# EUROPEAN MIGRATION NETWORK

## BELGIAN NATIONAL CONTACT POINT

# VISA POLICY AS MIGRATION CHANNEL IN BELGIUM


Author:
Geert Tiri
Immigration Department

Belgian Immigration Department
Commissioner General for Refugees and Stateless Persons
Centre for Equal Opportunities and Opposition to Racism

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www.emnbelgium.be
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The Belgian Contact Point can be contacted through the following channels:

info@emnbelgium.be - Tel. +32 (0)2/ 793 92 30

Or by ordinary mail at the following address:

EMN Belgisch Contactpunt
Dienst Vreemdelingenzaken, WTC II 24e verdieping,
Antwerpsesteenweg 59B,
1000 Brussel



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# VISA POLICY AS MIGRATION CHANNEL IN BELGIUM

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# EXECUTIVE SUMMARY

This study examines the impact of the visa policy on legal and illegal migration in Belgium. The scope is limited to nationals from third countries, with the exception of family members of EU nationals or Belgians. Both C short-stay visas of a maximum of three months and D visas for long stays of more than three months are discussed.

Chapter 2 gives a general overview of the policy and regulations on issuing visas. Although Belgium primarily regards visas as a migration tool (and less as a tool to promote external relations), visas, per se, only constitute a marginal part of discussions on Belgian migration policy. Since the 1974 migration stop, the emphasis is primarily on managing (irregular or legal) migration streams and less on further encouraging migration for economic reasons where visas can, however, play an important role.

Belgian regulations mirror this policy: we mainly find D visas only in the few categories for which European directives have already been transposed (family reunification and students). The Minister's discretionary power to grant authorisation for residence is the only legal basis for D visas for employees. This, in any event, offers the advantage that, should the circumstances necessitate that the policy be changed, it can be done quickly without requiring a time-consuming change to the law. Finally, C visas are governed by recent European regulations, which nonetheless still allow the Member States a certain amount of leeway.

In Chapter 3, there is an in-depth examination of the practical implementation and organisation of the visa procedure, where the application stage is discussed first, then the investigation stage and, if the visa is issued, the entry, stay and departure. For long stays, it can be established that the terms and conditions for the stay have, in principle, already all been investigated in advance (by consulates and/or the central Immigration Service) during the application for a D visa, a residence permit for the territory is then issued without substantial additional investigation.

Then aspects regarding legal migration, on the one hand, and combating illegal migration, on the other, are examined. Although the Belgian visa procedure is not explicitly aimed at that first aspect, a few success factors which seem to be of some import can nonetheless be detected, such as a speedy visa and residence procedure for economic migrants and the visa facilities that their family members enjoy. In combating illegal migration, the visa obligation itself can be highlighted as the first success factor. The preliminary investigation for all entry and residential terms and conditions during the course of the application for a C or D visa abroad, and not at the border or within the territory, naturally has an important preventive effect. The internal organisation of the investigation procedure, including preliminary check-up by the consulates and secondary check-up by the Immigration Service for both the C and D visas, also contributes towards combating illegal migration. In the near future, it will be possible to detect many misuses and cases of fraud for C visas by means of the Visa Information System (VIS).

Two case studies, i.e. Turkey and the Democratic Republic of Congo, are elaborated on in Chapter 4. There are a few international agreements dating back to the 60s between Turkey and Belgium and Turkey and the EU that promote legal migration and, therefore, also visa issuance, or that even lead to visa exemption. However, this is not in keeping with the rather restrictive Belgian migration policy of the last few decades. Hence, these agreements are being subject to a great amount of criticism (fuelled by a few judicial rulings by both the local courts and the Court of Justice) and they are interpreted restrictively.

There are no agreements on legal migration with the DR of Congo, but despite all (local) measures to combat illegal migration, including for visa procedures, there is still a substantial influx of Congolese people. All the same, visas are, however, a very important policy tool to manage migration, and they contain various measures that are specifically aimed at the DR of Congo, such as Vision Consulting and the establishment of the 'Maison Schengen' (Schengen House).

Chapter 5 then deals with the concrete local consequences of the EU visa policy. The actual visa obligation and exemption are regulated at European level, which has more far-reaching consequences than any other visa procedure measure whatsoever. This transpired clearly from the exemption of the various western Balkan countries since the end of 2009: since then, a substantial increase could be perceived in the number of asylum seekers who came from Serbia and the former Yugoslav Republic of Macedonia, although one of the criteria to obtain exemption was precisely the respect for the fundamental rights of all nationals, including minorities. European visa facility agreements can also have a negative impact on illegal migration streams, all the more so because, in the long term, they usually lead to exempting the third country in question from visas.

Some explanation of the statistics included in the appendix is given in chapter six. Numerous caveats mean that performing detailed analyses of these statistics for the purposes of evaluation of changes in the policy or regulations serves little purpose. For example, not only are the statistics themselves not always completely reliable and over-simplified (no sub-division of multiple-entry and group visas and different calculation methods for visas and residence permits) but, in addition, fluctuations in the statistics can just as well be caused by external factors in the country of origin as in the changes to local policy. Nevertheless, we can ascertain that of all foreign nationals with a Belgian residence permit, only approximately half of them arrived with the in principle required D visa; approximately half of these D visas related to family reunification and a quarter are students.

To conclude, we can state that visas cannot contain the entire migration problem, but they are nonetheless an essential tool within migration policy that makes it possible to promote legal migration and combat illegal migration. Moreover, these two aspects can be present simultaneously in the visa procedure without them counteracting one another, on the contrary: in this way, the D visa procedure, where all terms and conditions for residence are examined in advance and which is combined with a relatively flexible procedure for residence, offers benefits from both the promotional and prevention perspectives. For the purposes of a well-balanced visa policy, it therefore seems possible and even advisable not to provide any preventative measures that would cause unreasonable interference for bona fide candidate migrants. There is, however, an increase in the amount of discussion on this at the European level, as is displayed by the VIS and ESTA examples.

## Explanatory introductory summary

As mentioned in Chapter 1, this study follows the specifications as imposed by the European Migration Network, with special attention to Belgian particularities in the visa procedure. This didn't leave much room for an overview of the basic principles of visa and entry, especially not for the C-visas for which the procedures and conditions are harmonized anyway at European level. On the other hand, the study wishes to be of interest also for policy makers or analysts, who aren't necessarily specialist in this field. In order to somewhat remedy this shortcoming, we found it useful for pedagogical purposes to add this short explanation.

### Common Schengen policy

As there is no border control between Schengen states anyway, most elements of the visa policy (requirement and issuance policy) are dealt with on a harmonized Schengen level. The Schengen states are currently the member states of the EU without the UK and Ireland (who have no intention to join Schengen) and also without Romania, Bulgaria and Cyprus (who should take part in the future, once they meet the technical conditions). Apart from these members states of the Union, the associated countries Norway, Iceland, Liechtenstein and Switzerland are also a part of Schengen.

### Requirement and typology of visas

A-visa: For transiting through the international transit zone of an airport, most third country nationals don't require a visa. If a visa is required, this is called an A-visa. Twelve countries are currently on the common European list for A-visa requirement (annex IV of the visa code 810/2009), but the individual member states have the possibility to add countries. A A-visa doesn't give any right to actually pass the borders beyond the international transit zone.

C-visa: For residence up to three months, most third countries (especially from the African and Asian continent) require a visa. The common European list is established in annex 1 of regulation 539/2001, which is modified regularly. This visa for residence up to three months is called a C-visa. In general, this C-visa is valid for the whole Schengen area.

D-visa: For residence over three months, not only the third country nationals on the above-mentioned annex 1 require a visa, but in principle also all other third country nationals (although the legal situation for this latter category is not that clear). This remains the competence of the individual member states. The D-visa is only valid for the member state of issuance, although it also allows to reside up to three months in the other member states.

## Issuance of visas and competent authorities

Visas by definition have to be applied for and issued abroad, before entry (although exceptionally an application at the border can be possible).

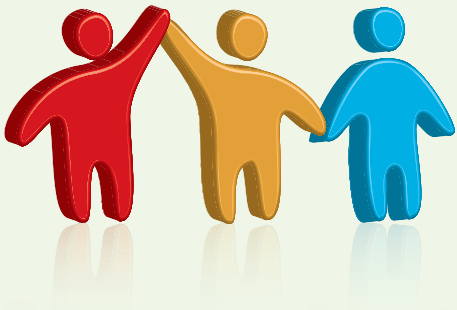
- If Belgium is the main purpose of travel for up to three months, the C-visa has to be applied at the Belgian consular post where the foreigner resides although representation by another member state is also possible. The conditions and procedures for this C-visa is harmonized at European level by the visa code 810/2009 (and previously by the Common Consular Instructions).
- D-visas for Belgium always have to be applied at the Belgian consular post (Ministry of Foreign Affairs). The procedure remains mainly the competence of the member states, although for some categories (such as students and family members) instructions can be found in the relevant directives which have to be transposed into national law.

In both cases, the application is according to Belgian legislation examined by the central authorities (Immigration Service, Ministry of Interior). The consular posts however have also the possibility to issue visas themselves for clear-cut cases, which is in practice the majority of all applications.

The decision to refuse of visa is always taken by the central authorities. An appeal against this motivated refusal is always possible. For C-visas, the motivation of refusals and the possibility of appeal has even become a European obligation since 5 April 2011.

## Entry conditions

A C-visa does never imply a right to enter: the possession of a visa for visa-required nationals is only an additional condition for entry. If at the border it turns out that the general entry conditions, such as travel purpose or means of subsistence, aren't met anymore or have indeed never been met (in which case the visa was obtained fraudulently), entry can still be refused and the visa can also be revoked or annulled.



## 1.1. Purpose

The EMN Steering Board approved the selection of a study on *Visa Policy as Migration Channel* as part of the EMN Work Programme 2011. The key objective of the study is to analyse the *nexus between visa policy and migration management and control, including tackling irregular migration.*

This EMN study will thus serve to inform policymakers and analysts about the effects of visa policy on the management of migration, both in terms of facilitating legal migration and preventing irregular migration. For the benefit of local analysts in particular, the footnotes refer extensively to the applicable regulatory texts, which are available only in Dutch and French. However, this study does not aim at being fully academically justified: various nuances and details were ignored to accommodate a broad range of readers.

The study will focus on third-country nationals, since EU citizens are entitled to visa-free travel within the EU. Family members of Union citizens who fall under Directive 2004/38 are not discussed either, seeing that there is a special visa, entry and residence system for them, which does not fall within the context of Articles 77 and 79 of the TFEU (Treaty of the Functioning of the European Union). The same applies to family members of Belgians who, in accordance with current national regulations, are, in principle, actually equated to family members of EU nationals.

Visas for both short and long stays are discussed in this study. For short-stay visas, however, coordinated European rules apply, which are not discussed as such in this study, the purpose of which is, after all, to explain the particular situation in the Member States, being Belgium in this case. The Belgian particulars are explained to the extent that these European rules still leave Member States some leeway; however, the general context of the European Visa Code is not always brought back up. This study therefore requires the reader to have some prior knowledge of the European visa policy on short stays[1].

## 1.2. Methodology

This study is primarily based on public reference sources, the reliability of which is not disputed, such as the websites of Foreign Affairs and the Immigration Service, official policy statements, regulations or instructions published in the Belgian Official Gazette, and, at European level, the

1 Moreover, different writings are already available on this subject, see e.g. Gérard Beaudu, 'Le code communautaire des visas' (Community Code on Visas), Revue du droit des étrangers, 2009, no. 156, p. 599-627. For more, see also http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/index_nl.htm, under the heading, 'Visa', for a summary of the relevant EU regulations.

public Council or Commission documents. Local embassy and consulate staff were consulted for Chapter 4 on Turkey and the Democratic Republic of Congo. In addition, as a staff member of the Immigration Service, the author had access to internal documentation. Useful information was obtained by way of informal contacts with employees from the various departments responsible for visas. However, this was only used indirectly to further explain or qualify public information; this is not specifically stated in the footnotes as a source of reference.

Furthermore, to make it easier to issue a European synthesis report, there was an attempt to follow the imposed study specifications as closely as possible. However, this inevitably led to a contextual overlap with similar information that recurs in various chapters, as the numerous cross references in this study prove.

Immigration law and policy is an active subject, which means that there were various amendments made and that various developments occurred while this study was being written[2] or that there were relevant on-going discussions which will only become definitive after this study has been finished[3]. To the extent that this is possible, an attempt has been made to incorporate such developments to avoid the study being outdated at the time of its publication.

It was not always possible to provide the statistics requested. For example, Belgium does not have any figures on the immigrant's previous residence, and the sub-division according to reason for residence has only been available since 2006. Moreover, even with full and reliable statistics, it would be dangerous to establish causal links from this: it is difficult or even impossible to check if a fluctuation in the statistics is caused by an amendment to the Belgian regulations or policy or, rather, by factors that are entirely external (for example, by push factors such as the political or economic situation in the country of origin) or, further yet, by factors inherent to other Member States (such as a change in their policy or even just the opening or closure of an embassy, which, by way of visa shopping, can also have repercussions for Belgium). For these reasons, we will hereafter use statistics rather sparingly to support this study.

Apart from the above (statistical) caveats, this study does, nonetheless, hopefully have some merit. The current information available on visas (i.e. for specific types of C or D visas) was rather partial and either fully focused on the applicant personally or was intended for the competent authorities who must examine the applications. This information is combined in this study to be as systematic as possible. Furthermore, there are very few national studies available on C and D visas as such (insofar as visas are discussed, this is often synonymous with a residence permit), which is why there are relatively few references to legal literature in this study. Maybe this study can remedy this shortcoming.

2 See, for example, the amendment to the law of 8 July 2011 (points 2.4 and 3.1a) or, also, the developments regarding the consequences of the exemption of the Western Balkan countries (point 5.1a).

3 See, for example, the transposition of Directive 2009/50 for highly qualified persons, the further adjustment of the regulations on students in light of Directive 2004/114 (policy intention stated under 2.1.d) or also the pending Demirkan case before the Court of Justice.

## 1.3. Definitions

In principle, the definitions used in the EMN glossary[4] are maintained 'as is' in this study. The following deserve particular mention:

- Visa(s): 'The authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:
  (i) 'long-stay visa' means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;
  (ii) 'short-stay visa' means the authorisation or decision of a Member State required for entry for transit through or an intended stay in that State or in several Member States for a period for which the total duration does not exceed three months in a six month period.

  This study will mostly not discuss visas in general, but there will be specific mention of which of the two visas is concerned. In accordance with point 7, Appendix VII of the Visa Code, we will, for the sake of convenience however, mostly hereafter refer to the long-stay visa as the 'D visa' and to the short-stay visa as the 'C visa'. For the sake of completeness, the other types of visas, i.e. A and B, are not discussed in this study. A-Visas relate to airport transit and, in actual fact, do not even allow entry into the territory; therefore these are not directly relevant to this study, which examines the link with migration. B visas are visas for transit through the territory: these have been dispensed with and have simply become an application of the C visas.

- VIS: Visa Information System, a system for the exchange of visa data between Member States, which enables authorised national authorities to enter and update visa data and to consult these data electronically.

- Residence permit: 'Any authorisation issued by the authorities of a Member State allowing a third-country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No. 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.'

