as a temporary residence permit for several months (three months in general, five months in case of family reunification with EU citizen; 9 months in case of family reunification with non-EU citizen) to persons who have filled an application for a procedure that gives right to a residence permit (asylum, family reunification, student, etc), while their application is still being considered/investigated. There were two types of certificates of immatriculation: A and B. The type B was specifically for EU-citizens who have applied for establishment. This has mainly been abolished since June 2008, but is still in use specifically for family members of employees of new EU Member States during the transitional period, as well as to Swiss citizens. Type A is issued for asylum seekers, family reunification, non-EU students, foreigners applying for residence for medical reasons and victims of human trafficking. The validity of this document depends on the status of the applicant (see further).

⁷⁵ The foreigner card type E and E+ are not considered to be real residence permits as they are not mandatory. The EU-citizen can instead obtain a paper form document (annex 8 or 8bis) free of charge.

4.1.3.1 Asylum⁷⁶

A foreigner who applies for asylum in Belgium fills in his/her application at the Immigration Department. The applicant will receive a document:

annex 25, when the application has been submitted at the border

annex 26, when the application has been submitted within the territory

These two documents are not residence permits, just evidence that the application has been submitted.

The applicant must then go to the municipality of his/her principal residence within eight working days following the submission of the asylum application. The municipality will issue a “certificate of immatriculation” (A.I.) type A, valid for three months from the date of issue. This certificate will be renewed (the first three renewals will be for three months, thereafter it will have to be renewed) as long the examination of the asylum procedure is pending.

The application will also be registered in the “Waiting Register” (wachtregister/register d’attente) and the applicant will receive a file number which is called the “public security number”.

When the applicant is recognised as a refugee, a right of residence for an indefinite period of time on the Belgian territory is granted. The foreigner is registered in the Foreigner’s Register and a foreigner card type B is issued. This card is valid for five years and after these five years this card will be renewed without any condition. However, it can be noted that a recognised refugee has the possibility of naturalisation after already two years of residence in Belgium. He/she also has access to the labour market without having to obtain a work permit. He/she is entitled to a living allowance if necessary (social integration income) and has a right to family reunification and the right to travel with a refugee passport issued by the Belgian authorities (except to the country of origin).

When the applicant has been granted the status of subsidiary protection, he/she is authorised to reside in Belgium for a limited period of time. He/she is granted a foreigner card type A valid for one year and is registered in the Foreigner’s Register. At the end of the year, the asylum instances verify whether the conditions under which the protection was granted are still met. If this is the case, the residence permit will be renewed for another year. After five years (counting from the date of the registration of the asylum application), if the right has been extended every year, the person will be granted a right of residence (foreigner card type B) for an unlimited period of time in Belgium.

A beneficiary of subsidiary protection status has the right to work, but must obtain a work permit C which will be renewed as long as the person is authorised to reside in Belgium. He/she is entitled to social assistance and has the right to travel. No specific Belgian travel document will be issued as the Belgian authorities consider that subsidiary protection status should not prevent the beneficiary from contacting the authorities of his/her country in order to obtain travel documents.

⁷⁶ This information is mainly based on Ciré, Guide on the asylum procedure in Belgium, edition 2008 and on Vlaams Minderhedencentrum, Vreemdelingenrecht, www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=616

4.1.3.2. Migration

Types of residence permits

Foreigner card type A: BIVR/CIRE for limited duration

This foreigner card type A is issued when a foreigner has the right of residence for a limited duration. This occurs in the following cases:

- 1) Beneficiaries of subsidiary protection status (see also 4.1.3.1).
- 2) Foreigners who have been regularised on humanitarian grounds according to article 9bis of the Aliens Act⁷⁷. In first instance this stay is granted on a temporary basis. This card is in principle valid for a limited duration. To obtain a prolongation of the validity of the card the Immigration Department sets out certain conditions (e.g. employment, etc.). If these conditions are not met, the foreigner will receive an order to leave the territory. If the conditions are met the prolongation will be granted and the conditions will have to be met again. If the applicant fulfills three subsequent times the set conditions, he/she will be granted a foreigner card type B for unlimited duration.
- 3) Foreigners who have been regularised on medical grounds according to article 9ter of the Aliens Act. The foreigner will receive a temporary right to stay for the limited duration of one year. When the foreigner, after five years, still falls under the conditions of this medical status, he/she will receive a right to stay of unlimited duration.
- 4) Family reunification with non-EU citizens.
- 5) Non-EU student.
- 6) Victims of human trafficking. According to the specific procedure (see also 4.1.2.2) a victim of human trafficking can receive a residence permit valid for 6 months, and this can be prolonged.
- 7) Non-EU labour migrant.
- 8) Unaccompanied minors who filed an application for a ‘specific protection status’. This specific procedure (created by Circular Letter⁷⁸ of 15 September 2005) is for unaccompanied minors who have not applied for asylum, and are no victim of human trafficking. When there is no durable solution six months after filing the application, a foreigner card type A for six or twelve months is issued. When the unaccompanied minor has lived for three years with this permit A, he/she can obtain a residence permit for unlimited duration.

Foreigner card type B: BIVR/CIRE for unlimited duration

This foreigner card B is issued when a foreigner has the right to residence for unlimited duration. This occurs in the following cases:

- 1) a recognised refugee
- 2) a non-EU foreign national who had right of residence for limited duration, but has successfully proceeded his procedure. E.g. beneficiaries of subsidiary protection after five years, regularised persons on medical grounds after five years, beneficiaries of family reunification after three years, etc.

This type B foreigner card is valid for five years and will thereafter be renewed without conditions. The foreigner has to apply for renewal of his card with the municipal authorities between forty-five and thirty days before the expiry date.

Foreigner card C: non-EU/EEA citizen with a right of establishment

The type C foreigner card is issued to the non-EU/EEA citizen with a permanent right of residence in Belgium who has filled an application and received the right for establishment. The foreigner will have an unlimited right of residence. The type C foreigner card is valid for five years and will thereafter be renewed without conditions. The foreigner has to apply for renewal of his card with the municipal authorities between forty-five and thirty days before the expiry date.

⁷⁷ see also www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=81

⁷⁸ Omzendbrief betreffende het verblijf van niet-begeleide minderjarige vreemdelingen, Staatsblad 07/10/2005.

Foreigner card D

This card is delivered for non-EU citizens who have received the status of long term residents (according to EU Directive 2003/109/EC). This type D foreigner card is valid for five years.

Foreigner cards E, E+, F and F+ :

These foreigner cards are related to EU-citizens:

- Type E to EU-citizens (or their family members who are themselves EU-citizens) with a right of residence for more than three months
- Type E+ to EU-citizens (or their family members who are themselves EU-citizens) who have the right to stay permanently
- Type F to non-EU family members who have obtained the right to family reunification with a EU-citizen
- Type F+ to non-EU family members who have the right to stay permanently with a EU-citizen

Integration measures

Until now, no integration requirements of any kind apply in Belgian migration law for being granted a residence permit; there are only material conditions (housing, insurance, resources) applying mainly to forms of family reunification and student migration. In 2008 the Minister of Migration and Asylum Policy declared before Parliament that she intended to introduce an integration condition for foreigners who apply for family reunification, but none of the basic parameters of such a condition have been defined so far (content, sanction, etc.).

In Belgium, different authority levels (mainly the Regions and the Communities) can take (and have taken) policy measures with regard to integration of foreigners, which implies that the responsibility for integration of foreigners is carried not by one institution but by several institutions, each taking integration measures within the limits of its competence.

- Flemish Community
 - In Flanders (excl. Brussels Region):
 - Categories of foreigners entitled to take part in the primary integration program:
1) foreign nationals aged 18 and more who permanently reside in Flanders or in the Brussels Capital-Region; 2) Belgian nationals who were not born in Belgium and of whom at least one parent was not born in Belgium are also a target group of the Flemish integration policy.
 - Within the two categories described above, some categories of foreign nationals are also obligated to take part in the primary integration programme: foreign nationals who received their first residence permit valid for more than three months; people who acquired the Belgian nationality abroad and established themselves on the Belgian territory for the first time; asylum seekers who claimed asylum since more than four months ago (they only have to attend the social orientation course); foreign religious personnel of officially recognised religions in Belgium.⁷⁹
 - All foreign nationals and people of foreign origin can benefit from integration measures related to the emancipation and participation of ethno-cultural minorities (cf. Flemish Decree of 28.04.1998); this sometimes includes undocumented migrants.