A few legal sources and local concepts that often recur in this study also deserve particular mention:

- Visa Code: Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243 of 15 September 2009, p. 1);

- Visa Handbook: Commission Decision of 19 March 2010 establishing the Handbook for the

4 http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do?directoryID=117

processing of visa applications and the modification of issued visas[5];

- Convention implementing the Schengen Agreement: Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. Please note that this Convention has been repeatedly amended and a coordinated version (including the latest amendment by Regulation 265/2010) is apparently not available;

- Belgian Immigration Law [Vreemdelingenwet]: Law of 15 December 1980 on Access to the Territory, Residence, Settlement and Expulsion of Foreign Nationals;

- Immigration Service (IS) [Dienst Vreemdelingenzaken] Directorate-General in the Federal Public Service Home Affairs, which is authorised to make decisions on access to the territory, residence, settlement and expulsion of foreign nationals.

5 http://ec.europa.eu/home-affairs/policies/borders/docs/c_2010_1620_en.pdf

## 2.1. National policy and legislative framework

### a) General vision on the role of visas

Belgium regards visas as *a tool to manage migration and security* rather than as an element concerning the foreign affairs policy. This appears firstly from the fundamentally competent authority to grant or refuse D visas, i.e. the Federal Public Service Home Affairs (in particular, the Immigration Service) instead of the FPS Foreign Affairs. Even regarding C visas, the Immigration Service still plays an important role on the grounds of the national interpretation of Article 4.4 of the Visa Code[6]. This principle is further confirmed by the finding that Belgium has almost no agreements with third countries on the exemption of D visas or of handling fees. In addition, Belgium attaches more importance to the management of illegal migration and national security issues than to external relations with the relevant third country and regional coherence for any possible exemptions from C visas[7].

### b) Visa policy

The concrete migration policy since 1974 has officially been an immigration stop[8]. This is also translated into the visa policy: D visas are only granted to a rather limited number of categories, mostly in application of European Directives. Traditionally, the emphasis therefore lies with securing public order *and managing irregular migration flows* rather than with the further promotion of legal migration. This appears from, e.g. the position of the Immigration Service within the government apparatus. Until the early 90s, the Immigration Service, together with the Belgian State Security Service, formed part of the Public Safety Service under the competence of the Minister of Justice. Consequently, asylum and migration policy, and therefore also the Immigration Service, was put under the auspices of the authority of the Minister of Home Affairs, whose range of duties also includes national security.

A cautious turn in the tide can be perceived in the last few years, however. Triggered by both European developments and the idea that migration can contribute positively to the host country (e.g. for the purpose of the ageing population and/or to fill up structural vacancies), there was a move *to further encourage legal migration*. Seeing that it is therefore not only unavoidable, but even advisable that (economic) migrants come to Belgium, there was a decision to conduct

6 For more information, please see point 2.3.a.

7 Cf. criteria for exemption stated in the consideration in point 5 of Regulation 539/2001. The consequences of the exemption for the Western Balkans, which is discussed below, was a factor that contributed to inspiring these criteria.

8 This was a decision made by the then government on 8 August 1974.

a more targeted policy, instead of to recruit from a stock of foreign nationals who are staying in the territory under precarious or even unlawful circumstances. In March 2008, this new vision also translated into appointing a Minister who is authorised especially for migration and asylum, and not for other Home Affairs matters. Since July 2009, this has involved a State Secretary for Migration and Asylum Policies, who has been added to the Minister who is also authorised for employment (since the new government took force: Minister of Justice) which further displays the increased attention for (economic) legal migration.

## c) Legal framework

In transposing the *European directives,* the Immigration Law provides a right to long stays for certain specific categories of foreign nationals. This concerns the following:

- Directive 2003/86: family members of third-country nationals[9],
- Directive 2004/114: students[10]
- Directive 2005/71: researchers[11].

The transposition of Directive 2009/50 on highly qualified persons will follow soon[12]. For the sake of completeness, attention can also be drawn to Directive 2003/109 on the status of third-country nationals who are long-term residents, although this is only marginally relevant to D visas and is not discussed any further in this study[13].

These guidelines entail an obligation to allocate certain *facilities* to obtain the required visa, which, in this context, refers to D visas. This is imposed by Directive 2003/86, Article 13.1 for *family reunification*. The national transposition only provides for maximum terms of the Directive to make a decision within nine months[14]. For *students,* the required visas on the grounds of the consideration in point 17 of Directive 2004/114 must be issued in good time. Furthermore, it can be deduced from Article 18.1 that 'in good time' is understood to mean the following: within a period that does not hinder continuation of the study concerned and that simultaneously offers the competent authorities enough time to deal with the application. To date, this has not yet been transposed into national regulations and no decision period has been included in the current regulations. Facilities are imposed on *researchers* by Article 14.4 of Directive 2005/71, indirectly transposed by Article 61/11 of the Immigration Law: in certain cases it is possible to derogate from the requirement to submit a medical certificate and/or proof of good conduct. The

9 Immigration Law, Articles 10 and 10bis.
10 Immigration Law, Articles 58 to 61.
11 Immigration Law, Articles 61/10 to 61/13.
12 The transposition period ran up to 19 June 2011; transposition will be provided for in new Articles 61/14 et seq. in the Immigration Law.
13 This Directive has been transposed by the Immigration Law, Articles 61/6 to 61/9, the explanation of which is included in a circular dated 14 July 2009 (Belgian Official Gazette 11 August 2009). Under favourable conditions long-term residents can be granted extended stays in Belgium as employees or self-employed persons, students or persons having sufficient means of subsistence. The general rule that application for residence for longer than three months must preferably be submitted abroad instead of in Belgium, therefore by way of a D visa, also applies to long-term residents. Seeing that, per definition, they are already in possession of a residence permit from a Member State, they will, however, be able to come to Belgium and submit their application here without any border control. These persons therefore only apply for D visas in exceptional cases.
14 Immigration Law, Articles 12bis(2)(3) and 10ter(2)(1) (transposition of Article 5.4 of Directive 2003/86).

requirement of Article 15 of the relevant Directive to make a decision as quickly as possible and, where applicable, to provide for expedited procedures, was not transposed in the Immigration Law but it is only the explanatory memorandum to the transposition law that states that a decision must be made quickly[15] [16].

*Re-entry authorisation* is another regulated category falling under D visas: persons with a residence permit who have been absent for more than one year (or possibly six years for long-term residents) lose their automatic re-entry authorisation and must apply for a D visa again to obtain new re-entry authorisation for longer than three months. In such cases, particular attention is paid to the ties that they still have with Belgium and the reason for their temporary absence[17].

Although this is not explicitly provided for by the regulations, a D visa is generally also issued to economically active persons, i.e. *employees or self-employed persons*. Only application in the territory is regulated for such persons[18], but it is logical that this is also applied *mutatis mutandis* in the case of an application for a D visa abroad, which, moreover, still remains the general rule (Immigration Law, Article 9). It is up to the competent FPS Employment (employees) or FPS Self-Employed (self-employed persons) to judge whether the person in question may exercise his/her occupation, either by handing in a work permit (for employees) or professional card (for self-employed persons), or is exempt from this. Having regard to the immigration stop mentioned above, the work permit, in principle, is only allocated after the labour market has been internally examined[19]. The consulates and IS, in principle, abide by the decision made by FPS Employment or FPS Self-Employed by issuing a D visa, unless there is a threat to the public order or public health[20].

Furthermore, on the grounds of the discretionary authority allocated in Article 9 of the Law, D visas can also be granted in other situations, even though this is applied rather restrictively to the immigration stop. In practice, this will particularly concern *persons of independent means* who, in any event, do not present any danger to the social security and *humanitarian family situations* that fall outside the scope of the Belgian legislation on family reunification. As regards the latter, it is possible to have the following situations, for example:

- Wards of the Court. Other than in the case of adoption, guardianship does not create a tie of descent and there is therefore no legal right to family reunification. For humanitarian reasons

15 The explanatory memorandum states the following: 'No maximum term shall be laid down in the law. The diplomatic and consular professional items and the relevant services of the Immigration Service will, however, handle these applications quickly once all the required documents have been presented. Except in exceptional cases, applications do require thorough examination and it will be adequate to establish that a host agreement has indeed been concluded with a recognised research institution and that there is no threat to public order, public safety or public health.' (http://www.dekamer.be/FLWB/pdf/51/2976/51K2976001.pdf, p. 11).

16 For the sake of completeness, Directive 2009/50 (highly-qualified persons), which has not yet been transposed, also contains a similar provision on facilities (Article 7.1), in addition, with the obligation in Article 11.1 to make the decision as quickly as possible and, at the most, within 90 days.

17 See Immigration Law, Article 19 and RDs of 7 August 1995 (general) and 22 July 2008 (for long-term residents). Furthermore, an exceptional situation concerns the return of persons who did not yet have a residence permit, but whose family reunification application is pending (see also point 4.1.4).

18 See Article 25/2(1)(1), RD of 8 October 1981.

19 See Articles 8 and 9 RD of 9 June 1999.

20 See http://diplomatie.belgium.be/nl/Diensten/Naar_Belgie_komen/Visum_Voor_Belgie/lange_duur/index.jsp

and depending on the case, such children can obtain D visas[21];

- Blood relations in the ascending line who are dependants of non-EU nationals. In such cases the non-EU national concerned must, in particular, have sufficient means available to support the ascendant family member[22].

With these possibilities of residence for more than three months, the Immigration Law distinguishes between 'authorisation to stay' and 'permission to stay'. The permission to stay only applies to family reunification, the authorisation to stay only to the other categories. However, the contextual difference between the two is not very clear. Originally, the permission to stay entailed a *right* to stay, whereas the authorisation to stay was more of a *favour* granted on the grounds of the discretionary authority of the administrative services. During the course of time, however, this difference has become vaguer and there are currently numerous 'authorisations' which also have to be granted if the legal requirements had been met. It is only for the aforementioned persons of independent means and humanitarian family situations that one can still argue that this is a favour instead of a right. For the time being, the only difference between the permission and the authorisation seems to lie with the consequences of when the validity of the residence permit expires: the residence permit granted on the grounds of a permission to stay is extended ex officio, subject to an explicit decision of termination; whereas, in the case of a residence permit on the grounds of an authorisation, it is indeed necessary to have an explicit extension (Immigration Law, Article 13(2)).

In general, these applications for a stay of longer than three months are preferably submitted abroad, therefore by way of a D visa, instead of in the territory. This applies to both the application for the permission (Immigration Law, Article 12 bis (1)(1)) and the application for an authorisation (Article 9(2)). Foreign nationals who want to come to Belgium for more than three months and who do not have a D visa will, in principle, not be granted entry into the territory. This also applies to persons exempt from a C visa[23]. However, if these persons are indeed legally in Belgium (either for a short stay or a long stay already granted previously), they can also submit the application in the territory[24]. If the person is in the territory legally or if it concerns an application for which the terms and conditions of residence are not laid down by Royal Decree[25], then the application for residence of longer than three months can only be submitted in the territory under 'exceptional circumstances'[26].

21 See http://diplomatie.belgium.be/nl/Diensten/Naar_Belgie_komen/Visum_Voor_Belgie/lange_duur/voogdijkinderen/index.jsp

22 See explanatory memorandum to the Law of 15 September 2006, p. 22-23, http://www.dekamer.be/FLWB/pdf/51/2478/51K2478001.pdf.

23 Moreover, the visa exemption of Regulation 539/2001 is clearly only valid for a stay of a maximum of three months (Article 1.2). Article 5 of the Borders Code further stipulates that they must be able to corroborate the travel purpose and the return journey within three months.

24 See the Immigration Law, Article 12bis(1)(2)(1) and (2) for the permission, and the Immigration Law, Article 9(2) in conjunction with Article 25/2(1) of the RD of 8 October 1981 for the authorisation.

25 Specifically only the really discretionary cases, i.e. the persons of independent means and for humanitarian family reasons.

26 See the Immigration Law, Article 12bis(1)(2)(3) for the permission, and the Immigration Law, Article 9bis for the authorisation.

## d) Link to legal and illegal migration in the visa policy

There is no explicit reference to visas in the most recent *government coalition agreement* of 2008[27]. The chapter on migration deals mainly with asylum and regularisation. Nevertheless, there is also an important passage on economic migration: 'In deliberation with the regions and social partners, the government introduces the possibility of short-term economic migration, taking into account the current reserves on the labour market and the effects of the approaching abolition of the restrictions on free movement of employees from the new EU Member States.' This implies that, where applicable, foreign nationals from outside the EU will be attracted by the issue of a work permit and D visa. This step is aimed at further promoting labour migration and proactive visa policy was, however, immediately mitigated by a clause in this government coalition agreement which states that foreign nationals who are already actually residing in the territory (also illegally) can also, under certain terms and conditions, be considered for this by way of regularisation.

However, no particular instructions on such economic migration have been issued to date, although, conversely, instructions on regularisation were indeed issued on 19 July 2009[28]. In this way, more than 20,000 foreign nationals residing illegally or residing in precarious situations thus obtained a residence permit in 2010 for humanitarian reasons, mostly because the asylum procedure took over three to five years or because they had built up other long-standing ties with Belgium[29]. Regardless of the reason for regularisation, they can also, in principle, work in Belgium, with the result that there is less of a need to attract migrants from outside the European Union by way of D visas. We can therefore already determine that the policy on visa issue is not an isolated subject but is, in actual fact, largely dependent on (and is eroded by) other migration factors such as the policy on regularisation which, in turn, depends on the speed of the asylum procedure and the return policy regarding foreign nationals residing illegally within a country. The anticipated end of the transition period for access to the labour market for Romanians and Bulgarians in January 2012 will possibly reduce the need to issue D visas to third-country economic migrants.

The most recent *policy paper* by the competent State Secretary, which dates back to November 2009[30], also does not discuss the role that the visa policy can play in combating illegal and promotional labour migration in much detail. For C visas, the policy paper is understandably restricted to European developments in this respect (VIS and the new Visa Code), where there is particular focus on the new possibilities to combat illegal migration in this regard (biometric registration, improved border control, combating visa shopping, etc.). There is no explicit mention of D visas, but a few immigrant categories that may be taken into consideration for this, i.e. family reunification, students and highly-qualified persons, are discussed, however. For the latter two

27 http://www.fedweb.belgium.be/nl/binaries/regeerakkoord180308_tcm120-14855.pdf

28 See http://www.kruispuntmi.be/uploadedFiles/Vreemdelingenrecht/Wegwijs/verblijfsstatuten/Humanitair/instructie%20regularisatie%2020090718.pdf. Although the Council of State annulled this instruction a few months later, the administrative services still apply this.

29 See IS 2010 annual report, especially p. 55 and 58, https://dofi.ibz.be/sites/dvzoe/NL/Documents/2010NL.pdf.

30 http://www.melchiorwathelet.be/uploads/20091105%20Note%20pol%20generale%20asile%20et%20migration.pdf, see p. 17 to 19 in particular for C visas, p. 13 to 16 for long stays and p. 28 for the DRC.

categories, the policy paper does not mention much more than that the European Directives are (shall be) duly respected. However, for family reunification, a few measures are clearly set as prerequisites to combat illegal migration: for example, there are additional measures that have been set as prerequisites to combat marriages of convenience and sham civil partnership, and an additional condition of sufficient means of subsistence has been established.

No particular directly specified third countries are targeted in the visa policy. The policy paper does, however, state that prevention and awareness-raising projects are started at the end of 2009 in the Democratic Republic of Congo to limit the irregular influx. This prevention of illegal migration can also relate to visas; the initiatives in this regard are discussed under point 4.2.4.

### e) Link to legal and illegal migration in the visa regulations

The visa regulations are limited mainly to a neutral summary of the terms and conditions of residence for a few immigrant categories, mostly in transposition of European Directives. It is obvious that it is not common practice to state the intention in the legislation, promote legal migration or combat illegal migration. It is significant, however, that the law does not explicitly regulate situations where there is little danger of illegal migration, for example, in the issuance of visas to employees. Indeed, one does not need a myriad of legal provisions to promote legal migration: for this purpose, Article 9 of the Immigration Law, which grants a discretionary authority to issue D visas in non-regulated situations, can serve as adequate legal basis. In addition, a visa that has been granted will in any event never be contested by the Court. This scanty legal basis offers the additional benefit that no cumbersome legal amendments would be required if the policy were to be changed and promoting legal migration were no longer found to be more or less expedient.

There is indeed extensive elaboration in the Law on visa requirements for immigrant categories that are more likely to lead to misuse and, therefore, also to visa rejection and disputes before the Court, such as family reunification. For example, an explicit provision on fraud, which leads to a visa being rejected, has been incorporated for them (Article 11(1)(4) of the Law), whereas this is not done for students and researchers, for example, and where the general legal principle of '*fraus omnia corrumpit*' suffices. Moreover, in comparison with the earlier national regulations, the Law of 15 September 2006, whereby Directive 2003/86 on family reunification is transposed into Belgian law, entails both stricter provisions on illegal migration and more flexible rules on promoting legal migration: both elements were required, at that time, to procure a political compromise. This is how it was possible, from then on, to withdraw a residence permit for 3 years if the spouses no longer co-habited, whereas, on the other hand, the possibility for non-married partners to obtain residence was included as a provision in the Law.

Furthermore, a horizontal provision on combating illegal migration has been included in the Immigration Law, Article 30bis, which was added at the end of 2007: this makes it possible to

take fingerprints when visa applications (for both C and D visas) are made, to establish or verify matters such as the foreign national's identity at the border or in the territory. The explanatory memorandum to this Law explicitly states that this is aimed at benefiting the combat against fraud and terrorism[31]. The extensive category of family members, which, moreover, is not free of attempts at misuse, is however excluded from this possibility to take fingerprints. No reason is given for this, either in the Law or in the explanatory memorandum. It is possible that the legislator was of the opinion that this would not be consistent with Article 8 of the ECHR or Directive 2003/86. It seems it is currently difficult to defend this exception for D visas for family members seeing that they subsequently receive a uniform type of residence permit in any event, for which fingerprints will anyhow be provided in the future[32].

## 2.2. Agreements with third countries

As regards ***visa exemption for short-term residence***, it is obvious that Belgium only has bilateral agreements that date back to before the common lists for visa obligations of the European Union were introduced. Purely bilateral agreements were only concluded before 1960. Since then, in principle, these have concerned multi-lateral Benelux agreements with third countries[33]. To the extent that these agreements have not been cancelled, they have in principle[34] ceased to serve a purpose. Since the common list of Regulation 539/2001, the Benelux countries only still conclude visa exemption agreements for holders of diplomatic, service and special passports in application of Article 4[35].

As regards ***visa exemption for long-term residence***, it is worth referring to an agreement between Belgium and *Monaco:* as stated in Article 23 of the Royal Decree of 8 October 1981, Monaco nationals do not have to be in possession of an 'authorisation for preliminary residence' (= D visa) to enter the territory for a stay exceeding three months[36]. Nationals of other countries will, in principle, be refused entry if they have a travel purpose that exceeds three months without having a D visa. There have also been plans for a few years now to conclude a bilateral agreement with *Andorra* to exempt students from D visas; however, without results to date.

Belgium has also concluded various agreements that can be regarded as a ***relaxation of the***

31 http://www.dekamer.be/FLWB/PDF/51/1437/51K1437001.pdf, p. 278.

32 The date for fingerprints on residence permits is established as 21 May 2012. See Article 9(3) of Regulation 1030/2002, as amended by Regulation 380/2008.

33 This is in application of Article 4 of the agreement between Belgium, the Netherlands and Luxembourg on the transfer of the check on persons to the outer borders of the Benelux territory of 11 April 1960. To illustrate this, there is the Belgium-Japan Agreement of 11 July 1956 and the Benelux-South Korea Agreement of 28 April 1970, for example.

34 There could be a possible exception for the calculation of the residence period that is allowed. These old agreements are not limited to a stay of three months per six-month period to be calculated as of the first entry into the Schengen zone. Moreover, such exceptions are allowed on the grounds of Article 20(2) of the Schengen Convention.

35 For an overview of the national derogations from visa obligations, see: http://ec.europa.eu/home-affairs/doc_centre/borders/docs/25.7.2011_Information%20539-2001_EN.pdf

36 Agreement between Belgium and the Principality of Monaco regarding the abolition of passports between the two countries, concluded by an exchange of papers in Brussels dated 31 January and 6 February 1950. See Luc Denys, Vreemdelingenrecht Commentaar (Commentary on the Immigration Law) on this subject.

***D visas,*** to thusly promote legal migration. A number of bilateral agreements were concluded with a number of countries in the 60s and 70s to attract migrant workers and their families. This concerns agreements with *Morocco* on 17 February 1964, with *Turkey* on 16 July 1964, with *Tunisia* on 7 August 1969, with *Algeria* on 8 January 1970, and with Yugoslavia on 23 July 1970. These agreements were ratified by the Law of 13 December 1976[37]. The agreement with Yugoslavia is still applied to the successor states of *Croatia*, the *Former Yugoslav Republic of Macedonia* (FYROM), *Bosnia-Herzegovina*, *Serbia*, *Montenegro* and *Kosovo*[38]. These agreements are currently particularly important to family members (who, moreover, do not have to be nationals of these countries themselves), seeing that they contain more favourable provisions than the national regulations in transposition of Directive 2003/86 on the right to family reunification. The Agreement for Turkey is discussed in further detail under point 4.1.3.

Finally, in the past decade, Belgium has concluded agreements with *Australia, New Zealand* and *Canada* on working holidays for young people[39]. Nationals of these countries who are between the ages of 18 and 30 can obtain D visas to spend up to one year's holiday in Belgium, with the additional possibility of doing paid work to supplement their financial resources. These are mutual agreements, which means that Belgians can enjoy the same benefits in these countries. There are currently also plans for a similar agreement with *Taiwan*, although this will not concern a classic agreement but only a Memorandum of Understanding, seeing that Belgium does not recognise Taiwan as a sovereign state.

## 2.3. Recent changes to visa policy and legislation within the context of a common EU dimension

### a) Changes concerning C visas: Visa Code, VIS code and visa exemptions

#### (1) National implementation of the common EU provisions

As regards ***decisions on visa obligations*** (amendments to Regulation 539/2001), we can at this stage already indicate that the exemption of Serbia and the Former Yugoslav Republic of Macedonia led to a great increase in the number of asylum applications (in Belgium). This examined in further detail under point 5.1.a.

37 BOG of 17 June 1977.

38 For Slovenia, the agreement became devoid of purpose by its entry to the EU on 1 May 2004. For Croatia, the Former Yugoslav Republic of Macedonia, Serbia-Montenegro and Kosovo, the further application of the Agreement of 23 July 1970 was explicitly ratified by an exchange of papers between Belgium and these countries (BOGs of 12 December 1997, 5 April 2006 and 14 May 2010). See also the general rule of Article 34(1)(a) of the Vienna Convention on succession of states in respect of treaties of 23 August 1978 (although Belgium did not sign this).

39 Agreement between Belgium and Australia of 20 November 2002 and the agreement between Belgium and New Zealand of 23 April 2003, both ratified by the Law of 13 July 2004 (BOG of 6 September 2004), with instructions for the municipalities in the circular of 5 November 2004 (BOG of 24 November 2004); the agreement between Belgium and Canada of 29 April 2005, ratified by the Law of 17 October 2006 (BOG of 7 October 2006).

Generally speaking, the new ***VIS and Visa Codes*** were implemented without too many problems. For example, Belvis, the Belgian national system for VIS, is ready to use and fingerprints are often taken, in practice, for visa applications. A few problems arose because VIS and VIS-mail were not yet in operation at the European level on 5 April 2010, the date on which the Visa Code came into effect. The Visa Code changes the rules on representation: if a representative has the intention to refuse, he can from now on no longer refer the applicant for a visa through to a consulate of the Member State represented, but the representative must either submit the file to the Member State represented (Article 8.2), or personally make the decision to refuse (if this is provided for in the bilateral agreement, Article 8.1.d). However, if there is no VIS, there is no simple method at hand to submit the file safely, whereas the second option is faced with internal legal objections in certain Member States: some Member States that are represented by Belgium do not allow other states to make negative decisions for them. In specific cases, certain ad hoc solutions had to be found to still be able to safely submit the files.

The new decision period of 15 and, exceptionally, 60 days may perhaps be problematic for Belgium if the Public Prosecutor's advice is sought, which happens especially in particular situations concerning C visas with a view to getting married in Belgium. Seeing that, in most cases, these persons intend to stay for more than three months (after getting married there is, after all, normally an application for residence for more than three months), a D visa can also be considered, in which case the terms of the Visa Code do not apply. However, issuing D visas in these situations is also confronted with objections: as long as they are not married, it is, after all, not obvious to grant a visa for more than three months.

Another novelty for the Belgian legal framework is the introduction of the distinction between the annulment of a visa and the revocation of a visa. The current Belgian legislation mentions only the annulment of visas at the border. According to the Visa code, a visa shall be annulled only where it becomes evident that the conditions for issuing it were not met at the time when it was issued, in particular if there are serious grounds for believing that the visa was fraudulently obtained. Revocation on the other hand shall take place where it becomes evident that the conditions for issuing it are no longer met. Both revocation as well as annulment will be entered into VIS. Both actions can be taken at the borders as well as on the territory.

Visa extension, which, since the Visa Code, must always be done by way of separate visa stickers and, as of the coming into force of the VIS, must also be entered into this system, made it necessary for Belgium to change its current visa extension procedure. Applications are still submitted to the municipality and the decisions are still made by the Immigration Service, but from now on, the implementation of the extension decision no longer lies with the municipalities because they do not, after all, have the technical capacity to issue the stickers or enter the data in the VIS. This is now done by the Federal Public Service Foreign Affairs.

Because there is an international airport near large sea ports, Belgium must often deal with visas for sailors, which are applied for at the border. A few amendments, such as the abolition of group visas, mandatory completion of visa application forms and, since 5 April 2011, the special visa

refusal form (in addition to the form for refusing entry as provided by the border code) have led to an increase the border staff's workload.

**(2) National method of dealing with non-coordinated aspects**

In certain aspects, the Visa Code still provides the Member States with some leeway. The following can be referred to for the purposes of this study:

- in expectation of when VIS will become operational, the Member States can at this stage already take fingerprints at national level for visa applications. Most Belgian consulates have been equipped for this for some time already and this is currently often already being applied[40].

- Article 4.4 allows national derogations from the principle that consulates are authorised to carry out the examination and to decide on C visas. Belgium interprets these possible exceptions widely. On the grounds of the Immigration Law, it is, after all, not Foreign Affairs, but indeed the Immigration Service which is competent for entry to the territory[41]. In practice, the consulates have the authorisation to personally make a positive decision in cases where there is no doubt whatsoever regarding the visa application, which constitutes the majority of the visa applications. If they intend to refuse the visa or in cases of doubt concerning the visa application, the Belgian consulates must still consult the Immigration Service[42]. Furthermore, it appears from the IS Annual Report that certain C visas, such as visas with a view to getting married, agreeing to a partnership in Belgium or visas for medical reasons, are always submitted to this institution. The file must also be submitted to the Immigration Service when the application is made to a Belgian post in a country where the foreign national does not live, but only stays temporarily[43].

- Article 14.4 provides the Member States with the possibility of providing for a standard form to stand guarantee and/or provide for accommodation. Just as was the case under the common visa instructions, Belgium continues to use a standard form for guarantees[44]. This document will still have to be changed, however, to contain the mandatory statements of this Article and of those of Article 37.1 of the VIS code.
- Article 25.2 states that a visa with territorially restricted validity is, in principle, only valid for the territory of the Member State in which it is issued, but it can also apply to various Member States if the Member States concerned give their approval. Following the uniform Benelux policy on short-stay visas, territorially restricted visas for Belgium will, in principle, also always

40 See http://diplomatie.belgium.be/nl/Diensten/Naar_Belgie_komen/Visum_Voor_Belgie/Korte_Duur/, where the possibility of a biometric visa is explained for each of the different types of C visa under point 2.

41 The Immigration Law does not explicitly mention the Immigration Service, but 'the authorised Minister who is competent for the access to the territory, residence, settlement and expulsion of foreign nationals or their proxies'. The Immigration Services acquired such authorisation to decide on short-stay visas by way of a Ministerial Decree of 22 June 2009 (Belgian Official Gazette of 3 July 2009).

42 See the IS 2010 Annual Report, https://dofi.ibz.be/sites/dvzoe/NL/Documents/2010NL.pdf, p. 70, with the following examples of such problem files: fake documents, previous refusals, fake statements and public order problems.

43 See http://diplomatie.belgium.be/nl/Diensten/Naar_Belgie_komen/Visum_Voor_Belgie/de_visumaanvraag_indienen/

44 This concerns the document enclosed in Appendix 3bis of the RD of 8 October 1981, which is also included in Appendix 15 of the Visa Handbook.

be valid for the Netherlands and Luxembourg. This is also one of the few Benelux particulars that still apply after the Visa Code came into force;

- An obligation to justify refusals and provide for appeal only came into force one year after the other provisions, i.e. on 5 April 2011. Nonetheless, on the grounds of its national law, Belgium has always offered both of these to foreign nationals[45]. To a certain extent and as regards the practical implications, the Member States do continue to avail of certain liberties. Since 2007, this concerns a legal appeal with an administrative Court that is authorised specially for residence, i.e. the Council for Aliens Disputes (CAD). Pursuant to a recent amendment to the Law, this appeal is no longer free of charge, administrative charges in the amount of EUR 175 can be levied. This is not payable if the foreign national falls under the pro deo system. In addition, the administrative charges are re-deposited if the Council pronounces that the foreign national is correct[46].

## b) Changes applicable to national D visas

Firstly, reference can be made to the abolition of the D+C visa and ***Regulation 265/2010***, which from now on allows holders of D visas to move around in other Schengen countries for three months. Belgium normally issues D visas that are valid from three to a maximum of six months and which must be converted into a residence permit within this term. This practice could be continued after the coming into force of this Regulation, whereas D+C visas are no longer issued.