⁷⁹ Foreigners who are obligated to take part in the Flemish integration scheme can be exempted from that obligation if they meet conditions for exemption. A detailed account of possible grounds for exemption is available at: www.vmc.be/thema.aspx?id=344

- In the Brussels-Capital Region:
 - If residing in the Brussels-Capital Region, all foreigners entitled to take part in the primary integration programme can benefit from part of the Flemish integration programme or the entire programme, without any obligation.
- Brussels-Capital Region
 - Initiatives by the Flemish Community Commission:
 - All foreign nationals and people of foreign origin (this sometimes includes undocumented migrants) can benefit from these integration measures, without any obligation.
 - Initiatives by the French Community Commission:
 - All foreign nationals and people of foreign origin (this sometimes includes undocumented migrants) can benefit from these integration measures, without any obligation.
- Walloon Region
 - All foreign nationals and people of foreign origin (this sometimes includes undocumented migrants) can benefit from integration measures taken by the Walloon Region, without any obligation.

Obtaining Belgian citizenship⁸⁰

The Belgian nationality law distinguishes four ways to acquire the Belgian citizenship⁸¹

- a) Belgian citizenship by declaration;
- b) Opting for Belgian nationality between 18 and 22 years of age;
- c) Belgian citizenship by marriage;
- d) Naturalisation as a Belgian citizen.

Neither language skills nor historical knowledge is required. By making an application for Belgian citizenship the will to integrate is automatically presumed. All procedures are free of charge.

a) Belgian citizenship by declaration

From the age of 18, one can obtain Belgian nationality by signing a nationality declaration if one meets one of the following criteria:

- born in Belgium and with main place of residence in Belgium, without any interruption;
- born abroad to a Belgian citizen parent;
- the person has had a main place of residence in Belgium for at least seven years and has an unlimited residence permit or authorization to settle in Belgium.

b) Opting for Belgian nationality between 18 and 22 years of age

A foreign national aged between 18 and 22 can sign a declaration indicating opting for Belgian nationality if that person meets one of the following criteria:

- born in Belgium OR
- born abroad and one of the person's adoptive parents is a Belgian citizen at the time the declaration with respect to opting for the Belgian nationality is made OR
- born abroad and one of the person's parents or adoptive parents was a Belgian citizen when the person was born OR
- born abroad and with main place of residence in Belgium with his/her parents or adoptive parents for at least one year before he/she turned six.

⁸⁰ www.just.fgov.be/nl_htm/informatie/htm_justitie_atotz/nationaliteit_verkrijgen.html

⁸¹ see also EMN, BE answer to AT Ad hoc query on naturalisation laws requested on 18/09/2008

All applicants must also meet the following criteria:

- main place of residence must have been in Belgium during the 12 month period preceding to the declaration;
- main place of residence in Belgium either between the ages of 14 and 18 or for a period of at least nine years. The applicant is exempt from these latter two criteria if one of his/her parents or adoptive parents was a Belgian citizen or had previously held Belgian citizenship at the time of the person's birth.

c) Belgian citizenship by marriage

- the person must be at least 18 AND
- the person must have lived with his/her Belgian spouse in Belgium for at least three years since the date of the wedding. This period is reduced to six months if, for a period of at least three years preceding the date upon which the declaration is submitted, that person was authorised to stay in Belgium for more than three months or to settle in Belgium. Spouses must live together for the entire duration of the procedure.

d) Naturalisation as a Belgian citizen

A person may be naturalised as a Belgian citizen by the Belgian Chamber of Representatives. It is a favour and thus not a right.

- after three years of residence in Belgium;
- this period can be reduced to two years for people granted the refugee status and stateless persons;
- residence abroad can be equated with residence in Belgium if you can prove genuine ties with Belgium during the required period.

Some statistics

Table 1: evolution of number of foreigners that became Belgian citizen 1996-2007

year	number
1996	24.581
1997	31.687
1998	34.034
1999	24.196
2000	61.982
2001	62.982
2002	46.417
2003	33.709
2004	34.754
2005	31.512
2006	31.860
2007	36.063

Source: Population Register/Statistics Belgium

Table 2: Top 30 previous nationality before obtaining Belgian citizenship 1996-2007

	2004	2005	2006	2007
Morocco	8.704	7.975	7.752	8.722
Turkey	4.352	3.511	3.129	2.965
Italy	2.271	2.086	2.360	2.017
Congo (DRC)	2.329	1.734	1.385	1.573
Yugoslavia	1.286	1.013	964	851
France	780	772	820	836
Algeria	801	684	633	670
Netherlands	665	672	692	668
Pakistan	293	298	338	632
Russia	321	360	475	624
Poland	451	457	539	576
Romania	311	330	423	553
Greece	265	226	310	434
Tunisia	405	297	380	411
Ghana	313	280	315	387
India	268	291	328	364
Albania	262	241	288	343
Philippines	442	370	385	332
China	257	233	286	325
Thailand	273	247	276	320
Macedonia (FYROM)	320	271	248	306
Cameroon	260	235	247	298
Germany	206	206	222	288
Portugal	240	229	239	284
Spain	269	276	242	262
Nigeria	150	194	167	260
Ecuador	125	182	136	240
Colombia	143	141	178	214
Brazil	148	159	134	210
Afghanistan	44	115	143	201

Source : Population Register/Statistics Belgium

4.1.4 Access to the labour market

In this paragraph is described which conditions a third country national has to fulfill to gain access to the Belgian labour market. The distinction is made between employment and self-employment.

4.1.4.1 Asylum

In 2006 the Belgian government decided to reform the asylum procedure. The new single procedure came into effect on 1 June 2007, replacing the former two phases (admissibility and eligibility) procedure. Transitional measures can still apply. The former system in two phases is still in application for asylum seekers who claimed asylum before the entry into force of the new asylum procedure. A distinction has to be made between asylum seekers still in the procedure and asylum seekers who have been granted either the status of refugee or the status of subsidiary protection.

In the new asylum procedure, asylum seekers who are still in the procedure do not have access to the labour market (neither paid labour nor self-employed labour, nor voluntary work) and thus are not allowed to work. They are considered to await the result of their request for asylum. However they may engage in maintenance and cleaning work at the reception centres for which they can receive a small remuneration. Preparatory work on new legislation is under way to provide access to the labour market to asylum seekers who have been awaiting a decision on their claim for more than six months.

A specific situation arises due to the reform of the asylum procedure that came into effect on 1 June 2007. Asylum seekers whose demand was deemed eligible (according to the old procedure), and are still awaiting a final decision, are entitled to the so-called work permit C (see 4.1.4.2). They are also eligible for self-employed labour under the condition that they apply for a professional card. However they have to take into account that their right of residence can be temporary and uncertain so that the self-employed activity cannot require neither excessive investments nor long-term obligations. Only small-scale and risk-free projects can be admitted.

Persons who have been granted the status of subsidiary protection receive a residence permit (foreigner card type A) for the limited duration of one year. The right of residence can be renewed on a yearly basis depending on the situation in the country of origin. During this temporary stay, the person is entitled to work with the work permit C. If they want to undertake self-employed labour, they will need to apply for a professional card.

Persons who have been granted the refugee status do not have to apply for a work permit and are thus allowed to work without a work permit. They are also exempted from having a professional card if they want to undertake self-employed labour.

4.1.4.2 Migration

Third-country nationals who wish to come to Belgium for the purpose of employment will need two kind of permits: on the one hand a residence permit and on the other hand a work permit. A work permit is not valid without a residence permit/authorisation to stay in Belgium. A distinction also needs to be made between paid employment and self-employed activities. Nevertheless, in both cases a prior authorisation is required to have access to the labour market. Since 15 September 2008 the Service for Economic Migration within the Immigration Department was established to offer the economic migrants a faster deliverance of the visa for labour purposes, a faster inscription in the Foreigner's Register and a faster deliverance of the residence permit.

Relevant laws

The core of the legislation concerning the entry, residence, settlement and removal of foreigners (Aliens Act of 15 December 1980) does not contain any specific provisions regarding the entry of third country nationals to Belgium for the purpose of paid employment. A distinction is made between short-stay entry (less than three months) and long-stay entry (more than three months). Provisions regulating long-stay entry are applied to third-country nationals coming to work in Belgium for more than three months. Provisions regulating short-stay entry (e.g. tourism, etc.) are applied to foreigners coming to work for less than 3 months.

The rules for employment of foreign workers are defined in the law of 30 April 1999 regarding the employment of foreign workers, the Royal Decrees of 9 June 1999 on the implementation of this law, the Royal Decrees of 2 and 6 April 2003 (on work permit C), the Royal Decree of 23 May 2006 on work permits and work authorisations.⁸² For a more elaborate overview of the relevant legislation we can refer to the website⁸³.

Work permit

As a general rule, foreign nationals are only given permission to come to Belgium to work if a labour market study has shown that no suitable employee can be found in the Belgian (or European) labour market within a reasonable term.

The key principle is that an 'employment authorisation' has to be applied for by the employer before the candidate-worker comes to Belgium. The employer has to draw up an employment contract and submit an application "for employment of a foreign worker". If the employment authorisation is granted after a labour market study, a category B work permit is issued to the employee. The foreign national can then use this work permit to apply for a type D visa/ residence permit to come to Belgium.