As has already been stated under point 2.1.c, the ***facilities*** for obtaining a D visa as a family member, student or researcher, in accordance with the transposition into Belgian law, relate particularly to the *decision period*. The specific average decision periods can be found on the Immigration Service website. It is stated that for family members, it is currently less than four months and for students, approximately three weeks[47]. Nothing is stated for researchers, but in the normal course of events their applications should be finalised very quickly, as is the case for all economic migrants[48]. It is obvious that these priority cases are at the cost of the other categories of immigrants, in particular, the 'discretionary' categories (persons of independent means and humanitarian situations) for which there is no binding decision period, but at most the general principle of good governance to deal with the application within a reasonable term. It appears from the website that their applications take approximately eight months.

Within the scope of these facilities, the *cost price* for the application of a D visa can also be a relevant factor. This cost price was not legally established, but decided on unilaterally by the administrative services. The current amount is EUR 180, which also applies to these three

45 Written justification is always mandatory on the grounds of the Law of 29 July 1991 and Article 62 of the Immigration Law, while it is possible to appeal to the Council for Aliens Disputes (Articles 63 and 39/2(2) of the Immigration Law).
46 See the new Article 39/68-1 of the Immigration Law, which has been in force since 1 April 2011.
47 https://dofi.ibz.be/sites/dvzoe/NL/verblijfwijzer/Pages/Behandelingstermijnvisa.aspx. This is updated regularly.
48 Cf. incorporation of Smedem, see point 2.4.

categories of foreign nationals. This may possibly be a little expensive, but this is compensated for by the rather low cost price for a residence permit in the territory. The matter that is especially relevant is this total cost price for both the D visa and the residence permit, which will amount to approximately EUR 200 for Belgium, which is comparable to that of the other EU countries[49].

For these family members, students and researchers, the respective guidelines further contain an obligation to ***issue a document of residence in accordance with Regulation 1030/2002***[50]. This does not really prejudice the Belgian requirement that the persons concerned must, in principle, possess a D visa to enter Belgium; after all, a residence permit is only issued by Belgium in the territory. Generally speaking, the D visas in question are valid for three months and must be transposed into a residence permit within this term. This is amply within the maximum validity period of a D visa, which, in accordance with the new Article 18.2 of the Schengen Agreement, can be up to one year. This transposition of the D visa into a residence permit is done without a new substantial examination; there is only a residence check.

## 2.4. Recent changes to visa policy and legislation relating to national D visas

One of the first practical policy actions by the then responsible Minister of Migration and Asylum was to found a special service within the Immigration Service to ***promote economic migration*** on 15 September 2008. The objective of this 'Smedem' (Service Migration Economique / Dienst Economische Migratie - Economic Migration Service) is the following: 'To ensure that investors, business people and foreign employees who have an economically worthwhile project to offer Belgium are given an efficient and friendly reception by informing them well and facilitating the steps that the Belgian regulations impose on them.' In practical terms, this entails, among others, that applications for D visas for employees and their family members will be dealt with quickly and by way of a fast-track procedure.

On 1 July 2009, the ***cost price for the application for a D visa*** was doubled from EUR 90 to EUR 180. Migrant workers will presumably be less affected by this measure, seeing that, normally speaking, this cost price is not insurmountable for them, or is even paid by the employer.

Regarding the regulation of ***family reunification***, there were three rather more technical changes on 8 March 2009, 5 July 2010 and 26 August 2010 on the manner in which family ties, long-standing relationships between partners and requisite adequate housing can be shown. This is further explained in point 3.1.a. below. Finally, on 8 July 2011, an amendment to the law was ratified which makes family reunification substantially stricter[51]. For example, an income requirement of

49 After all, the cost price for a residence permit in Belgium is only EUR 20. For an overview of the other Member States, see the Bulgarian EMN ad hoc query no. 259 of 10 September 2010 about the taxes for issuing residence permits for third-country nationals.

50 Article 2.e of Directive 2003/86, Article 2.e of Directive 2004/114 and Article 2.e of Directive 2005/71. Article 7.3 of Directive 2009/50 contains a similar provision for highly-qualified persons, but that has not yet been transposed into Belgian law. Finally, see also the consideration under point 8 of Regulation 265/2010.

51 SeeBOG 9 September 2009.

120% of the subsistence minimum was imposed.[52] The most important and most controversial provision is, however, that family members of Belgians from now on also fall under this system, whereas, to date, they had been equated to EU nationals. However, seeing that the latter, as stated in point 1.1, falls outside the scope of this study (and also because of the very recent nature of this amendment to the Law), this amendment is not discussed in further detail here. This act of making the law stricter can be seen against the background of the fight against improper use of migrant procedures, but it does so in a rather rudimentary manner: the requirements are simply stricter for everyone, as a result of which not only mala fide (sham) family members but also many bona fide family members will henceforth be excluded. In any event, this Law satisfies a few commitments emanating from the 2009 policy paper; however, it must be pointed out that this amendment to the law was, exceptionally, not a government initiative (which has, after all, been a caretaker government for over a year), but one that was actually made by Parliament.

52 In this regard, it is useful to refer to recent case law of the Court of Justice of the European Union, in which the Court rejected the raise of the income requirement to 120% of the minimum wage imposed by the Dutch legislation as a requirement of family reunification, ECJ, March 2010, Case C- 578/08

## 3.1 General procedure followed in the stages of the visa procedure

We will only discuss D visas in points a) and b) of this subsection. Applications and examinations for C visas are, after all, regulated by the recent Visa Code and any national details on this have already been referred to in point 2.3a. Both the C and D visas are discussed in point c).

### a) Application stage

*Who?* The foreign national must always personally submit an application for a D visa. This also applies to family members, although Article 5.1 of Directive 2003/86 offers the possibility to Member States to have the application pass through the reference person.

*Where?* D visas, per definition, cannot be applied for in the territory as this is always done abroad and, in particular, at a Belgian diplomatic or consular post. Other than in the case of C visas, there can therefore be no representation by another (Member) State because D visas are, after all, purely national visas. The Belgian post that has actual authorisation in terms of the law is the post of the domicile or place or residence of the foreign national[53]. In practice, however, it seems as though there is a wish to limit the choice to the domicile, not the temporary place of residence through which the foreign national is travelling, for example. If there is no Belgian embassy or consulate in the country of domicile, the foreign national must address the Belgian post authorised for that country, mostly likely in one of the neighbouring countries[54]. It is not possible to make an application through an honorary consulate. If available, the consulate can appeal to an external service provider to receive the application, although this possibility is not explicitly provided for by the Immigration Law[55].

*How?* The application is submitted by way of a particular form with the title 'Application form for long-stay visa for Belgium'. However, this document is identical to the application form for a visa for a short stay[56]. This is remarkable, seeing that various headings in this form are not directly relevant for a long stay. The fee of EUR 180 must be paid when submitting the application. As is the case for C visas (to which European rules apply), this does not concern the cost price of the visa as such, but it is a handling fee: if the visa is refused, this handling fee will not be reimbursed. Holders

53 See Immigration Law, Article 9(2) for the authorisation to stay and Article 12bis(1)(1) for the residence permit.

54 See http://diplomatie.belgium.be/nl/Diensten/Naar_Belgie_komen/Visum_Voor_Belgie/de_visumaanvraag_indienen/.

55 The Visa Code does indeed provide for this possibility in the case of C visas, albeit under strict terms and conditions. When external service provision is contained in C visas, this can also be used for D visas. This is actually the case in Nigeria, Morocco (Casablanca), China, India, Pakistan, the Ukraine, the United Kingdom, Russia and Turkey (see Appendix 28 to the Visa Handbook).

56 Compare http://diplomatie.belgium.be/nl/binaries/VisumlangNL_tcm314-122813.pdf with Appendix 1 of the Visa Code.

of diplomatic and service passports can obtain a D visa free of charge[57]. Students and interns on grants for the purposes of development cooperation are also exempt from such handling fees.

Furthermore, all supporting documents must be submitted. It does not fall within the scope of this study to provide an exhaustive overview of the documents to be submitted for every individual type of D visa. We restrict ourselves to a horizontal discussion of only rather general requirements, supplemented by a few details.

- *Passport.* According to the Foreign Affairs website, a passport that is still valid for 12 months as of the date of the application must always be submitted[58]. However, this 12-month requirement cannot be found in a legal text. For example, Article 2(2) of the Immigration Law only stipulates that the passport must be valid upon entry. However, this 12-month requirement does seem reasonable, given that it can take quite a few months to deal with the application, and after the visa has been issued, the foreign national is still given another three months to actually use the visa.

- *Public order, public safety or public health.* The three migration directives all contain a clause on this, which is also provided for in the national transposition: those in question must submit a certificate of good conduct and a medical certificate from which it appears that they are not infected with illnesses that can endanger public health[59]. The Foreign Affairs website also stipulates that these documents be submitted for the other, non-regulated categories of migrants. The conditions that these documents must meet are also explained on this website. For example, the *certificate of good conduct* must be issued during the last six months and relate to the last five years. For economically active persons, it will suffice, however, if it relates to the last 12 months. This is a substantially facilitating element: otherwise, these persons would have to apply for a certificate of good conduct from all the third countries where they have stayed for the last five years; after all, this target group of economically active persons often stay in different countries for a relatively short period of time. The question 'what then is the use of such a document if it only relates to the last year' can be asked. The *medical certificate* must also be issued during the last six months and this must be done by a doctor specified by the consulate. If one is indeed worried about public health, it is, however, remarkable to only target the relatively limited target group of persons who apply for a D visa, whereas the much larger group of persons who apply for a C visa cannot be subjected to such a medical certificate in accordance with the Visa Code[60].

57 See http://diplomatie.belgium.be/nl/Diensten/Naar_Belgie_komen/Visum_Voor_Belgie/kostprijs_voor_behandeling_van_het_visumdossier/index.jsp Acccording to this website, exemption from the fee for holders of diplomatic and service passports only applies on the condition of reciprocity, but this condition is not always imposed in practice.

58 See http://diplomatie.belgium.be/nl/Diensten/Naar_Belgie_komen/Visum_Voor_Belgie/lange_duur/

59 Article 6.1 of Directive 2003/86 (family reunification), Article 6.1.d of Directive 2004/114 (students) and Article 7.1.d of Directive 2005/71 (researchers), transposed by Articles 12bis(2), 58 and 61/11 of the Immigration Law, respectively. For this last category of researchers, we point out that they can be exempt from this, 'If, considering the circumstances, it is impossible to submit these documents'.

60 Other critical remarks can also be made regarding the medical certificate: the illnesses that can endanger public health progress quite quickly, with the result that a six-month-old certificate cannot offer any guarantee whatsoever, not even a certificate that would date back to the same day as the day on which the visa was issued because the illness can occur between the moment when the visa was issued and the departure. Moreover, persons who really suffer from one of the relevant illnesses will not even be in a physically fit state to travel. A template of the medical certificate can be found at: http://diplomatie.belgium.be/nl/binaries/medischattestnl_tcm314-85568.

- *Sufficient means of subsistence.* Economically active persons do not need to show this specifically, given that they are presumed to have this in light of their work. The host agreement with a research institution, which the researchers must submit has to provide for sufficient means of subsistence for the researcher[61]. Specific proof is required for students, however; they can show this by means of a study grant, a pledge of financial support or, additionally, also income from a student job[62]. The minimum amount for the student is indexed annually and amounts to EUR 588 per month for the 2011-2012 academic year[63]. Finally, regarding family reunification, the possibility offered by Article 7.1.c of Directive 2003/86 to require sufficient means of subsistence is currently only imposed for students' family members and for independent disabled children older than 18 years[64]. They may not become a liability for the public authorities, which implies that they must possess more than the subsistence minimum. This subsistence minimum currently amounts to EUR 775 per month, increased with EUR 252 per dependant[65]. As is stated under 2.4, the requirement of sufficient means of subsistence was recently extended to all family members and increased to 120% of the subsistence minimum.

- *Health care insurance.* Economically active persons are deemed to comply with this and do not have to specifically show this or the sufficient means of subsistence. For researchers for example, health care insurance is mandatory in the host agreement[66]. This is imposed on students by Article 6.1.c of the respective Directive, which is indirectly complied with by way of the aforementioned sufficient means of subsistence, seeing that the student grant or pledge of financial support also relates to health care. In the case of family reunification, a specific health care insurance is always requested. This is possible by way of a certificate from the public Belgian national health service that states that the foreign national will be insured in Belgium after arrival (even if that will not be possible for all categories of family members) or by way of a private insurer. In the latter case, the insurance must cover the risks for at least EUR 30,000 for at least three months; however, to avoid an unnecessary insurance policy, this only needs to be submitted when the visa application for all the rest has been approved fundamentally.

- *Family reunification: adequate housing*. This is only imposed for family reunification, but it appeared that it was not simple to apply the procedure that the Royal Decree provided[67] and it even led to an annulment by the Council of State in February 2010. This was complied with by a new Royal Decree of 26 August 2010. From now on, the foreign national is deemed to have adequate housing if he/she submits either proof of the registered rental contract or the property title for his/her residence. It is possible that more amendments will be made to this in the future.

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pdf, which is based on Article 29 of Directive 2004/38.

61 See Article 6.2.c of Directive 2005/71, transposed by Article 9 of Royal Decree of 8 June 2007 (BOG 3 July 2007).

62 Article 7.1.b of Directive 2004/114, transposed by Articles 58(2) and 60 of the Immigration Law.

63 See RD of 8 June 1983 and announcement published in the Belgian Official Gazette of 2 September 2011.

64 See Immigration Law, Articles 10(2)(3) and 10bis. It is worth remarking that family members of students do not actually fall under the scope of Directive 2003/86, seeing that a student doesn't have 'reasonable prospects of obtaining the right of permanent residence' (Article 3.1. of the Directive).

65 See announcement of 1 May 2011, Belgian Official Gazette of 13 May 2011.

66 See Article 6.2.c of Directive 2005/71, transposed by Article 9 of Royal Decree of 8 June 2007 (Belgian Official Gazette 3 July 2007).

67 See also footnote 70 of the EMN study entitled 'The organisation of Asylum and Migration Policy in Belgium', April 2009.

- *Family reunification: civil registry documents.* This is required to show the family ties, e.g. a marriage certificate for spouses, registered partnership for partners and birth certificates for parents or children. If the foreign national shows that he/she cannot submit such civil registry documents, the family tie can also be proved by submitting other legitimate proof in this regard. However, the Directive only explicitly provides for this possibility for family reunification of fugitives (Article 11.2), but since an amendment to the Law on 8 March 2009, this is possible for all forms of family reunification. If the ties of descent are stated, national identity cards or marriage certificates can be regarded as such 'other legitimate proof'[68].

- *Family reunification: proof of long-standing relationship.* The unmarried registered partners must additionally show that they have already had a long-standing and stable relationship for one year. The Council of State annulled a few old criteria in this regard in February 2010 and the new criteria were laid down by Royal Decree of 5 July 2010: the partners must either have lived together for a year in the past or, on the one hand, have kept regular contact for at least one year by way of meeting at least three times which, altogether amount to a total of 45 days and, on the other hand, by telephone and e-mail or (they must) have a child together.

- *Students: certification issued by educational institution.* Students must submit certification issued by the educational institution to prove that they will be studying. This can be certification from which it appears that the foreign national is actually registered as regular pupil or student, or has, in principle, been allowed to do the studies, is registered for an entrance examination or has submitted an application to have his/her foreign certificate or degree declared equivalent.

## b) Examination stage

In accordance with the Immigration Law, the legal competence to decide on residence of more than three months lies exclusively with the Minister competent for Asylum and Migration and the Immigration Service[69]. Nonetheless, for pragmatic reasons, consulates are allowed delegated power. In practice, the majority of D visas are issued pursuant to decisions made by the consulates themselves. As regards economically active persons, students and family members, the application is only sent through to the Immigration Service 'in certain cases'[70].

In practice, the visa application is dealt with as follows:

**(1)** If it concerns an application falling under the *authority of the Immigration Service*, the completed application form and the documentary evidence submitted are sent to the IS without delay. This

68 See circular of 17 June 2009, Belgian Official Gazette of 2 July 2009.

69 See, for example, Articles 9 and 58 of the Immigration Law, which mention the Minister's authorised representative and such authorised representative is then specifically referred to in a Ministerial Decree of 18 March 2009.

70 See the Immigration Service Annual Report https://dofi.ibz.be/sites/dvzoe/NL/Documents/2010NL.pdf, p. 76-79. It is stated that 32% of the decisions for applications for students are sent through to IS. See also http://diplomatie.belgium.be/nl/Diensten/Naar_Belgie_komen/Visum_Voor_Belgie/lange_duur/.

is generally sent by diplomatic bag. Seeing that this can take two to three weeks[71], it can also be sent by fax or e-mail to save time. The IS then performs an intrinsic examination, whereby we can state the following:

- Security check and medical tests: to a large extent, this is limited to the systematic check of the SIS (Schengen Information System), as this has actually been explicitly imposed by Article 25 of the Schengen Convention (amended by Regulation 265/2010). To the extent that the person concerned may have committed criminal offences outside the EU and is not listed in the SIS, the certificate of good conduct that has already been submitted will suffice as guarantee. A medical examination is not done in the examination stage, but a medical certificate must already be submitted together with the application.

- Fingerprints: to date at few places (e.g. Kinshasa, Lubumbashi) fingerprints have been taken for the applications for a D visa, although this is made legally possible by Article 30bis of the Immigration Law (see point 2.1.e, *supra*) and the infrastructure at most Belgian consulates to take fingerprints is available. If there is no systematic check of the fingerprints in the municipality where the D visa is exchanged for a residence permit, it seems that taking such fingerprints upon application for a D visa actually offers little added value at the moment. This may well become worthwhile when fingerprints become mandatory for residence permits.

- Examination of family ties for the purposes of family reunification. If family ties were not shown by official civil registry documents, but rather by other documents, the IS will examine whether the impossibility to submit official documents is objective and genuine, i.e. beyond the applicant's control. The Immigration Service assesses the impossibility of each individual case on the grounds of elements of proof that are sufficiently serious, objective and consistent. If the foreign national cannot submit any document whatsoever that proves the family ties, the IS can take the final step of interviewing the family members (especially in the case of spouses) or performing any other examination deemed to necessary, such as a DNA test, for example (it is obvious that this is only for ascendants or descendants)[72]. Such a DNA test cannot be done at all consulates, and if the foreign national is prepared to do this, he or she must personally pay the cost price.

- Marriage of convenience or sham civil partnership? A foreign national can, however, have documents that show that he or she is a spouse or registered partner, but if this marriage or partnership was only concluded to procure the benefit of lawful residence, the visa application will nonetheless be refused[73]. The IS will examine the application in more detail every time the consular employee has any doubts about the genuineness of the marriage. The IS, in its turn, can contact the Public Prosecutor's Office, given that concluding a marriage of convenience is, after all, a criminal offence in terms of Article 79bis of the Immigration Law.

71 See https://dofi.ibz.be/sites/dvzoe/NL/verblijfwijzer/Pages/Behandelingstermijnvisa.aspx.

72 Article 5.2 of Directive 2003/86, transposed by Article 12Bis(5) and (6) of the Immigration Law. See also the circular of 17 June 2009 on this.

73 Article 16.2 of Directive 2003/86 and Article 11(1)(4) of the Immigration Law; see also Article 27 of the International Private Law Code.

Criteria that may indicate a marriage of convenience are, for example: applicant's previous illegal residence, the fact that spouses do not speak any common language, a marriage that was concluded quickly after a first meeting, large gap in ages, etc.[74]. For the purposes of this examination, the IS can request the consulates to organise an interview with the applicant (and, possibly, the reference person).

Within the scope of this examination, the IS communicates its decision to the consulate, which then notifies the person concerned.

If the D visa is granted, it is normally valid for a term of three to six months. In accordance with Article 18.2 of the Schengen Convention, the maximum validity period in all cases is 1 year. For the sake of border posts and municipality staff, a code which shows the reason for issuing the visa can be written on the visa sticker in the space marked 'remarks' (B1, B2, etc.).

If the application is refused, such a decision is justified in writing and it is possible to appeal to the Aliens Litigation Council. The possibility to appeal is also explained in the refusal decision. The foreign national must submit such appeal within thirty days after having received the decision. This does not concern an appeal on the merits of the case, but an appeal to have the decision declared null and void: in principle, the ALC only checks whether the negative decision could have been made lawfully. In this respect, the ALC does not have autonomous power of examination: it bases its decision on the documents that are already in the administrative file of the visa application. This is in accordance with the three migration guidelines for researchers, students and family members, which actually only provide that it must be possible to appeal, but does not state the practical procedure for such an appeal. Having regard to the technical nature of this appeal procedure, it is advisable to engage a lawyer to submit the application.

On the whole, the ALC makes its decision within three months, but this is not a binding term. If the ALC refuses the appeal, the only possibility left is a cassation appeal to the Council of State. If the ALC overturns the decision, then the IS must make a new decision. In principle, it again makes use of the full decision period (e.g. for family reunification: another 9 months)[75].

**(2)** If it concerns an application which *consulates can approve automatically*, therefore without the intervention of the IS, the examination will be much quicker and most of the above will not apply. Indeed, if there is any doubt whatsoever, the application must be submitted to the IS. This therefore concerns relatively simple files which require little intrinsic examination. In accordance with Article 25 of the Schengen Convention, the check-up by the SIS will anyway have to be performed in all cases. These files, which the consulates approve ex officio, must only be submitted to the IS for the latter's information. On the one hand, this is important for the

74 These criteria are listed in the circular of 17 December 1999 and, to a large extent, these correspond to the 'Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience' (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997Y1216(01):EN:HTML).

75 For this appeal procedure, see, among others, Articles 39/18, 39/57 and 39/76(3) of the Immigration Law. This applies not only to D visas but also to C visas.

follow-up of the foreign national's file when he or she enters the territory (and the IS acquires authority in any event) and, on the other hand, it makes it possible for the IS to monitor the issue policy of the various consulates.

## c) Entry, stay and exit

### (1) D visas

***Entry.*** In general, a foreign national who has a Belgian D visa will be able to enter the *Belgian external border* without any problems. A systematic SIS check will be done again at the border as some time may lapse between the issue of a D visa and entry, with the result that it is advisable to perform another check. If he or she wishes to enter the Schengen zone by way of *another external border*, said Member State (of the other external border) must in any event grant him or her entry to allow him or her to transit to Belgium[76]. If the foreign national meets the classic Schengen requirements (travel purpose, sufficient means of subsistence, etc.), residence period allowed is not limited to the duration of the transit, but he or she can even stay up to three months in another Member State on the grounds of this Belgian D visa[77].

***Stay.*** The foreign national must then apply to be registered at the municipality within eight working days after entry. Within eight days after such application, the local police will then officially visit the address to see whether the person concerned really does live there[78]. However, this period is not always adhered to: in practice, such a check can take a few months, especially in the large cities. After the residence check proves positive, the foreign national is registered in the register for foreign nationals and he or she receives his or her residence permit.

For the purposes of *registration*, it is best that the foreign national submits all his or her civil registry documents, such as birth certificate and possible marriage certificate, even if he or she did not come for the purposes of family reunification and these documents were not required for a visa or residence permit. If there is no marriage certificate, the register will in any event state 'not married' under the civil status heading, which can complicate matters if the person concerned is actually married.

The *residence permit* following the D visa will firstly allow temporary residence, usually for one year, which can be extended insofar as the residence conditions are still met. The residence permit is in the form of a card in accordance with the mandatory template of Regulation 2002/1030, which also has an electronic chip bearing additional information such as the address. In principle, a D visa is exchanged for a residence permit without any intrinsic examination. When the foreign national has his or her residence permit, there may be an additional examination with a view to

76 Article 5.4.a of the Borders Code.
77 Article 21.3 of the Schengen Convention.
78 Article 12, last paragraph of the Immigration Law and Article 7 of the Royal Decree of 16 July 1992 on the civil registry and register of foreign nationals.

possibly withdrawing or not extending the residence permit. For instance, in the case of family members, the local police must systematically check, before the expiry of the validity of the first residence permit, whether the persons concerned are actually really co-habiting and if this is not the case, the Immigration Service can decide to withdraw the residence permit or not extend it[79]. Workers are the group, par excellence, where the check will be done upon annual extension of the residence permit, even if the Immigration Law does make it possible to withdraw the current residence permit if the work permit was withdrawn[80].

***Exit.*** If, during the validity period of his or her residence permit, the foreign national wishes to return to his own country where he will once again have his principal residence, he must notify the municipality that he is leaving no later than the day before his departure abroad. However, this is a purely administrative obligation that cannot be sanctioned. The foreign national is then removed from the register[81]. If the foreign national will be absent for more than three months, but has the intention of returning, he must also notify the municipality accordingly[82].

If the residence permit expires (either because it is not extended or because it has been withdrawn), the foreign national will receive an order to leave the territory. This automatically entails removal from the national registry[83], and in such a case, the foreign national need not notify the municipality of his departure. An order to leave the territory, which follows a residence permit of more than three months, always offers the foreign national a period during which to follow up this order independently. It is only if this order was not followed up within the pre-set period that it is possible that he will be detained with a view to forced removal (Article 27 of the Immigration Law). It is possible that the practical procedures will be amended for the purposes of transposing Return Directive 2008/115 in the future.

**(2) C visas**

***Entry.*** Having a C visa does not signify an automatic entry right. In accordance with the Borders Code and Article 30 of the Visa Code, the entry requirements are checked (once again) at the border. When Belgian consulates issue a C visa, they systematically hand over a standard form[84], which reminds the obligation that one must be able to once again submit the required documents to the border control. In this way, the number bona fide persons with a C visa who are returned is kept to a minimum.

Although fingerprints have often already been taken for applications for a (Belgian) C visa (see

79 See Article 11(2) of the Immigration Law and point III.B of the circular of 21 June 2007.

80 See Article 13(3) of the Immigration Law, which refers to withdrawal of residence if the person concerned 'no longer meets the conditions laid down for his or her residence'. It clearly appears from the explanatory memorandum to this provision (see http://www.dekamer.be/FLWB/pdf/51/2478/51K2478001.pdf, p. 73) that this refers to the withdrawal of the work permit for workers, for example.

81 Article 7(1)(2) and (5), and Article 8 of the Royal Decree of 16 July 1992 on the civil registry and register of foreign nationals. Moreover, this is a horizontal provision that not only applies to foreign nationals, but also to EU nationals and Belgians (see also the Czech EMN ad hoc query of 20 April 2011 on tracing the number of EU citizens residing within the territory of Member States).

82 Article 39(2) of the Royal Decree of 8 October 1981.

83 Article 12(5) of the Royal Decree of 16 July 1992 on the civil registry and register of foreign nationals.

84 Can be found at http://www.diplomatie.be/kinshasanl/media/kinshasanl/mededeling.pdf .

point 2.3.a, above), no fingerprints are currently taken at the Belgian border - this will only be done when the European VIS comes into operation. Seeing that a Belgian visa does not necessarily mean that one enters the Schengen territory by way of a Belgian external border, a purely local border control, after all, offers very little added value in the fight against illegal migration.

***Stay.*** As has been provided for by Article 22.1 of the Schengen Convention, the holder of a C visa must report to the municipality where he or she stays within three working days of entering. However, this obligation does not apply to foreign nationals who stay at hotels - hotels do, after all, keep their own registers. A breach of this obligation can, in principle, be sanctioned with a criminal-law monetary fine[85]. They are not registered in the national register; they have only received a so-called statement of arrival.

When the visa expires, it is possible to have it extended, insofar as the total residence period does not exceed three months. If the foreign national wants to stay more than three months, an application for a long stay must be submitted which, as has been stated earlier (see point 2.1.c), can also be submitted in the territory if the person in question resides legally for a short term when the application is made. It may be pointed out that the C visa was, in this case, presumably issued incorrectly, seeing that at the stage when the application for the visa was made, the foreign national most probably did not have the intention to returning during the term of his or her visa, as imposed by Article 21.1 of the Visa Code.

However, in principle, the stay will terminate when the visa validity period expires. In accordance with Article 34 of the Visa Code, it is also possible that the visa is withdrawn earlier if the entry and residence requirements are no longer met[86].

***Exit.*** If the foreign national leaves the territory within the visa validity period, as he or she should, it is not necessary to comply with any more special formalities.

If he or she stays longer than his or her visa residence period allows, it is possible that the foreign national receives by way of interception an order to leave the territory. Visa withdrawal is always accompanied by an order to leave the territory. In general, these orders offer the foreign national a period within which he or she can leave the territory independently, but this differs from a long stay in that, with a view to forced removal, it is possible that the foreign national is detained immediately when the order is issued (Article 7 of the Immigration Law). Having regard to the transposition of the Return Directive that still has to be finalised, we will again not go into the further details of these provisions.

85 See Articles 5 and 79(2) of the Immigration Law.

86 Also compare with Article 7 of the Immigration Law. It can be pointed out that the Visa Code also allows for withdrawal due to an inadequate travel objective, while this is not explicitly provided for by said Article 7 of the Immigration Law. However, the Visa Code is a European Regulation and therefore takes preference.

## 3.2. Visa issuance for the purpose of legal immigration

### 3.2.1. National visa practices for admission of third-country nationals

This part makes it necessary to provide some additional explanation on the proportion between D visas and residence permits in Belgium. Indeed, there may be various national scenarios[87]. In practical terms, four different scenarios can be distinguished in the Member States:

- **scenario 1:** visa is a requirement to obtain a residence permit - application for a residence permit (and examination of conditions for residence) in the country of origin - issue of a residence permit in the territory;
- **scenario 2:** visa is a requirement to obtain a residence permit - application for a residence permit (and examination of conditions for residence) in the Member State - issue of a residence permit in the territory;
- **scenario 3:** residence permit can be obtained immediately in the country of origin, then no D visa is required;
- **scenario 4:** no separate residence permit required, the D visa is also sufficient to stay in the territory.

In Belgium, all persons, both Belgians and foreign nationals who wish to establish their principal residence in a Belgian municipality, must report to the municipality to request their registration[88]. This registration is accompanied by a document (either the Belgian identity card or residence permit) that makes mention of the residential address as this was established after positive residence check by the community police officer. This horizontal regulation that applies to all persons means that foreign nationals, too, will, per definition, always only be given a residence permit in the territory. This therefore immediately excludes scenarios 3 and 4. Moreover, it will definitely not be possible to have scenario 4 for family members, students and researchers, for example, where the relevant guidelines in question impose a residence permit according to the 1030/2002 template. It also seems as though scenario 4 is excluded for every stay of more than one year, seeing that the D visa may only be valid for a maximum term of one year[89].