Although category B is the most commonly used type of permit when it comes to labour migration, different categories of work permits exist:

Category A: work permit of unlimited duration granted to foreigners already having a stable right to stay in Belgium (minimum of 4 years of type B work permits). It grants the authorisation to have any kind of employment with any kind of employer. Employers do not have to request an "employment authorisation", it is up to the candidate-worker himself to make the application.

Category B: work permit is valid for a maximum period of 12 months but can be prolonged under certain conditions. It grants the authorisation to have one specific employment with one single employer. In order for an employer to employ a foreign national with a category B work permit, the employer has to take the initiative and apply for a category B employment authorisation. Once this category B employment authorisation has been granted to the employer, the work permit B for the employee will also be granted. After 4 years, holders of the type B work permits are entitled to apply for type A work permits.

Category C: work permit issued for a definite period to persons who come to Belgium for other reasons than "employment" and who are thus staying in Belgium temporarily. It is valid for maximum one year and it can be extended under certain conditions. It is up to the candidate-worker himself to make the application. It is valid for all employers and salaried professions. This Category C is given a.o. to people in the context of family reunification, students, victims of human trafficking, beneficiaries of subsidiary protection, etc.

⁸² www.werk.belgie.be/moduleTab.aspx?id=5690&idM=102

⁸³ www.emploi.belgique.be/defaultTab.aspx?id=4888

Conditions to obtain a work authorisation / work permit B

1. Requests for work permits are only examined if the third-country national comes from a country with which Belgium has signed a bilateral work convention. These conventions are limited to, Algeria, Malta, Morocco, Turkey, Croatia, Slovenia, Macedonia and Bosnia Herzegovina.
2. A thorough examination of the employment market is carried out by the regional authorities to check whether no Belgian national can take on the position offered to the third-country national. Work authorisations and work permits are granted if no other national can fulfill the requirements of the position offered during the required time scale.
3. The third-country national who wishes to come to Belgium for the purpose of employment has to make his application from abroad. Work permit B will not be granted if the foreign national is already in Belgium. This is to prevent a situation whereby foreign nationals come to Belgium to find work, thus by-passing the officially proclaimed migration stop.
4. The employer and the prospective employee must have concluded a contract of employment that clearly states the obligations of the employer as well as all the social and economic rights to which the third-country national is entitled.
5. The third-country national has to produce a medical certificate to prove that he/she has no serious illness which will prevent him/her from exercising his/her professional duties in the near future. This medical certificate has to be recent, and dated from maximum three months before the request for work permit.

If all these conditions are met, the competent regional ministry will deliver to the employer a “work authorisation” which corresponds with the validity of the work permit. This “work authorisation” is subject to the actual signing of an employment contract. Concomitantly, a work permit is delivered to the third-country national.

However, several important exceptions to the general conditions of deliverance of work authorisations and work permits exist. Foreign nationals do not have to comply with conditions 1) to 4) if they belong to one of the 33 categories mentioned in the law.⁸⁴ In practice, workers are then exempted from satisfying to the labour market criterion; they can be nationals of countries with which Belgium has not concluded a bilateral agreement; employers can apply for an authorisation even if the worker already lives in Belgium (e.g. when the employee has already a work permit C) and no signed model work contract is needed in advance.

The main categories are:⁸⁵

- highly-skilled workers providing they are taking on employment for a period not exceeding four years;
- third-country nationals who come to Belgium to undertake a management position in the branch of a foreign company;
- researchers and professors invited to take on a post at a Belgium university for a period not exceeding four years;
- specialist technical workers;
- sportsmen/sportswomen and trainers, over 18 years old;
- au pairs;
- trainees;
- journalists.

Belgian law targets highly qualified workers by facilitating their admission on the labour market. Third-country nationals having at least finished higher education (meaning university studies or equivalent) may obtain a work permit without a prior labour market study if their gross salary is higher than 34.261 EUR per year (for the year 2008; indexation to 35.638 EUR in 2009). Their employment is in theory limited to

⁸⁴ Article 9 of Royal Decree 9/6/1999

⁸⁵ A detail account of all categories can be found by consulting Article 9 of the Royal Decree of 9/6/1999 For the specific conditions applying to these categories we can refer to www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=660#loon

four years, which can be renewed once for a new period of 4 years. The period can however be prolonged for an unlimited time if the salary is of a minimum of 57.162 EUR per year (for the year 2008, indexation to 59.460 EUR in 2009) for managerial functions. In practice, the majority of these persons will easily subsequently be granted an unlimited residence permit (after 5 years) allowing them to work in Belgium without the restriction of a work permit.⁸⁶ It can be noted that this system is not based on a waiver of the acquisition of a work permit, but on an extremely facilitated procedure.

Self-employment

As a system of authorisation exists for workers, special authorisation is also needed for foreign self-employed workers. Instead of a work permit, people who want to set up a business in Belgium will have to apply for a professional card.⁸⁷ The delivery of professional cards for self-employed third-country nationals falls within the competence of the federal power (as opposed to the work permit which is the competence of a regional power).

As opposed to work permit type B, when it comes to professional cards for self-employed foreign nationals, no labour market study needs to be undertaken to see if the position can be filled in the Belgian (or European) labour market; and no bilateral work convention is required between Belgium and the country of the applicant.

Applications should be made with the nearest Belgian diplomatic post in their country of residence or with the municipal administration of the place of residence for people with a right of residence in Belgium. The application will be transferred to the Federal Public Service Economy, SMEs, Self-employed and Energy, which will examine the ability of the third-country national to exercise the self-employed activity. This check is even more important in case of professions to which the access is controlled (i.e. specific training or experience requirements for professions such as cook, butcher, optometrist, etc.). Furthermore, the FPS has to be shown objective evidence that the envisaged professional activity will be of benefit to the Belgian economy (e.g. because it creates a certain number of new jobs, answers an economic need, promotes innovative activity, etc) or can judge the application on terms of social, cultural, artistic or athletic benefits.

Professional documents need to be attached to the application form. These documents need to demonstrate the skills and abilities of the applicant to exercise the self-employed activity her/he is requesting a permit for. In addition to the professional documents described above, the applicant is requested to submit a medical certificate (delivered by the practitioner of the diplomatic post) as well as a “certificate of good life and behaviour”.

If the application for a professional card is rejected, the foreigner needs to respect a waiting period of two years before he/she can apply again, although certain exceptions apply. Once the application for the professional card is approved, the long term visa type D will be issued by the Belgian diplomatic post.

The professional card is valid for maximum 5 years. In general, the first professional card is issued for a trial period of two years. After this period the card can be renewed in so far the applicant has fulfilled all the regulations as well as the criterion of economic purpose. The validity of the professional card is linked to the right of stay on the territory. In case the right to stay ceases to exist, the professional card is no longer valid, and vice versa, and should be returned to the authorities. The Immigration Department will check if the TCN has ceased the activity.

Certain categories benefit from a waiver, and thus do not need to apply for a professional card. The main categories are:⁸⁸

- professional sportsmen, for a period of time not exceeding 3 consecutive months

⁸⁶ see also: www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=185

⁸⁷ for more information see : http://mineco.fgov.be/sme/Reglementation/beroepskaart_nl.htm#P19_1049

⁸⁸ See Royal Decree 11 December 1980

- musicians and artists coming to Belgium for purpose of a show, for a period of time not exceeding 3 consecutive months
- foreigners residing abroad who are coming to Belgium on business trips for no more than three consecutive months
- persons that have been granted refugee status
- foreign students in Belgium performing an internship
- lawyers/barristers who meet the conditions to be registered with or “to be called to” the Belgian Bar

Residence permit

As already explained, third-country nationals who wish to enter Belgium for the purpose of paid or self-employment are requested to apply for a type D visa. An application should be made at the nearest Belgian diplomatic post in the country of residence.

Once in Belgium, the third-country national has to register with the municipal administration of their local authority within eight days. His or her name will be entered in the Foreigner's Register (*register des étrangers, vreemdelingenregister*) and he/she will receive a residence permit in the form of an electronic foreigner card type A with a limited duration. The duration of the residence permit corresponds to that of the work permit + 15 days.

When the duration of the work permit B is extended, the residence permit will also be extended for the same duration. In case a foreigner has already worked for several years with a work permit B, he will be able to apply for a work permit A with an unlimited duration and the duration of the residence permit will be altered accordingly.⁸⁹

Institutional framework

The admission of third-country nationals coming to Belgium for the purpose of employment involves several government departments at federal level, as well as government departments at regional level.

The Federal Public Service of Home Affairs, through the Immigration Department, is responsible for examining applications and issuing residence permits.