Both scenarios 1 and 2 are followed in Belgium. The foreign national must in any event have a D visa to enter the country with a view to staying more than three months and obtaining a residence permit. In that sense, a D visa is therefore indeed a requirement to obtain a residence permit, although a foreign national who would nevertheless be in the territory (legally) without a D visa can also obtain a residence permit (see point 2.1.c, *supra*). As a reminder, one can immediately enjoy all the rights that a residence permit offers with this D visa as of the day of entry into the territory,

87 See, e.g. IOM International Migration Law No. 16, 'Laws for legal immigration in the 27 EU Member States' (2009), p. 35-36.

88 See Article 7 of RD of 7 July 1992 and Article 12 of the Immigration Law. It can be pointed out that for foreign nationals, it is not explicitly required that they should have their 'principal residence' there (which is a question of fact, with the rule of thumb being that one must reside there for the largest part of the year – cf. point 11 of the circular of 7 October 1992). Conversely, it is sufficient if foreign nationals stay there for more than three months.

89 Article 18.2 of the Schengen Convention.

like a stay for three months in other Member States[90]. The only 'disadvantage' of scenarios 1 and 2 compared to scenarios 3 and 4 is that there is the additional condition that you have to report to the municipal authorities, but it seems as though this is a rather limited disadvantage, given the accompanying benefits (e.g. certainty that the holder of the D visa has actually come to Belgium, which provides, among others, more reliable population statistics).

The application for a residence permit, as such, is not submitted to the consulate in the country of origin, but is formally only done in the territory. In that respect, therefore, scenario 2 would apply in Belgium. Seeing that in this case, there is often no new intrinsic examination for the purposes of the residence conditions, but only an administrative residence check, the Belgian working method is therefore substantively closer to *scenario 1*. Indeed, all conditions for residence are examined in advance in the case of an application for a D visa.

There is another systematic substantive check in the territory for *family members*, i.e. the check that the spouses actually cohabitate. This goes far further than the simple residence check to verify whether the person concerned is living at the address indicated. This concerns a check on whether the spouses actually live together as a couple, which entails multiple visits by the community policy officer and the neighbours may also be questioned in this respect. This examination can, per definition, only take place in the territory. This examination does, however, only take place after the residence permit has been granted but, having regard to the systematic nature of this check and the principle withdrawal of the residence permit if there is a negative co-habiting report, it can be stated that *scenario 2* applies to family members[91].

Finally, for *certain students*, there is derogation from the principle that the D visa leads to a residence permit without any intrinsic examination. Only if the status of student was proved by means of actual registration, the D visa (to be recognised by the code B2) will immediately lead to a residence permit. However, it is not always possible to obtain actual registration at the educational institution in good time because of the different rules that apply to the different types of education (authority of the communities instead of that of the federal state). That is why student status can also be shown in three other ways[92], but those cases will only let the D visa (to be recognised by the codes B3, B4 or B5) lead to a communal preliminary 'registration certificate', which is valid for four months. The student must then show his or her actual registration within four months and only then will he or she receive his or her residence permit. Seeing that there is still a substantive procedure for these students after the D visa has been issued and before the residence permit is issued, *scenario 2* applies to them.

We can conclude the following from the above: insofar as this is possible, all conditions for residence are examined in the country of origin (scenario 1). Only in exceptional cases will additional

90 Article 21 of the Schengen Convention.

91 As regards the history, this scenario 2 was even more clearly applicable to family members before the amendment to the Law of 15 September 2006: then, a D visa for family reunification did not immediately lead to a residence permit, but the person concerned first received a preliminary document of residence, called a registration certificate. The check on actual cohabitation was done at the same time as this registration certificate. The family member received a 'real' residence permit only after a positive cohabitation report.

92 See the alternatives stated under point 3.1.a, last bullet point.

conditions for residence be systematically checked in the territory after the D visa has been issued (scenario 2), in particular when it concerns conditions that, per definition, can only be fulfilled and checked in the territory. In any event, it appears from this that the focal point of the procedure for legal migration lays within the scope of the visa application. The internal distribution of authority between central authorities has been largely adjusted by IS delegating the authority to make decisions to the consulates.

### 3.2.2. Challenges and success factors for facilitating legal immigration

It is obvious that the first question that has to be asked here is for whom and to what extent it is advisable to promote legal migration by way of visa policy. As stated in point 2.1.d, the only promotion to be pointed out in this regard is that of ***economically active foreign nationals.*** The workers that Belgium wishes to attract are largely the same ones as those of most other European countries, i.e. on the one hand, specifically highly-qualified persons and, on the other hand, the rather classical shortage occupations (the care sector, for example). Consequently, these potential workers often still have various other migration possibilities besides Belgium and it is therefore advisable to have an active policy to convince these people to opt for Belgium if one does not only want to deal with the 'leftovers' of other EU countries or of other industrialised countries. In the assumption that visa policy and visa facilities could play a role in the choice of potential destination country of an employee, following elements could be listed:

The first obvious factor that plays a role is the *presence of a Belgian consulate* in the region where one wants to recruit people. Moreover, representation by other Member States is not possible for D visas, with the result that, in any event, a foreign national must turn to a Belgian embassy. If there is no Belgian embassy in his or her country of origin, the foreign national may opt to migrate to the Member State that does have a local consulate instead of moving to the nearest Belgian consulate. Belgium definitely has a fairly wide consular network and it has approximately 70 consulates where visas can be issued[93].

Other very concrete factors such as the *processing period* will presumably also play a role. By establishing the Smedem service, which provides for a fast-track procedure for economic migrants, Belgium has definitely done everything possible to let these applications run as smoothly as possible. In this regard, it is also worth mentioning the pragmatic delegation of authority by the IS to the consulates in cases where residence criteria of a more objective nature are concerned and where the intrinsic examination of the visa application therefore remains limited: this indeed applies pre-eminently to workers with a work permit. This possibility that the consulates have of personally issuing a D visa, combined with the quick issue of a residence permit without additional intrinsic examination in the territory is the simplest and quickest working method to attract employees within the current Belgian context (which, as has already been said, only allows for scenarios 1 and 2).

93 See Appendix 28 of the Visa Handbook for an overview of the consulates of all Member States outside the Schengen zone. In comparison, countries such as the Netherlands, Portugal and Denmark have approximately 80, 60 and 40 consulates, respectively.

The employees' *family members* also enjoy the same priority treatment, otherwise these measures for the benefit of economic migrants would lose their useful effect: if only the worker can come to Belgium without any problems, but his or her spouse must wait the full 9 months for his or her residence permit, the potential worker will naturally be hesitant to opt for Belgium and will give preference to a Member State where his or her spouse can indeed quickly obtain a residence permit[94]. Moreover, the directive for highly-qualified persons, which, however, has not yet been transposed into Belgian law, does contain for the same reasons a favourable system for family members[95]. So this is also according to the European legislator an important success factor.

Conversely, the *cost price* of a D visa, which was doubled to EUR 180 two years ago, is presumably less of a factor for this target group of economically active persons: they will be able to pay this without any problems or their employer will bear responsibility for it[96].

It is likewise possible that workers want to come to Belgium for a *maximum period of three months*. However, this occurs less often in Belgium since there is little need to attract additional seasonal labourers from outside the EU. Article 4.3 of Regulation 539/2001 provides the Member States with the possibility of requiring all workers to have a visa for the purposes of a short stay; therefore, also for nationalities who, per se, are exempt from applying for a visa. Belgium has not made use of this possibility, however. Although these workers must, in any event, mostly go to the consulate for their work permit, this visa exemption is undoubtedly an important factor. The *EU visa facilitation agreements* can be referred to for nationals of Russia, the Ukraine, Moldavia and Georgia, who must always apply for a visa. These agreements contain, among others, more benefits regarding the processing period, documents to be submitted to corroborate the travel objective and/or issue of multiple visas for journalists, athletes, cultural officials and their support staff. Moreover, Belgium exempts these same categories of workers from work permits insofar as their employment (and, therefore, also their residence) does not last longer than three months[97]. Finally, it is possible to submit a visa application for a maximum of three months, not only to the Belgian consulates, but also to the consulates that *represent* Belgium: this extended possibility to submit the application is also a success factor.

As has already been stated under point 1.2, it is difficult, however, to make a pronouncement on the exact extent to which all the aforementioned factors actually play a role. A possible increase or decrease in the number of visas for workers during the past few years is, after all, not necessarily directly linked to the introduction of the aforementioned success factors. There are many external factors that play a role, such as the economic situation in both Belgium and the third countries of origin, the expansion of the labour market by eight EU countries in May 2009, other measures regarding the migration and labour market policy, etc.

94 See also point 2.4 on this Smedem service.

95 See consideration under point 23 of Directive 2009/50: 'Favourable conditions for family reunification and for access to work for spouses should be a fundamental element of this Directive, which aims to attract highly qualified third-country workers.'

96 See point 2.4 on this matter.

97 Article 2(15), (16) and (17) of the Royal Decree of 9 June 1999.

There is less of a necessity to create additional success factors for ***family members*** (of persons who are not economically active): on the one hand, because Belgian migration policy does not aim to actively attract these foreign nationals and, on the other hand, because these family members want to come to Belgium in any event to join their family member who has a Belgian work permit. In other words, staying in the country of origin or migrating to a country other than Belgium is not an option for them in any event. Nonetheless, a few additional national facilities are distinguished in addition to the obligations of Directive 2003/86. These are to be found primarily where the scope has been expanded.

For example, in Belgium, the reference person only needs to have a short-stay visa, even if there is no prospect of unlimited residence (see Article 3.1 of the Directive) and, in addition, family reunification of non-married partners is also allowed (only 'may' provision in Article 4.3 of the Directive). This was already possible in Belgium before the Directive and this possibility was retained when the Directive was transposed[98]. To a certain extent, it was a conscious choice to allow these forms of family reunification but, as stated in point 2.1.e, this was also an essential part of the political compromise, and in exchange for this, other aspects of family reunification could be made more restrictive (for further details, see also point 3.3.1). In any event, it can be determined that purely extending the scope to non-married partners itself amounts to an important facilitation of legal migration, even if this is accompanied by a rather difficult residence procedure.

## 3.3. Visa procedures for the purpose of preventing irregular migration

### 3.3.1. Prevention of irregular migration during the visa issuing and monitoring process

As always, European standards, which have already been extensively explained in the Visa Handbook, apply to C visas. There is discussion of the phenomenon of irregular migration, in particular, during the examination stage (point VII of the Visa Handbook) such as, for example, examination of the authenticity of the travel document and assessment of the risk that the person concerned will stay longer than the residence period allowed. For D visas it is not possible in this study to summarise all internal national initiatives openly and in detail. We will restrict ourselves below to a national particularity regarding the C visas and a few rather general remarks on D visas.

Within the scope of the ***application stage*** of the C visas, attention can be drawn to the Common Application Centre in Kinshasa, which combats visa shopping. This is discussed in detail under point 4.2.4, which deals specifically with the DRC. Besides the legally required certification from the educational institution, students applying for their D visa will, upon application, mostly also be requested to complete an extensive questionnaire of approximately ten pages from which it

98 One can nevertheless argue that one of the most important reasons to allow family reunification of non-married partners, i.e. family reunification of homosexual partners, had in the meantime become devoid of purpose: in Belgium, persons of the same sex have also been allowed to get married since 2003 (Article 143 of the Civil Code).

will appear that the studies that they have chosen were consciously chosen to align with previous training and subsequent professional options. This questionnaire is inspired by both practical experience and national jurisprudence. In this way, it will be possible to detect persons who will probably not finish their studies in Belgium and will go in search of other, if necessary, illegal residence alternatives.

As has already been said, all conditions of residence are already examined to the greatest extent possible at the ***examination stage*** of the visa application. Choosing 'scenario 1' can, per se, be regarded as a form of prevention of irregular migration. From the prevention point of view, it is obvious that it is best to have a prior check on as many residence criteria as possible (even if this does take some time), instead of after the visa has been issued and the foreign national is already in the territory. In this regard, we can refer in particular to examining marriages of convenience. As has already been stated in point 3.1.b., an additional interview can be organised in this regard to obtain a definite answer as to whether this is a matter of a genuine marriage or not. This involves approximately fifty questions from which it must appear that the partners know one another and have a relationship. To prevent these questions from being known to mala fide applicants, they are only asked verbally and the order in which the questions are asked is also varied.

During the ***residence stage***, additional examination is only systematically performed for family reunification: even if it does not concern a marriage of convenience, there is still the requirement of Directive 2003/66 that the spouses must actually cohabitate and not have a relationship with someone else[99]. In accordance with the national transposition of 2006, this condition which, per definition, can only be checked in the territory, applies for three years and an unrestricted residence permit is issued only after those three years. Until 2006, this was only required for the first year after entry. This cohabitating check is performed systematically with reference to a standard document, which is included in the appendix to the circular of 29 September 2005[100].

### 3.3.2. Prevention of irregular migration through other measures during visa issuing

For the purposes of ***C visas***, organisational rules on the operation of *consulates* have again been established at the European level. In this regard we can refer, in particular, to Titles IV and V of the Visa Code and the 'Handbook for the organisation of visa sections and local Schengen cooperation'[101]. This includes provisions such as that staff must receive appropriate training and that it is advisable that there is a rotation system to avoid the same staff coming into direct contact with the local population for too long. Furthermore, appropriate safety measures are required for office space and storing visa stickers. In addition, experiences are exchanged locally between the consulates of the different Member States in local Schengen cooperation on matters such as the assessment of migration and safety risks (socio-economic structure of the country, use of false, counterfeit or

99 See Article 16.1 of Directive 2003/86.

100 See https://dofi.ibz.be/sites/dvzoe/NL/Documents/20050929_nl_bijlage.pdf.

101 See http://ec.europa.eu/home-affairs/policies/borders/docs/c_2010_3667_en.pdf

forged documents, illegal migration routes, refusals, etc.)[102]. When there is cooperation with *external service providers*, these must meet various minimum prescriptions[103].

In principle, the above applies only to C visas, but much of this will also apply to ***D visas***: it does, after all, concern the same consular staff, the same office space and the same blank visa stickers[104]. Furthermore, the consular staff is given specific instructions on D visas by way of a particular website requiring a login and password, where all the relevant information is drawn up by the central authorities.

The *national distribution of authority* between the central authorities and the consulates was also largely prompted by worries on illegal or pseudo-legal migration. The central authorities are competent for both C and D visas as soon as there is any doubt regarding the visa application and, therefore, pre-eminently also if there is a danger that it appears as though the migration procedures will be bypassed. Also, with due regard to national jurisprudence, the central authorities are, after all, in the best position to evaluate and justify such cases[105].

### 3.3.3. Challenges and success factors for preventing irregular migration

One can assume that all measures referred to under point 3.3 contribute to the success of combating illegal migration to a greater or lesser extent, if not, the European legislator and the competent national authorities would not continue to impose this. It is difficult to evaluate the exact impact of each individual measure, however.