The Federal Public Service of Foreign Affairs, in charge of approving entry clearance (temporary residence visas: type D visas), for third country nationals who are admitted into Belgium for work related reasons, through its diplomatic posts based abroad.

The Federal government, by means of the Federal Public Service of Employment, Labour and Social Dialogue (FPS Emploi, Travail et Concertation Sociale / FOD Tewerkstelling, Werk en Sociale Dialoog) is responsible for determining and interpreting the conditions under which a third-country national can work. The Advisory Council for the Employment for Foreign Workers⁹⁰ is hereby consulted for a (non-binding) advice.

⁸⁹ see also : www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=270

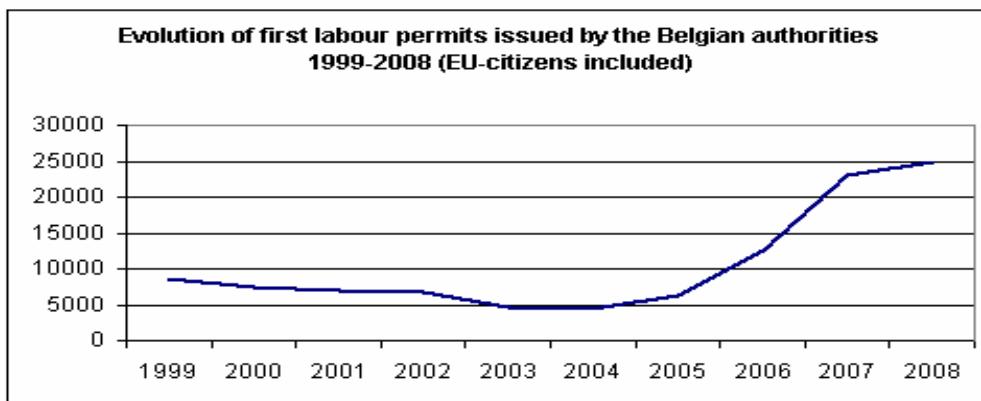
⁹⁰ Advisory Council for the Employment for Foreign Workers is made up of representatives of the employers, employees, several (federal and regional) state departments who are involved in this field

The implementation of the law, and thus the competence to deliver work permits to third country nationals has been decentralised to the regional authorities. The three regions and the German Community possess the executive competence and thus apply the rules adopted by the Federal power with respect to work permits. In each Region, the competent authority is the Ministry of Employment.

- the Ministry of the Flemish Community⁹¹
- the Ministry of the Region of Brussels Capital⁹²
- the Ministry of the Walloon Region⁹³
- the Ministry of the German-speaking Community⁹⁴

The FPS Economy, SMEs, self-employed and Energy⁹⁵ examines requests and delivers professional cards to third-country nationals who wish to undertake a self-employed activity in Belgium.

The application for a work permit must be submitted to the regional employment office of the place of employment (one in each region: VDAB, FOREM, ACTIRIS),⁹⁶ which has to check if all necessary documents are included. The regional employment office then sends the application to the competent regional immigration department (Flanders, Brussels Capital-Region, Wallonia or the German speaking Community). The immigration department then checks whether the application meets all criteria. If no additional information is required, it will normally take a decision within a few weeks of receipt of the application. The immigration service notifies the employer of its decision in writing.⁹⁷



Source : FPS Employment

Note: Figures before and after 2003 are difficult to compare due to a legislative change in April 2003

⁹¹ www.werk.be/wg/werknemers_buitenlandse_nationaliteit/

⁹² www.brusselirisnet.be

⁹³ www.wallonie.be

⁹⁴ www.dglive.be

⁹⁵ FOD Middenstand/ FPS Classes Moyennes ; http://mineco.fgov.be/SME/Reglementation/Beroepskaart_nl.htm#14

⁹⁶ Flanders VDAB (www.vdab.be), Walloon FOREM (www.leforem.be), and Brussels ACTIRIS (www.actiris.be)

⁹⁷ EMN BE NCP Study on conditions of entry and residence of third country highly-skilled workers in Belgium. December 2006, p.16.

4.1.5 Return

In this paragraph a description is given how the return policy in Belgium is organised. First we look at the institutional context, the detention centres, followed by the different return possibilities (forced or voluntary). In contrast to the other paragraphs of this chapter, no specific distinction will be made between asylum and migration.

4.1.5.1 Institutional context

As already explained, the Minister of Migration and Asylum Policy is responsible for the entry into the territory, the residence and consequently, the removal of foreign nationals from the territory. The Immigration Department (ID) encompasses the central services located in Brussels, 5 detention centres spread over the country and 1 detention centre at the Brussels Airport (known as “INADs”). The ID closely collaborates with other authorities and organisations, such as Belgian and foreign embassies and consulates, municipal authorities, federal and local police services, the social inspectorate, public prosecutor’s departments, the International Organisation for Migration (IOM), Child Focus, the FPS Justice and so forth.

Actual (physical) return operations are carried out by the ID in cooperation with the Federal Police. Voluntary return is mainly the responsibility of the Minister of Social Integration. *Fedasil*, i.e. the Federal Agency for Reception of Asylum Seekers, is tasked with implementing the voluntary return policy, in collaboration with IOM through the REAB-programme. From the closed detention centres voluntary return is possible via the assisted voluntary return (AVR) project of IOM.

Removing non-nationals from the territory is a fairly complex affair, one that is located at the crossroads of the various regulatory processes. The following three areas are of particular relevance: the regulatory process for foreign nationals; the regulatory process for the police force; and the regulatory process for aviation and shipping. However, main regulations for forced return are stipulated in the so-called Aliens Act (Law of 15 December 1980 concerning the access to the territory, residence, establishment and removal of foreign nationals).

Every foreign national who does not comply with the rules on immigration or residence can be subjected to removal. Removal measures are facultative and individual. So there is no obligation to removal prescribed in the law.

Several removal measures are mentioned in the Aliens Act:

- Removal at the border: a foreigner not complying with the conditions of access to the territory is submitted to a measure of removal at the border. This measure is decided by the border control authorities, namely the Immigration Department and notified by the Border Police.
- The order to leave the territory: this order is delivered to a foreigner who is neither allowed to remain more than three months on the Belgian territory, nor authorised to become ‘established’; and thus who is illegally residing on the territory. Article 7 of the Aliens Act specifies eleven situations in which a foreigner who is unlawfully present on the territory or is not established can receive such an order to leave the territory. The order to leave the territory stipulates how much time the recipient has to leave the territory, there is no uniform time limit, e.g.:
 - five days in general (eight days when the Return Guideline will be applied)
 - five days for asylum applicants whose application is considered to be inadmissible
 - thirty days for asylum applicants whose request has been rejected, and for applicants whose application for family reunification has been rejected
 - forty five days for people who have filed an application according to the in the procedure for victims of human trafficking
- The Ministerial Decision (MD) concerning expulsions and the Royal Decree concerning expulsion
The MD concerning Expulsions is a decision taken by the Minister of Migration and Asylum Policy with regard to a foreign national having a right to remain more than three months on the

territory who threatened public order or national safety and/or did not observe the conditions stipulated for his residence and/or a violation of the rules restricting his freedom. The foreign national will normally have a minimum of 15 days to leave the territory.

The Royal Decree concerning expulsions is applied to established foreign nationals who seriously threatened public order or national safety. Implementation of this Royal Decree must be deliberated in the Council of Ministers if it is based on the political activity of a foreigner. These two measures must be premised on the personal behaviour of the non-national. The time to execute this Royal Decree is in principle one month. As a result the foreigner cannot enter the territory during a period of ten years.

4.1.5.2 Detention centres

In order to return the foreign national to his country of origin, or another country, the law has foreseen the possibility of detention. The period of detention cannot be longer than strictly necessary to execute the order to return. In principle this is a maximum duration of 5 months. However, for reasons related to public order the Minister of Migration and Asylum Policy can decide to prolong this to a maximum of 8 months. When an attempt to return the foreign national fails due to the resisting of the foreign national, a new detention period can start, thus the counters are back to zero.

Belgium counts six detention centres (a.k.a. closed centres)

- INAD (INADmissibles) in the transitzone of Brussels Airport
- Transitcentre 127 near Brussels Airport
- Repatriationcentre 127bis near Brussels Airport
- Centre for Illegals in Bruges (CIB)
- Centre for Illegals in Merkplas (CIM, near Antwerp)
- Centre for Illegals in Vottem (CIV, near Liège)

Several categories of foreign nationals can be detained in one of these six detention centres.

- Foreign nationals who do not have access to the territory because they do not comply with the conditions can be removed at the border
- Foreign nationals who apply for asylum at the airport or seaport, without being in the possession of valid documents
- Foreign nationals who apply for asylum, but who are transferred according to the Dublin Regulations
- Foreign nationals whose asylum application was rejected
- Foreign nationals who have entered the Belgian territory illegally, or whose residence in Belgium has become illegal.