A few further challenges can be identified. *Representation agreements* can contribute to reducing visa shopping. If a foreign national has Belgium as main destination, the application will in all cases have to be submitted to a Belgian consulate or a consulate that represents Belgium. If there is neither of the two in the foreign national's country of origin, the foreign national will probably not take the trouble to go to another third country where Belgium is indeed present or represented. Chances are that this will lead to the foreign national submitting his or her application to the consulate of the Member State having local presence and for that purpose he or she will pretend that such Member State is the main destination (= visa shopping). The expansion of the consular network by way of representation reduces this problem. Moreover, this is also imposed by Article 8.5 of the Visa Code.

The long-awaited coming into force of the *VIS system*, anticipated in October 2011, will also offer further guarantees against irregular migration in different ways. E.g. the European check on fingerprints at the border will almost exclude fraud of documents or possible use of stolen

102 Article 48.3 of the Visa Code.
103 Article 43 and Annex X to the Visa Code.
104 Article 18.1 of the Schengen Convention.
105 This does not prejudice the importance of good training for the consular staff, however, which is, after all, the first to establish whether there is any possibility at all of a risk of illegal migration.

blank visa stickers: the visa and fingerprints will then not be registered in the VIS and entry will be refused (see also point 3.1.c.2, above). The previously stated problem in the case of representation (see point 2.3.a.1) will also be solved if the file can be safely lodged with the represented Member State by way of VIS. The consulates of North Africa will be the first places where the VIS will come into operation[106] and the entire geographic roll-out should then be finalised in approximately two years[107]. This timing is rather optimistic but, to avoid visa shopping, this period must be as short as possible: there is indeed the risk that foreign nationals will apply for their visa more often to consulates where the VIS has not yet been put into operation. Another risk linked to the VIS is that taking fingerprints is regarded by third-country persons subject to a visa obligation as a serious measure which hinders international mobility and the people-to-people contacts in general: for example, China has already repeatedly shown its discontent concerning the fingerprinting that their diplomats, in particular, will be required to undergo.

The largest general challenge therefore seems to be to find a good *balance* between allowing (legal) migration and preventing illegal migration. It has indeed not been established at all that fraud or misuse would be proportionally reduced to the extent that one prevents (legal) migration. A targeted policy to promote legal migration can, to a certain extent, also be a success factor to combat irregular migration. As the former Minister for Migration and Asylum formulated it in 2008-09: 'one should open the front door (of legal migration) wider, but the back door (illegal migration and regularisation) must be closed'.[108] These two objectives are not necessarily always one another's opposites, but they can go hand in hand. Practically speaking, one will, for example, have to maintain decision periods which, on the one hand, allow the visa application to be thoroughly examined but, on the other, will not deter the foreign national from going through a long difficult procedure which, after all, may only encourage evasion or bypassing of the law.

The *visa obligation* itself is the last success factor 'hors concours'. This appeared clearly from the influx of asylum seekers into Belgium pursuant to the exemption of the western Balkan countries over the past few years (see further under point 5.1.a). In hindsight, one must conclude that the earlier visa obligation was a very effective way of preventing this latent wave of irregular migration. With the visa obligation, no foreign nationals are excluded a priori from gaining access to the territory; the entry requirements are, after all, the same for both those subject to the visa obligation and those exempt from visas[109]. The danger that bona fide foreign nationals find themselves compelled to seek other, if necessary, illegal acts to enter the territory is therefore rather small. In the final analysis, the only differences are that in the case of a visa obligation, there is more time to make a thorough examination of the entry requirements (i.e. 15 to 60 working days) and that, in addition, this examination is first performed by the consular employees who are very familiar with the relevant third country. Conversely, this examination must be done for all nationalities exempt from visas within the short time span at the border control. From this perspective, it is therefore clear that this

106 See Commission Decision of 30 November 2009, document C(2009)8542, OJ L 23/62 of 27 January 2010.

107 See Council Conclusion of the JHA Council of 1-2 December 20005. http://www.consilium.europa.eu/uedocs/cmsUpload/JHA,1-2.12.05.pdf, p. 33.

108 See also point 2.1, b and d.

109 See Article 21.1 of the Visa Code, which refers to Article 2.1 of the Schengen Borders Code.

longer examination period is very effective. It is impossible to achieve the same results, even with a strict border control. The responsibility of those Member States, along whose borders nationals of Serbia and FYROM mostly enter the Schengen zone, can also then be put into perspective. As is apparent from a letter from the present State Secretary to Commissioner Malmström at the end of May 2011, which contains the suggestion to possibly re-introduce a visa obligation, people at the governmental level are also of the opinion that this visa obligation is an extremely effective success factor against illegal migration.

Following this, one can also conclude that visa facilitation agreements, where decision periods are generally only 10 working days instead of 15, can also have a negative influence on irregular migration. In any event, during the last few years Belgium has never distinguished itself in the competent Council Bodies as a great protagonist of such Visa Facilitation Agreements (VFA). This is explained in further detail under point 5.1.b.

## 4.1. The facilitation of legal migration and prevention of irregular migration: case study I - Turkey

### 4.1.1. Rationale for case study selection

As requested in the study specifications, in choosing two countries, the option taken was, on the one hand, a country where the focus lay more with promoting legal migration and, on the other, a country for which the initiatives are focused more on avoiding irregular migration. The choice of Turkey is because of historical reasons more within the scope the first option, although the fight against illegal migration is also discussed: as has been stated in point 3.3.3, both aspects certainly do not exclude one another.

Turkey is, in any event, one of the few countries for which additional benefits regarding the common system apply: there is a bilateral agreement on Turkish workers and their family members in this regard, which dates back to 1964. Only Morocco, Tunisia, Algeria and the former Yugoslavia benefit from similar agreements (see also point 2.2). National jurisprudence and administrative practice regarding these bilateral agreements have undergone interesting developments during the last few years.

Furthermore, Turkey is an interesting study object because of its association agreement with the EU and the accompanying standstill clause, which has given rise to the Soysal decision of the European Court of Justice. The problems regarding the concessions that Turkey wants for visas in exchange for concluding an EU readmission agreement and the status of the EU candidate Member State in general will also be discussed.

It is not only for academic purposes that Turkey is interesting. After all, there are very many Turkish people in Belgium: they are second on the list of all the non-EU countries and seventh when the EU countries are included. This produces the result that Turkey is one of the front runners when it comes to visa and migration statistics.

### 4.1.2. Historical overview of relations with Turkey

Turkish migration to Belgium originated mainly in the Belgian coal industry. Until the mid-50s Belgium primarily attracted Italian migrant workers. On 8 August 1956, however, the Marcinelle mine disaster occurred, where there were 262 fatal casualties, of which 136 were Italians and 95 Belgians. Italy stopped migration to Belgium as a result. The Belgian government subsequently

attracted migrant workers from Greece and Spain and later also Turkey and Morocco (cf. bilateral agreements of 1964).

It can be noted that this migration of Turkish migrant workers only started taking off while the Belgian coal industry had been on the decline since 1958[110]. However, this fell within the scope of the general Belgian policy prior to the migration stop of 1974, when migrant workers were welcome. There was also such a European policy in respect of Turkey, as is apparent from the conclusion of a European Community Association Agreement with Turkey of 12 September 1963, which also bore benefits for workers (and other economically active persons): it was the intention at that stage already that Turkey would, in the long term, become a member of the EU.

The sometimes undesirable consequences of the bilateral agreement, in particular within the scope of family reunification, would only become known later. For example, Turkish migrants, even of the second or third generation (most of them were already Belgian nationals at that stage), have the habit of looking for a partner in Turkey, and this resulted in secondary migration flows.

### 4.1.3. Existence of agreements with Turkey

Prior to the Schengen Convention, Belgium had had various bilateral agreements with Turkey on short-stay visas. The first was concluded by an exchange of letters on 18 and 25 February 1948, the second dates back to 16 October 1952. The third Belgium - Turkey bilateral agreement of 2 January 1956 replaced the previous one and provided for an exemption, with the exception, however, of economically active Turkish people who remained subject to visas[111].

Various treaties were concluded within the Council of Europe in the 50s, which can also be relevant for Turkey, which is, after all, a member of this Council. This particularly concerns the European Convention on Establishment[112] and the European Agreement on regulations governing the movement of persons between Member States of the Council of Europe[113]. The first refers to facilitating entry, but apparently this does not have a direct effect and definitely does not entail visa exemption. Visa exemption for a maximum stay of three months can indeed be derived from the second tool (in any event for non-economically active persons), but Belgium lifted the relevant Articles 1(1) and (2) in respect of Turkey. This occurred by means of a verbal memorandum to Turkey on 24 October 1980. On the same occasion, the bilateral agreement Belgium - Turkey of 2 January 1956 was lifted[114]. Since late 1980, Belgium has therefore maintained a general visa obligation for Turkish nationals. Since the Schengen Convention, this has also been provided for by Regulation

110 Cf. International Coal Crisis of 1958 and production restrictions imposed by the ECSC (European Coal and Steel Community). The last Belgian coal mine was eventually to close completely in 1992 (source: Wikipedia).

111 http://treaties.un.org/doc/Publication/UNTS/Volume%20228/v228.pdf , p. 203 et seq. See point 3 of the agreement: The Belgian and Turkish nationals wishing to travel to Turkey and to Belgium, respectively, in order to practice a trade, profession or other gainful occupation […] will, whatever the case, have to have been issued with the necessary visa for these two countries from the competent diplomatic or consular representative beforehand.

112 Convention no. 19 of 13 December 1955, especially Article 1.

113 Convention no. 25 of 13 December 1957, also particularly Article 1. Both texts can be found at http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG

114 See http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=025&CM=8&DF=18/07/2011&CL=ENG&VL=1

539/2001, which puts Turkey on the negative list.

An association agreement was concluded between the EC and Turkey on 12 September 1963[115] and a supplementary protocol followed on 23 November 1970[116]. Association Council Decision no. 1/80 of 19 September 1980 can also be referred to. This agreement deals with economically active Turkish nationals for a stay of less or more than three months. However, Turkish *workers* in Belgium seldom invoke these tools because there is a particular bilateral agreement dating back to 1964 for them. For Turkish *self-employed persons and service providers*, the standstill provision in Article 41.1 of the supplementary protocol of 1970 has also become important to Belgium. In the Soysal Decision C-228/06 of the Court of Justice of 19 February 2009, it became clear that Turkish service providers may not be subjected to the visa obligation for short stays if they were exempt at the moment at which the standstill clause was introduced[117]. This decision had no immediate effect for Belgium, seeing that Turkish service providers were already subject to visas on the grounds of the bilateral agreement of 1956. However, the Demirkan case (C-221/11), where the question is asked whether the Turkish service receivers can also benefit from this standstill clause, is still pending. This case could indeed have an impact on Belgium.

As has already been said, a bilateral agreement between Belgium and Turkey on the employment of Turkish workers in Belgium was finally concluded on 16 July 1964 and it was ratified by the Law of 13 December 1976 (Belgian Official Gazette of 17 June 1977). This agreement is important for Turkish workers and their family members who stay for longer than three months. Regarding *workers*, the agreement provides for flexible employment terms and conditions (and therefore residence terms and conditions) and the national employment regulations also provide for various (supplementary) easing for countries with which an international agreement regarding employment was concluded, which therefore includes Turkey[118]. The provisions for *family members,* who, moreover, do not have to be Turkish themselves, are in some respects more beneficial than those of the Immigration Law, which is a transposition of Directive 2003/86. For example, the spouses do not have to be of a minimum age of 18 or 21 years and dependent ascendants can also obtain residence in special cases[119]. The national Courts and, consequently, also the administrative services, traditionally interpreted this bilateral agreement broadly: it sufficed for a Turkish worker to be on Belgian territory, regardless of whether one had obtained migration particularly as a worker.

During the last few years, these agreement provisions on family members have been under discussion, however, especially on the grounds of a decision by the Aliens Litigation Council in 2009[120]. It was decided in this case that the reference person must indeed have obtained residence for Belgium as a worker within the sense stated in the agreement, and, in addition, that he or she

115 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21970A1123(01):EN:HTML, approved by the Law of 15 July 1967.

116 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21970A1123(01):EN:HTML, approved by the Law of 18 August 1972.

117 The Commission issued particular instructions on this decision in document C(2009)7376. In addition, the Commission suggested that this decision be included in Regulation 539/2001 (document COM(2011)290). Both documents can be found at http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=en

118 See Articles 2(29), 10 and 16(2) of the Royal Decree of 9 June 1999.

119 See point 11 of the agreement.

120 Decision 26.661 of 29 April 2009 in case 37.132 II, can be found at http://www.kruispuntmi.be/vreemdelingenrecht/detailrechtspraak.aspx?id=9602 .

can only let his or her already existing family come to Belgium (family reunification), therefore not the spouse whom he or she married after he or she migrated to Belgium (family formation). This decision was pronounced within the scope of the agreement with Morocco, but this can be extended to the similar agreement with Turkey. This Turkish agreement provides that the Belgian government makes job offers that have the terms, conditions and suitability required of the workers to the Turkish government; the selection is then organised by the Turkish services with due respect for the terms and conditions set out in the offers[121]. A strict application of this provision means that this agreement has become completely devoid of purpose in 2011, so that it only relates to family members of migrant workers who came to Belgium before the migration stop in 1974. This decision has indeed caused the administrative services to start applying this agreement more strictly. The amendment to the law of 8 July 2011 from now on even includes this limitation in the Law as such[122].

### 4.1.4. Any other measures

Turkish nationals enjoy a few additional benefits. If they are in Belgium and there is a pending application for their family reunification (and they therefore do not yet have a residence permit), they can return to their country of origin during the holiday period of 1 July to 30 September and obtain a return visa for Belgium (D visa) under flexible terms and conditions. This does not concern a formal agreement with these countries, however, but only a unilaterally granted benefit, which is renewed every year[123]. This also applies to nationals of Morocco and Tunisia.

Furthermore, like almost all Schengen countries, Belgium has exempted diplomatic, service and special passports from visas for stays of up to three months[124]. However, it can be established that the Turkish government has a very broad issue policy, particularly for special passports to bypass the visa obligation in this way. For example, in September 2010, Turkey still decided to issue 700 special passports to journalists.

In order to convince the Turkish government to sign the EU-Turkey readmission agreement, Council Conclusions were further issued on 25 February 2011, whereby the Council 'invites the Commission, the Member States and Turkey to intensify their cooperation on visa issues, ensuring harmonised implementation of practical improvements for Turkish visa applicants within the framework of the EU Visa Code'[125]. It is, after all, common practice to grant certain visa benefits in exchange for readmission, even if it mostly concerns a formal EU visa facilitation agreement with benefits that go beyond the Visa Code. Turkey was not offered any VFA, however, especially because Turkey did not personally insist on this: in their eyes, a VFA would be a step backwards, as candidate Member State they do, after all, speculate that they will have full visa exemption. Moreover, at this stage,

121 See Articles 1 and 2 of the agreement.

122 See the following for a critical discussion: http://www.kruispuntmi.be/vreemdelingenrecht/detail.aspx?id=14372#Commentaar_Kruispunt_Migratie-Integratie, points 1 and 2; L. Walleyn, 'Bilaterale tewerkstellingsakkoorden naar de prullenmand?', ('Bilateral employment agreements in the bin?') note under RvV 29 April 2009, no. 26.661 in T.Vreemd. 2009, issue 4.