Each person detained in a closed centre can start a procedure before the Court of Appeal and the Tribunal of First Instance to order the release.

With the coming into force of the Reception Act⁹⁸ of 12 January 2007, unaccompanied minors are in principle no longer put in one of these detention centres, but in a so-called Observation and Orientation Centre (OOC)⁹⁹, which is open for all unaccompanied minors regardless of their administrative status. These centres are not closed centres but are secured.

In the past families with children were detained prior to their removal. In 2008 the Minister of Migration and Asylum Policy announced in a Circular Lettre the intention to reduce the number of detentions of families with children. A Family Identification Team (FIT) was created within the Immigration Department. (See “4.1.5.5- assisted voluntary return in practice”, for more information).

⁹⁸ Asylum Seekers and Certain other Categories Aliens Act :

www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=2007-05-07&numac=2007002066#top

⁹⁹ There are two OOCs : Steenokkerzeel (Dutch speaking) and Neder-Over-Heembeek (French speaking)

4.1.5.3 Return possibilities

The foreign national who has received an order to leave the territory is asked to leave the country independently, on his/her own initiative and to return to his/her country of origin or a country where he/she is allowed to reside. The foreign national can organise his/her return by his/her own means, or ask for assistance with the International Organisation for Migration (IOM). It should be the normal situation that a foreign national voluntarily follows the order received by the Immigration Department.

After the deadline mentioned in the order to leave the territory has passed, the ID asks the municipality to check whether the interested party is living at the address. If this is the case, the police get in touch with the Immigration Department, which may call for the arrest of the person, for the person to be held in a closed centre in order to organise the direct repatriation if the conditions are met.

The Immigration Department is in charge of the organisation of the entire repatriation process, including securing the necessary travel documents. A precondition for organising repatriation is the confirmation of the nationality and identity of the person being repatriated. This confirmation requires the cooperation of foreign authorities, particularly for the issuance of a laissez-passer, passports and visas.

A kind of cascade system is in place, which means that the possibility to leave voluntarily is offered to everybody. Only when this process does not work, forced removals are resorted to, if possible without constraint, but if necessary with constraint. Five steps can be discerned:

- 1) Each foreign national can choose to leave voluntarily by his proper means or with the assistance of IOM;
- 2) The foreign national can leave ‘without obstruction’. This means that the foreigner declares to cooperate towards his removal. He/she will be escorted by the Federal Police to the airplane;
- 3) Unescorted departure: when the foreign national is obstructing his removal, he/she can be transferred to the airplane by the Federal Police, where he/she will be handed over to the crew of the airplane;
- 4) Escorted departure: the Federal Police will accompany the foreign national in the plane until he/she reaches his/her final destination;
- 5) In case the removal with escort failed, the foreign national can be removed by secured flight, possibly working with other EU member states. These flights are organised if return with a commercial flight has proved not to be possible due to the violent behaviour of the foreign national.

An order to leave the territory allowing a person to be expelled after the expiry of the prescribed deadline specifies that a non-compliant foreign national will be taken to the border and be held towards this end for the time strictly required to carry out this measure.

An order to leave the territory is not issued to a foreign national who applies for a regularisation of residence on the basis of article 9 of the Aliens Act. The regularisation claim has to be fully processed by the administration before a decision is taken about the expulsion. In case the regularisation claim is made during his/her detention, the application will be handled with priority, but the foreign national will be kept in detention.

4.1.5.4 Forced return in practice

Resources used for forced repatriations originate with the Immigration Department and Police Department. The police intercept an individual and get in touch with the ID. After considering the case, the ID can take 4 different decisions: it orders a release (if, for example, regularisation proceedings are still on appraisal with the administration); it orders the person to be held in a closed centre if a place is available; the person is taken to the border for forced removal; or, it orders the intercepted foreign national to leave the territory.

When an illegally residing foreign national is held in a closed centre, repatriation preparatory activities are the responsibility of the Immigration Department. It takes charge of securing travel documents and identification and practical departure arrangements, particularly the booking of a flight.

On “D-day” the Immigration Department transfer department escorts the non-national to the airport, where the individual is handed over to the Federal Police. The Federal Police officers stationed at the airport are in charge of escorting the interested party to the plane.

When the repatriation operation ends up with the illegally residing foreign national resisting repatriation and failing to leave, the individual is re-placed in the detention centre, where the period of detention starts from zero again.

4.1.5.5 Assisted Voluntary Return in practice

Fedasil (Federal Agency for the reception of Asylum seekers) is responsible to ensure that all persons who wish to voluntarily return to their country of origin can make an appeal to a support programme. It organises two programmes: REAB programme (Return and Emigration of Asylum Seekers ex Belgium)¹⁰⁰ which mainly provides logistical support; and a Reintegration Fund to support reintegration programmes.

REAB

The Brussels Regional office of IOM (International Organisation for Migration) is responsible for the practical organisation of this programme for voluntary return and therefore receives the financial means from Fedasil.

This humanitarian programme assists migrants, who wish to voluntarily return from Belgium to their country of origin or to emigrate to another country and do not have the necessary means. The programme provides mainly logistical support.

This programme is intended for three categories of migrants in Belgium:

- Asylum seekers who withdrew their asylum application;
- Asylum seekers whose asylum application has been rejected;
- Other foreign nationals who did not apply for asylum (except recognised refugees, citizens of the EU or a country in the Schengen area), mainly stranded, irregular migrants

This programme also assists vulnerable groups including unaccompanied minors, medical cases, victims of trafficking, and elderly people.

To perform the REAB activities and ensure the opportunity for migrants to easily access the programme at each stage of their stay in Belgium, IOM has developed an extensive network of partners covering the whole territory of Belgium. The REAB network consists of a combination of non-governmental organizations (NGOs), local authorities (cities and municipalities), and governmental structures for reception of asylum seekers (FEDASIL and Red Cross reception centres) and the social services of the

¹⁰⁰ www.belgium.iom.int/REAB/

closed detention centres. The role of each REAB partner is crucial to ensure successful implementation of the programme. Through a counseling process, migrants receive from the REAB network information about the voluntary return option and the opportunities to reintegrate into their home country.

Reintegration Fund

This fund supports tailor-made reintegration projects that are small-scale, individual projects intended to facilitate sustainable return of migrants to their country of origin.

Fedasil does not execute the projects on its own, but collaborates to this end with IOM, the NGO Caritas¹⁰¹ and two NGOs specialised in reception of asylum seekers and migrants s (Vluchtelingenwerk Vlaanderen and Ciré). These organisations have a network of partners in the countries of origin, specialised in small-scale projects.

The Reintegration Fund supports reintegration activities by allocating a specific amount benefiting every returnee above 18 years old and his/her family. IOM does not provide cash grants but in-kind assistance to returnees in their country of origin valued at 700 EUR per person (or a maximum of 1750 EUR per family).

The programme pays also special attention to vulnerable groups such as unaccompanied minors, medical cases, victims of trafficking and elderly people. The Vulnerable Cases Funds allocates a specific amount per vulnerable case in order to support reintegration activities benefiting the returnee and his reinsertion in his/her family. Vulnerable persons are entitled to an additional 700 EUR in assistance.

Family Identification Team

As from 1 October 2008 a new service has been created: Family Identification Team (FIT). A project has been set up in Zulte (Flanders) and Tubize (Wallonia) where respectively three and six so-called “return-houses” (*terugkeerhuizen voor uitgeprocedeerde gezinnen/logements destinés aux familles déboutées*) have been opened. Four return coaches are responsible to convince families with children who are overstaying, or for whom an asylum status or staying permit has been refused, to go back to their country of origin. The family has to sign a so-called contract of confidence in which the family engages itself to cooperate towards voluntary return. In that case the family is assured that they will not be put in a detention centre by the Immigration Department. This service is part of the Identification Unit within the Immigration Department. They will also collect information about the identity and nationality of the family so that the Identification Unit can take the necessary steps to obtain the required travel documents. The FIT is also a partner with IOM in order to facilitate the assisted voluntary return for these families.

¹⁰¹ www.caritas-int.be/nl/hulp-aan-migranten/begeleide-vrijwillige-terugkeer.html

4.2 Links with other policy areas

In this chapter is described how asylum and migration systems are linked to other policy areas for the various stages in the migration process given in chapter 4.1. Although several links can be discerned, the most relevant links are the following: labour market policy, integration policy, and foreign and development policy.

4.1.4 Labour market Policy

As most European countries, Belgium has a greying and thus a decreasing labour population. This leads to shortages on the labour market and threatens the sustainability of the current social security system. Migration has been qualified as one of the important remedies for this problem. Whereas Belgium had an official migration stop since 1974, the tendency now is to evolve towards a system of economic migration, but in a controlled and organised way. This would allow Belgium to attract the necessary highly-skilled professionals, but also to fill up the so-called “bottleneck occupations” (shortage occupations) with non-EU economic migrants.

The Policy Documents of the Minister of Migration and Asylum Policy¹⁰² mention that a system of economic migration has to be set up in the short term. This will be in consultation with the regional governments and the social partners. In order to be realised, this project will take into account the current stocks on the labour market and the lifting of the restrictions on the free movement of nationals from the EU-8 Member States. It will also be in line with the EU-“Blue Card” Directive.

Certain measures have already been taken such as the foundation of the ‘Service for Economic Migration’ within the Immigration Department. The aim is to offer the economic migrants a faster visa application procedure, as well as an information desk and contact point for all actors involved. All administrative authorities involved are sensitized on the importance of a faster and simplified administrative procedure for economic migrants. Belgium has also decided to lift all restrictions on the free movement to nationals from the EU-8 Member States as from 30 April 2009.

In the aftermath of the global financial crisis of Autumn 2008, fear for a further economic slow down and rising unemployment rates has led to stronger hesitations with respect to opening up the Belgian labour market to more foreign workers.

4.2.2 Integration Policy

Migration policy was long limited to controlling people who entered and left the territory according to the economic demand of labour force in Belgium. Since the 1970s, there has been a growing attention to the question of integration of foreign nationals. Two different approaches could be discerned regarding integration: one that stresses citizenship (a.o. through voting rights) and one that stresses nationality (through naturalisation).

In 1980 the Communities became responsible for the reception and integration of immigrants. It is only in the mid-1980s that the government began to develop policies to encourage immigrants to settle in Belgium and to foster their inclusion in the society. Until then there was a kind of a hidden consensus on the temporary nature of immigration.

In 1989, a Royal Commissioner for Immigrants’ Policy was appointed for the first time. This position was introduced following large electoral gains of the extreme right in Flanders. The upswing in support for right-wing extremism and urban riots in certain Brussels neighbourhoods involving young immigrants who

¹⁰² Belgische Kamer van Volksvertegenwoordigers, Algemene Beleidsnota van de Minister van Migratie en Asiebeleid 2008-2009. Doc52 1529/026, 20/11/2008,
www.dekamer.be/kvvcr/showpage.cfm?section=|pri|dossiers&language=nl&rightmenu=right_pri&story=notes.xml

claimed to denounce discrimination, in particular by the police, forced the government to introduce new social policies. These aimed at improving relations between Belgians and foreigners and at upgrading conditions in the neighbourhoods in which many immigrants lived. The new policies covered fields as far-ranging as regional planning, culture, education, professional training, and the fight against petty crime. In the 1993 the Centre for Equal Opportunities and Opposition to Racism was created and entrusted with the task of fighting racism and racial discrimination. In 2003, it was mandated to fight all forms of discrimination.

In the beginning of 2004, following a rise in racist crimes and violence, a consultative body (The Commission for Intercultural Dialogue) was created. It aimed to improve social cohesion of Belgium's culturally diverse society and focused on four areas: citizenship, gender equality, basic principles for the public services, and the role of religion in a secular society. The final report of this Commission clearly acknowledged cultural diversity as an asset and not a threat.

Integration, as well as most issues linked to it (education, health, housing, and to some degree employment), is dealt with either by the Communities or by the Regions. Therefore, there is no Belgian model of integration. Historically, different approaches developed in the North and in the South of the country.

At the *federal level*, access to citizenship has been seen as a means to stimulate integration. The latest change in the Belgian citizenship law took place in 2000 and it is fair to say that Belgium has one of the most liberal laws on nationality in the European Union. (see also 3. development of Migration and Asylum systems).

According to most observers, the current approach to integration in Wallonia and in the French-speaking Community has been inspired by the French republican model, while the Flanders' approach has for a long time been inspired by the Dutch multicultural model.¹⁰³

The *Walloon region* and the *French Community* have placed the responsibility of integration on the immigrant in the sense that efforts towards social inclusion are voluntary. The French Community has indicated that the integration of foreigners should be achieved by means of improved coordination between authorities, which fund language and literacy courses and by adapting professional competencies. The Walloon decree¹⁰⁴ of 04/07/1996 pertaining to the integration of foreigners and people of foreign origin launched the creation of seven Regional Integration Centres. Within its respective regional territory, each Integration Centre can develop initiatives. All foreigners and people of foreign origin (this sometimes includes undocumented migrants) can benefit from these integration measures. Participation is on a voluntary basis.

The approach of the *Flemish Community*¹⁰⁵ was for a long time inspired by the Dutch multicultural model. In the mid '90s more weight was given to social and economic considerations in the integration policies. More and more, the proficiency in the language (Dutch) and the importance of prevailing values and norms were brought into focus. In this context, the Flemish government agreed on a civic integration decree (2003): all adult newcomers registering in a Flemish municipality are obliged to participate in an integration programme. This introductory programme consists of two parts: a training programme and one-on-one study path guidance. The training programme comprises a language course (Dutch), social guidance and career guidance. The idea is to enable the newcomers to learn the daily routine of the host society. A team of partners ensures that comprises someone of the local integration one-stop shop that the integration process is tailored as much as possible to the newcomer's needs. The integration process is free for most newcomers.¹⁰⁶

In 2004, Flanders established the first Minister for Integration. In his policy plan, the Minister focused on the management of the existing diversity in the Flemish society. The government wants to promote a

¹⁰³ MPG, Current Immigration Debates in Europa: Belgium. Sonia Gsir, Marco Martinello, Katrien Meireman and Johan Wets, September 2005

¹⁰⁴ http://reflex.raadvst-consetat.be/reflex/index.reflex?page=chrono&c=detail_get&d=detail&docid=19491&tab=chrono

¹⁰⁵ <http://binnenland.vlaanderen.be/inburgering/integrationprograme.htm>

¹⁰⁶ Administrative fines can be imposed on newcomers who refuse to comply with the obligation to take the mandatory courses.

Flanders where all people can ‘live together in diversity’, irrespective of their origins. It wants to achieve this on the basis of equality and active, shared citizenship. The idea is to allow every Fleming to participate actively in society. Inburgering (civic integration) is an ideal way of giving “new Flemings” this opportunity. Newcomers and religious personnel are obliged to take the integration course and they can be sanctioned for not participating in the integration scheme. Participation in the mandatory scheme is not only linked to the right to live in a social housing but also to the right to receive a social security benefit. In addition, the integration programme is also targeted at established immigrants who are still insufficiently acquainted with what goes on in the society and have an insufficient knowledge of Dutch. They can enroll in an integration programme on a voluntary basis.

The *Brussels-Capital Region* has initiatives from the Flemish Community Commission and from the French Community Commission. In addition to offering the standard Flemish integration programme, the *Flemish Community Commission* supports a number of non-profit organisations that assist, valorise and help organize migrants and help organize ethnic minority communities in the Brussels-Capital Region. The participation to these integration measures is voluntary for the foreigner.

Many public and private initiatives that are financially supported by the *French Community Commission* seek to improve the integration of migrants and ethnic minorities in the Brussels-Capital Region. Reception and integration of newcomers is one of the five core themes of the decree pertaining to social cohesion¹⁰⁷. The overall objectives of that decree are 1) enhancing active citizenship and 2) maintaining social cohesion in a socially and culturally diverse society. Reception of newcomers is approached as a global issue that is to be addressed through networking with existing social care providers, health care providers, guidance service, etc. Particular attention is given to French language courses. Participation is on a voluntary basis.

4.2.3 Foreign Affairs and Development Policy

The FPS (Federal Public Service) Foreign Affairs aims to develop, monitor and outline guidelines for the development and coordination of Belgium's foreign policy on asylum and immigration. It also aims to develop guidelines on how to tackle human trafficking and human smuggling. The FPS Foreign Affairs promotes a coherent approach to external aspects of immigration and asylum policy and identifies the contributions that Belgian migration policy can make towards stabilising certain regions. This results in a coherent approach to the various elements of Belgian foreign policy.

At *national level* the FPS Foreign Affairs coordinates external aspects of Belgian migration policy internally and promotes an approach involving the entire government. It conceptualises the contribution made by migration to the stabilisation of specific regions. As part of this work, the FPS Foreign Affairs maintains contact with various other federal public services concerned by migration-related issues and also with civil society. It updates Belgian diplomatic representations abroad on Belgian migration policy and uses reports from offices abroad as the basis for analysing trends in migration, asylum, human trafficking and people smuggling for other government departments in Belgium.

At *bilateral level* the Ambassador for Immigration and Asylum Policy, a post created in the FPS Foreign Affairs in 1990, maintains high-level contacts with third countries to facilitate discussion on issues such as illegal migration, capacity building with regard to migration and asylum policy, internal problems acting as a catalyst for migration and other issues related to asylum and migration. Within the framework of the Benelux countries, this ambassador also negotiates readmission agreements with a number of countries (for foreign nationals who are in Belgium illegally). The ambassador also acts as an interface at recognised embassies for third countries in Brussels with the aim of assisting the Immigration Department in the smooth delivery of identity documents to deported foreign nationals, facilitating the voluntary return of illegal migrants and facilitating the negotiation of administrative arrangements with third countries as regards returns and combating illegal migration.

¹⁰⁷ Décret du 30 Avril 2004 relatif à la cohésion sociale. More information is available at : www.cocofirisnet.be/site/fr/affsoc/cohesion

The offices abroad provide reports on country specific issues related to immigration and asylum and new legislation in that country. A number of offices in 'sensitive' areas or countries that are important from a migration perspective systematically draw up annual reports on immigration, asylum, human trafficking and people smuggling which are then carefully analysed. Preventive diplomacy is another instrument that is used in connection with external aspects of immigration and asylum. The FPS Foreign Affairs also facilitates contacts and information exchange between countries of origin - more specifically via diplomatic offices - and the Office of the Commissioner-General for Refugees and Stateless Persons, the Aliens Litigation Council and the Immigration Department.

At European level Belgium contributed to The Hague and Tampere Programme that sets out the priorities for freedom, justice and security in Europe, including immigration and asylum. Belgium also tries to promote synergies between immigration policy, foreign policy and development policy in order to obtain a greater global coherence of the different external policy areas and actions, without affecting the priority areas set out in the development policy. This was also the approach of the international and regional conferences that took place in 2006 and that were a meeting point for the countries of destination, origin and transit. Belgium organized a conference on Migration and Development in March 2006. Further in 2006 the Belgian government in collaboration with IOM organised a conference on the Pan-european Dialogue on Migration Management. The programme aimed at a comprehensive and horizontal approach to the Hague Programme, the European Neighbourhood Policy (ENP), and the Lisbon Agenda.¹⁰⁸ Finally, it also organised the first Global Forum on Migration and Development¹⁰⁹.

At multilateral/international level Belgium also plays its role. The Ambassador for Immigration and Asylum Policy is also a member of the Global Committee on International Migration (GCIM), launched by UN Secretary General Kofi Annan in 2003. The Committee's objective is to bring migration to international attention, detect gaps in the current approach to the phenomenon of migration and to develop links with other areas.

The FPS Foreign Affairs is not only involved in colloquia on migration organised in conjunction with and by federal think-tanks such as the King Baudouin Foundation (KBF/FRB) or the Royal Institute for International Relations (IRRI/KIIB) but also represents Belgium in various international bodies such as the UNHCR, IGC, IOM, UN, OSCE, ILO, WHO and OECD on issues related to migration and asylum policy. FPS Foreign Affairs also follows up asylum disputes in the Belgian Council of State and international courts such as those in Arusha and the Hague or the European Court of Human Rights.

¹⁰⁸ www.belgium.iom.int/pan-europeandialogue/Index.asp

¹⁰⁹ www.gfmd-fmmd.org/en/programme/agenda-en

5. Analysis of asylum and migration systems

In this chapter we provide an analysis of the ‘lessons learned’ in the development of asylum and migration systems in Belgium. We also try to take a look at possible future developments.

5.1 Lessons learned-improvements

Belgium has long believed in the fiction of ‘zero migration’ and held the conviction that it was not a major destination country. Asylum and Migration policies have often restricted themselves to regulating access to the Belgian territory, while focusing on the fight against illegal migration and abuses. However, there has been a permanent effort to increase effectiveness and legitimacy of legal provisions with respect to Asylum and Migration, among others by taking into account developments in EU Law, international private law and case law.

Belgium has over the decades seen some major reforms of the Aliens Act of 1980. This was on the one hand to transpose European directives into national legislation, but on the other hand also to reform the procedures and adapt them to new realities on the field as well as to policy choices of the government. Without any doubt reforms of the Aliens Act will also be necessary in the future to adapt them to new realities on the field.

As mentioned, at the end of the 1990s Belgium was confronted with a peak in asylum applications with more than 40.000 applications in 2000, but also had a substantial number of irregular migrants on its territory. Amongst these applications there were large waves of unfounded applications, which tried to exploit the gaps (e.g. long procedure and financial support during the procedure) in the asylum procedure. The attractiveness of Belgium as a host country was mainly due to the long asylum procedure and to the financial benefits that an asylum applicant could receive while he/she was waiting for a final decision.

The government decided to reform the asylum and migration procedures based on three pillars. Firstly, all the different procedures needed to be improved to become faster and more efficient. Secondly, there came a one-off regularisation campaign in 1999-2000 to regularise around 50.000 people. The government accepted responsibility for the existence of a large stock of irregular residents, this due to the long procedures and the gaps in the removal-procedure of irregulars. Removal of these persons who were often well-integrated in the Belgian society was an extremely sensitive issue. That is why the government eventually launched a regularisation campaign. Thirdly, removal of undocumented migrants, return policy and the fight against the abuses of migration were to be considered cornerstones of migration policy.

In 2000 a major reform of the asylum procedure was envisaged, but it ended with a lot less as the initial measures taken already led to a fall in the number of asylum applications. The LIFO- principle (Last In First Out) was established with the asylum authorities: this means that the last applications are examined in the first place with regard to their admissibility, so that the asylum seekers can be very quickly informed of the results of their applications’ examination. The speedy settling of new asylum applicants had a dissuasive effect. It was also decided to create additional reception capacity and that in the future no financial but only material assistance (reception in asylum centres) would be granted to asylum seekers. These measures were effective and led to a gradual fall in the asylum applications. While in 2000 there were still 42.691 people lodging applications for asylum, these figures fell to around 12.000 in the year 2007. There is still a certain backlog of the asylum instances but this is more or less under control. As the number of asylum applications dropped sharply the need for a major reform of the asylum procedure was considered to be less urgent.

This major reform of the Aliens Act took finally place in 2006-2007. First of all, developments towards a common European Asylum and Migration Policy meant that several European directives had to be transposed into Belgian legislation. Secondly, it became clear to the government that there was a shift from a purely illegal migration towards more pseudo-illegal migration (e.g. sham marriages, fraud in family reunification, etc.). Prior to the reform, a lot of administrative practices had been arranged by Ministerial

Circulars, which had little legal value, as a result it was not always clear how to deal with certain situations. The reforms also had the purpose to incorporate all these circulars into the law. These reforms of the Aliens Act were called Mammoth I & II and dealt with a.o. the introduction of the subsidiary protection status, a faster and more efficient asylum procedure by reducing the number of authorities examining the asylum requests (inclusive the to unburden the Council of State), fighting the improper use of immigration procedures, and thoroughgoing reform of the rules on family reunification and the stay of EU residents. These reforms are now in place and are up for evaluation. It is not excluded that some changes will have to be made in the future.

In order to better understand the Belgian situation it should be mentioned that there exist divergent opinions about immigration in the French en Flemish Communities. As already mentioned, Belgium is a federal state with migration affairs distributed over the three levels of power (Federal, Regions, Communities). It is within this institutional framework that the two main Communities (French and Flemish) express increasingly divergent views with regard to the immigration issues. The situation of the labour market and the employment policies are also quite different between the three regions and a request for more autonomy in that field is strongly expressed in the Flemish Community. Moreover, the strength of a far-right party in Flanders since 1991 based on a programme combining the independence of Flanders with strong anti-immigration measures, contributes to a different political climate concerning migration in the North and South of Belgium.¹¹⁰

¹¹⁰ De Bruycker Philippe. In: IOM, Study ordered by the European Parliament, Comparative study of the laws in the 27 EU member states for Legal immigration, February 2008, pp.154-155.

5.2 Future developments

Since 2008 Belgium has for the first time a Minister solely responsible for Migration and Asylum Policy. It proves the growing importance and the need for a more coordinated approach in migration and asylum issues; not only the coordination between different policy departments but also between policy levels (EU, federal level and regional authorities). General policy papers of the Minister of Migration and Asylum Policy since 2008, as well as policy papers from the Minister of Interior prior to 2008, can offer some insight into the Belgian migration and asylum policy for the future.

Managed Migration

In 2008 the Minister of Migration and Asylum Policy put the issue of ‘economic migration’ on the agenda. As in several other European countries, Belgian policy-makers have found evidence in demographic, economic and labour market related figures that Belgium needs labour migration in the 21st century. Belgium evolves more and more towards a knowledge economy¹¹¹ and according to some analysts the competitiveness and prosperity of the country partly depends on it. In other words, it has become clear today that the immigration stop of 1974 is at the same time fictive and outdated.

According to the Minister of Migration and Asylum Policy, migration is something you should not undergo but something you should organise. Migration should be based on a well-defined “front-door”, and at the same time the “back-door” should be closed. In other words, migration has to be better managed and accompanied by a firm repressive approach to illegal migration and human trafficking and/or smuggling. Legal paths of entry to the country should allow economic migrants to make their way to the Belgian labour market easily, while abuses and illegal practices should be fought against.

The Policy Documents of the Minister of Migration and Asylum Policy mention that a system of economic migration has to be set up in the short term. This will be done in consultation with the regional governments and the social partners. Also, the current stocks of unemployed workers on the labour market and the lifting of the restrictions on the free movement of nationals from the EU-8 Member States are important factors that will have to be taken into account in the designed system. The system will also have to be in line with the EU -“Blue Card” Directive. In addition, the debate on ‘economic regularisation’ for irregular migrants who have been in Belgium at least since April 2007 is still ongoing. Due to the unstable political situation in Belgium in 2008 no political agreement could be reached on the whole package of this future ‘global migration policy.’

As already mentioned, certain measures have already been taken such as the foundation of ‘Service for Economic Migration’ within the Immigration Department. The aim is to offer the economic/labour migrants a faster procedure (visa application; administrative formalities at municipal level). The Service should also become the information and contact point of all actors involved. All administrative authorities involved are sensitized of the importance of a faster and simplified administrative procedure for labour migrants.

¹¹¹ For example, as Belgium is evolving more and more towards a knowledge economy it is important that research institutes can easily attract researchers worldwide to participate in research projects in Belgium. The bringing together of scientific experts with their own know-how can raise the competitiveness of Belgium in different scientific areas, which will lead to more prosperity in Belgium.

Return policy

Over the last few years, the number of forced returns has dropped, mainly due to the enlargement of the Schengen area. The government has taken and envisages taking measures to reverse this trend:

- protocol-agreements with the local authorities will be negotiated
- voluntary return will be further encouraged,
- readmission agreements have been negotiated (for example in 2008: Vietnam, Ecuador, Guinea)
- on EU-level readmission agreements should be further developed
- return policy will be further supported by developing international contacts and immigration liaison officers will be sent to 'sensitive' countries

However, the return policy is also a part of the more global approach of the Belgian government towards migration. The last few years the link between migration and development became more visible a.o. through the organisation of the first meeting of the Global Forum on Migration and Development (2007) and the creation of the post of Special Ambassador for Immigration and Asylum.

Family reunification

In the policy agreement of the current government it is announced that the rules for family reunification for non-EU citizens should become stricter as the condition of regular, sufficient and adequate means of existence should be introduced in the law. As foreseen in Directive 2003/86/EC conditions for integration could be introduced, however no decision has been taken on this issue as it is up for negotiations with the Regions and Communities.

Sham marriages (marriages of convenience)

The Immigration Department estimates that there are serious signs indicating that the phenomenon of sham marriages and sham legal partnerships has become more important over the last few years. New measures will be put in place to combat the abuse of marriages for gaining legal benefits:

- the information exchange between the Immigration Department and the local authorities will be improved;
- the attempts and the concluding of a sham marriage have been made penal offences
- a task force on sham marriages was set up within the Justice Department

Students

The status of students is often abused by using false or fraudulent documents. More Immigration Liaison officers will deal with this matter and will for example go to targeted countries to check and to deliver the student visa on the spot

6. Annexes

6.1 Publications

- Algemene Directie Werkgelegenheid en arbeidsmarkt : de Immigratie in België: aantallen, stromen en arbeidsmarkt, Sopemi Rapport 2008.
- Belgian Multi-annual programme for the External Border Fund (2007-2013)
- Belgische Kamer van Volksvertegenwoordigers, Algemene Beleidsnota van de Minister van Migratie en Asiebeleid 2008-2009. Doc52 1529/026, 20/11/2008
- Belgische Kamer van Volksvertegenwoordigers, Algemene Beleidsnota van de Minister van Migratie en Asiebeleid 2007-2008, Doc52 0995/020, 21/04/2008
- Centrum voor Gelijkheid van Kansen en Racismebestrijding , Migraties en migratiepopulaties in België, Statistisch en Demografisch verslag 2007.
- Centrum voor Gelijkheid van Kansen en Racismebestrijding, Jaarverslag Migratie 2007.
- Centrum voor Gelijkheid Kansen en Racismebestrijding, Jaarverslag Migratie 2008
- CIRé. Guide on the asylum procedure in Belgium. Edition 2008.
- Dienst Vreemdelingenzaken, Jaarverslag 2007
- De Clercq Régine H.E. Ambassador for Immigration and Asylum Policy, Belgium. Belgium and policy coherence on migration www.un.org/esa/population/migration/turin/Turin_Statements/Turin_Statements_all.htm
- Ecotec Research and Consulting Limited, Admission of third-country nationals for paid employment or self-employed activity, European Commission, Directorate General for Justice and Home Affairs, 2001
- EMN Study 2005, Belgian Contact Point, Illegally Resident Third Country Nationals in Belgium : state approaches towards them and their profile and social situation, 2005.
- EMN Study December 2006, Belgian Contact Point, Conditions of entry and residence of third country high-skilled workers in Belgium
- EMN Study 2006 : Forced and Voluntary Return in Belgium
- EMN Policy Report Belgium 2006
- EMN Policy Report Belgium 2007
- EMN, BE reply on NL Ad hoc query on anti human trafficking policies requested on 12 September 2008
- EMN, BE reply on PL Ad hoc query on integration approach in the EU Member States requested on 17/11/2008
- EMN, BE reply on AT Ad hoc query on naturalisation laws requested on 18/09/2008
- Foreign Affairs, Foreign Trade and Development Cooperation, Foreign Policy, Asylum and Migration, www.diplomatie.be/en/policy/policynotedetail.asp?TEXTID=13963
- Geets Johan, Pauwels Fernando, Wets Johan, Lamberts Miet, Timmerman Christiane; Nieuwe migranten en de arbeidsmarkt, 2006.
- IGC Report on Asylum procedures (Blue Book) 2009 : Belgium
- IGC Immigration Country report Belgium, 2007.
- IOM, Study ordered by the European Parliament, Comparative study of the laws in the 27 EU member states for Legal immigration, February 2008.
- Migration Information Source. Belgium's Immigration Policy Brings renewal and challenges. By Marco Martinello and Andrea Rea. October 2003. www.migrationinformation.org/feature/display.cfm?ID=164
- MPG, Current Immigration Debates in Europa: Belgium. Sonia Gsir, Marco Martinello, Katrien Meireman and Johan Wets, September 2005.
- Belgian Multi-annual Programme for the Return Fund
- Belgian Multi-annual Programme for the External Border Fund

6.2 Websites

- www.actiris.be
- www.adde.be
- www.belgium.iom.int
- <http://binnenland.vlaanderen.be/inburgering/integrationprogramme.htm>
- www.bruxellesirisnet.be/fr/region/region_de_bruxelles-capitale/institutions_communautaires/cocom.shtml
- www.caritas-int.be
- www.cbai.be
- www.ceps.eu
- www.cgvs.be
- www.cireirisnet.be/ressources/guides/guide-asile-en.pdf
- www.cndc.be
- www.cocofirisnet.be/site/fr
- www.croix-rouge.be, www.rodekruis.be and www.roteskreuz.be
- www.dekamer.be/kvvcr/showpage.cfm?section=pri|dossiers&language=nl&rightmenu=right_pri&story=notes.xml
- www.dglive.be
- www.diplomatie.be
- www.diversiteit.be
- www.dofi.fgov.be
- www.f-a-m.be
- www.foyer.be
- www.gfmd-fmmd.org/en/programme/agenda-en
- www.ibz.fgov.be
- www.inburgering.be
- www.just.fgov.be/nl_htm/informatie/htm_justitie_atotz/nationaliteit_verkrijgen.html
- www.juridat.be/cgi_loi/loi_N.pl?cn=2007042576
- www.leforem.be
- www.medimmigrant.be
- www.mi-is.be
- www.migrationinformation.org/feature/display.cfm?ID=164
- <http://mineco.fgov.be/>
- www.migpolgroup.com
- www.npdata.be/BuG/106-Belgwordingen/
- www.orcasite.be
- http://reflex.raadvst-consetat.be/reflex/index.reflex?page=chrono&c=detail_get&d=detail&docid=19491&tab=chrono
- www.un.org/esa/population/migration/turin/Turin_Statements/Turin_Statements_all.htm
- www.rvv-cce.be
- www.vdab.be
- www.vluchtelingenwerk.be
- www.vmc.be/vreemdelingenrecht
- www.vgc.be/Site+structuur/leftnav/situering/paspoortHome.html
- www.wallonie.be
- www.werk.belgie.be/home.aspx
- www.11.be