123 This is normally published in the Belgian Official Gazette, see announcements of 28 June 2011 (BOG of 8 July 2011), 6 July 2010 (BOG of 13 July 2010) and 7 July 2009 (BOG of 14 July 2009).

124 See http://ec.europa.eu/home-affairs/doc_centre/borders/docs/25.7.2011_Information%20539-2001_EN.pdf

125 Document 7023/11, can be found at http://register.consilium.europa.eu/servlet/driver?typ=&page=Simple&lang=NL&cmsid=638

Turkey already has one of the most important benefits of a VFA, i.e. exemption from diplomatic passports. A (prospect of) a general visa exemption is too difficult an offer for the Council, and also for Belgium, to obtain readmission, therefore only a relaxation remains an offer within the framework of the Visa Code. Visa dialogue with a view to visa exemption traditionally only starts a certain time after the coming into operation and correct application of a readmission agreement.

However, Turkey resolutely dismissed this offer, as is apparent from a Turkish press release that followed immediately on the same 25 February: they adhere to the start of visa dialogue with the view to visa exemption[126]. Although the readmission agreement has therefore not been signed yet, this does not diminish the fact that it was indeed possible to grant Turkish visa applicants a few practical improvements within the framework of the Visa Code. It does, after all, often concern purely legal obligations of the Visa Code, which are not yet correctly applied everywhere, however.

For example, the consulates of the different Member States must make arrangements in the Local Schengen Cooperation on a harmonised list of supporting documents to obtain a C visa[127]. Although this particularly means combating visa shopping, it can also have the practical relaxation effect if various Member States were to decide within the framework of this agreement not to require certain documents (deemed unnecessary) any longer. The official approval in comitology of the harmonised list of supporting documents at the embassies and consulates of Turkey is expected during the second half of 2011.

The Belgian embassy in Ankara and the consulate in Istanbul have, for their part, in any event done the necessary to offer the required service to Turks who wish to obtain a C visa[128]. For example, a list of the insurance companies that offer a medical travel insurance complying with the Visa Code has been included on their website (see also Article 48.3.d of the Visa Code). In addition, outsourcing is used in both Ankara and Istanbul: in accordance with Articles 40.3 and 43 of the Visa Code, the visa application can be lodged to an external service provider, in particular IKS (Innovative Key Solutions): the person can then submit his or her visa application, although subject to payment of the service provision fee of EUR 30 (as allowed by Article 17 of the Visa Code). In addition, a fast-track procedure is maintained in Ankara for workers of certain selected companies who wish to come to Belgium on business. This fast track 'aims at simplifying visa application procedures for a selected group with specific interests in Belgium. It is characterised by easier direct contact, a reduced list of documents, access to a VIP counter at IKS, reduced application times and easier granting of long term multiple entry visas. The aim is to make it easier for the selected people to travel to Belgium.' Promoting professional contacts between Belgium and Turkey in such a manner can benefit the Belgian economy and can therefore be regarded as a concrete application of the visa policy of the last few years that is referred to in point 2.1.b.

Other future improvements as intended in the Council Conclusions of 25 February 2011 could for instance be more flexible issue of general multiple-entry visas in general, therefore not only

126 http://www.mfa.gov.tr/no_-57_-25-february-2011_-press-release-regarding-the-conclusions-of-the-eu-justice-and-home-affairs-council.en.mfa

127 See Article 48.1 of the Visa Code.

128 See web sites on Ankara http://www.diplomatie.be/ankaranl/default.asp and Istanbul http://www.diplomatie.be/istanbulnl/default.asp , always under the 'Services' heading.

for business people but also for family members who want to travel often (see Article 24.2 of the Visa Code). Such visas can be valid for up to five years and during that time, the person concerned can travel in and out of the Schengen zone without restrictions, without always having to apply for a visa again every time. One can also think of an extension of the consular network in Turkey: Member States currently only have embassies or consulates in Ankara and Istanbul and another few in Edirne and Izmir (all in the Western part of Turkey). It would be a practical improvement if Turks could also submit a visa application in other regions of Turkey, either by opening additional consulates or by outsourcing (external service providers to whom the application can be submitted, the application must then indeed still be decided on by the consular post).

### 4.1.5. Statistics

Preliminary note: the remarks made in point 6 for the statistics listed in the appendix also apply to the statistics below, which relate to Turkey.

**a) C Visas**

| Applications | Total | Tourism | Business | Visiting family/ friends | Cultural | Sports | Official | Medical reasons | Transit | Other |
|---|---|---|---|---|---|---|---|---|---|---|
| 2006 | 10.692 | 1.020 | 5.227 | 3.442 | 406 | 204 | 5 | 23 | 0 | 365 |
| 2007 | 11.477 | 1.050 | 5.674 | 3.707 | 317 | 232 | 10 | 49 | 4 | 434 |
| 2008 | 11.131 | 1.465 | 5.267 | 3.577 | 248 | 123 | 5 | 11 | 123 | 312 |
| 2009 | 10.293 | 1.475 | 4.218 | 3.703 | 332 | 175 | 2 | 6 | 88 | 294 |

| Visas issued | Total | Tourism | Business | Visiting family/ friends | Cultural | Sports | Official | Medical reasons | Transit | Other |
|---|---|---|---|---|---|---|---|---|---|---|
| 2006 | 8.690 | 870 | 5.043 | 1.882 | 390 | 203 | 5 | 17 | 0 | 280 |
| 2007 | 9.519 | 946 | 5.468 | 2.169 | 308 | 225 | 7 | 45 | 4 | 347 |
| 2008 | 9.453 | 1.327 | 5.092 | 2.306 | 225 | 137 | 5 | 10 | 117 | 234 |
| 2009 | 8.839 | 1.321 | 4.049 | 2.741 | 235 | 168 | 2 | 6 | 69 | 248 |

*Source: FPS Foreign Affairs*

**b) D visas**

| | Applications | Visas issued | | | | |
|---|---|---|---|---|---|---|
| | | total | education | employment | family | other |
| 2006 | 2.754 | 2.331 | 325 | 133 | 1.744 | 129 |
| 2007 | 2.713 | 2.254 | 383 | 208 | 1.542 | 121 |
| 2008 | 2.387 | 2.160 | 356 | 240 | 1.443 | 121 |
| 2009 | 2.429 | 2.053 | 368 | 165 | 1.429 | 91 |
| 2010 | 3.602 | 1.801 | 391 | 165 | 1.177 | 68 |

*Source: FPS Foreign Affairs*

The percentage of refusals for Turkish D visas amounts to approximately 15%, which is considerably less than the general average of approximately 25% for all third countries.

**c) Residence permits granted annually according to purpose**

| | Total | Education | Employment | Family | Other | Change of purpose |
|---|---|---|---|---|---|---|
| 2008 | 3.222 | 393 | 336 | 2.121 | 372 | 5 |
| 2009 | 3.650 | 427 | 208 | 2.526 | 489 | 3 |
| 2010 | 3.785 | 342 | 373 | 2.193 | 877 | 2 |

*Source: IS/Eurostat*

There are no figures available for the number of refusals or withdrawals.

**d) Stock of Turkish people in Belgium**

| 31/12... | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|---|
| Number | 45.866 | 42.582 | 41.336 | 39.885 | 39.664 | 39.419 | 39.532 | 40.893 | 40.913 | 37.641 |

*Source: ADSEI (Directorate-General of Statistics and Economic Information)*

With this, Turkey is second on the list of all non-EU nationalities in Belgium after only Morocco (78,000 in 2010). The number has decreased slightly during the last ten years, but this does not mean that the influx has diminished: many Turkish people have disappeared from these statistics during the last ten years seeing that they have acquired Belgian nationality. The figures come from the Directorate-General Statistics and Economic Information of the FPS Economy[129]. The available Eurostat figures have been used as of 2008 (tabel migr_resvalid).

**e) Entry refusals, interceptions and removals**

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| Entry refusals | 85 | 205 | 120 |
| No valid travel document | 0 | 20 | 35 |
| False travel document | 25 | 20 | 0 |
| No valid visa or residence permit | 30 | 60 | 10 |
| False visa or residence permit | 0 | 15 | 0 |
| Purpose and conditions of stay not justified | 20 | 55 | 50 |
| Already stayed 3 out of 6 months | 0 | 5 | 5 |
| No sufficient means of subsistence | 0 | 25 | 0 |
| Alert has been issued | 10 | 10 | 10 |
| Considered to be a public threat | 0 | 0 | 0 |
| Interceptions | 220 | 300 | 250 |
| Refusals | 105 | 85 | 80 |

*Source: Immigration Service/Eurostat*

## 4.1.6. Findings of the case study on Turkey

As has already been stated (see, for example, point 2.1.d), the internal Belgian visa policy only aims, to a certain extent, to promote legal migration, in particular for certain economically active foreign nationals. In this respect, there is no preference for certain nationalities. Conversely, there are various (either bilateral or multilateral) international agreements that apply to Turkey and which grant Turkish people additional benefits, although this does not always coincide with the internal Belgian policy of the last few decades.

129 http://statbel.fgov.be/nl/statistieken/cijfers/bevolking/structuur/huidige_nationaliteit/

This discrepancy between the general Belgian policy on the one hand and the applicable international standards for Turkey on the other results in a strict interpretation of the latter. This has applied for a few years now, in particular to the family reunification provisions of the bilateral agreement of 1964. Over the last few years, the scope and content of the agreement have been under increasing discussion and it remains an open question as to whether a stricter interpretation of the agreement does not constitute a breach of international legal rules. Moreover, it seems as though there is an analogous discussion (on interpretation of international agreements) at the European level, in particular as regards the standstill clause of the supplementary protocol of the association agreement with Turkey.

The general Belgian policy to attract economically interesting foreign nationals enjoys special attention in its application to Turkey. This is, for example, apparent from the fast-track procedure for businessmen in Ankara. Seeing that this concerns more of a quality instead of a quantity migration policy, the available figures are not the best indication to assess whether this policy and the measures applying it bear fruit.

## 4.2. The facilitation of legal migration and prevention of irregular migration: case study II - the Democratic Republic Congo

### 4.2.1. Rationale for case study selection

Selecting the Democratic Republic of Congo (also referred to as Congo-Kinshasa) as second case study fits in with combating irregular migration in particular. The DRC is an obvious choice in this respect. Due to the historical ties as former colony, there is a large Congolese community in Belgium, more than in any other EU country[130]. In addition, the DRC is third on the list of all the non-EU nationalities present in Belgium. One can therefore also state that for Congolese people who want to emigrate, whether legally or not, Belgium will often be their first choice.

The recent opening of the common application centre in Kinshasa and the explicit statement by the DRC in various policy statements regarding the combat of illegal migration[131] provide additional support for this choice, insofar as this is necessary.

### 4.2.2. Historical overview of relations with the DRC

After the 'Kongo-Vrijstaat' (Congo Free State) had been the private property of the then Belgian King Leopold II from 1885 to 1908, it became a colony of the Belgian State under the name of 'Belgian Congo' in 1908. The Congo became independent in 1960. Belgium continues to distinguish itself in

130 In any event, as regards percentage of the total Belgian population. In terms of the figures, only France has a larger presence of Congolese people.

131 See point 2.1.d.

the DRC by way of its foreign policy and development cooperation. Different factors have caused a substantial Congolese community to develop in Belgium. There was never a conscious policy to stimulate migration from the DRC, however.

Before independence, Congolese immigration to Belgium was limited to fewer than one hundred per year. This particularly concerned students: the intention was that certain Congolese were educated to take over the tasks of the colonial civil servants. In the years following independence, migration also remained limited to students, businessmen and tourists who did not have the intention to settle in Belgium permanently and also actually returned in most cases: i.e. circular migration. Although migrant workers were actively attracted until 1974, no workers were recruited in the DRC, but rather in southern Europe and northern Africa.

As of 1975, when a stop was put to economic migration by means of quotas, Congolese migration - in contrast to other migrations - continued and even increased. There was a switch from circular to permanent migration at the start of the 90s in the form of asylum seekers (who do not necessarily come with a visa) who wished to leave the turbulent DRC. The asylum stream has definitely not diminished since then, on the contrary. Many of these would either be recognised as refugees or be regularised for humanitarian reasons. Family reunification or family formation (in respect of Congolese or Belgians) has also increasingly been rising and has also become the most important reason for issuing D visas to Congolese, even more than for study reasons. Labour migration of workers has still remained marginal[132].

### 4.2.3. Existence of agreements with the DRC

No visa abolition agreement was found between Belgium and the DRC, which means that, like almost all African countries, the country has always needed visas for Belgium.

As a member of the ACP countries (African, Caribbean and the Pacific Group of States), the DRC is a party to the Cotonou Agreement that was concluded between these ACP countries and the EU on 23 June 2000[133]. Article 13 of this agreement contains a provision on migration and, in particular, on readmission. For example, the authorities of these countries must provide administrative facilities that are necessary for the return of their nationals. Conversely, a compromise to grant visa facilities in exchange for this is not provided. Upon renegotiation of this agreement in 2010, this Article 13 was also discussed, but no agreement was reached. Instead, a common statement on migration and development was adopted[134]. It is provided in this that the EU and ACP countries strengthen and deepen their dialogue and cooperation on migration, including legal migration and admission. This reference to admission can therefore have implications for the visa policy.

132 See Q. Schoonvaere, 'Studie over de Congolese migratie en de impact ervan op de Congolese aanwezigheid in België', (Study on the Congolese migration and its impact on the Congolese presence in Belgium) can be found at http://www.diversiteit.be/index.php?action=artikel_detail&artikel=362 .

133 PB L 317 of 15 December 2000.

134 See statement II with the agreement to the second revision of the Cotonou agreement, PB L 287 of 4 November 2010.

However, the Visa Code does remain applicable to ACP countries for the foreseeable future. Any easing or improvements regarding visa issue must therefore remain within the scope of the Visa Code, which provides the necessary leeway for this[135].

Finally, the bilateral agreements between Belgium and a number of African countries, including the DRC, which allow their soldiers to follow a traineeship in Belgium, can be referred to. The intention is that these soldiers return to their country of origin after their training, which takes a few years, so that they can use their skills to be of service to their country. However, every year, it is established that various trainees 'disappear' during or upon termination of their training and often apply for asylum. In order to combat this misuse, the exchange of information between all the services involved is optimised[136].

### 4.2.4. Any other measures

#### a) Prior consultation

As was already the case under the old Common Visa Instructions, the current Article 22 of the Visa Code provides that Member States can request to be consulted in advance for certain nationalities if another Member State is considering issuing a C visa. Belgium requires prior consultation for the DRC and another former colony, i.e. neighbouring Rwanda[137]. Such prior consultation is a rather serious measure for the third country concerned: the decision on an application for a C visa for any Member State whatsoever normally causes a delay of 7 days[138]. The fact that Belgium nevertheless adheres to this measure shows how much importance is attached to possible illegal Congolese migration to Belgium. In this way, many Congolese who apply for a visa for another Member State, but most probably have the intention to subsequently come to Belgium (illegally), can indeed be intercepted.

#### b) Maison Schengen

The establishment of the 'Maison Schengen' in Kinshasa in 2010 is a 'hors concours' measure which also has an impact on the fight against illegal migration. Some background information is appropriate in this regard. The Visa Code provides for various forms of cooperation between Member States, especially also to share the costs to take fingerprints for a visa applications. For example, Article 41.2 allows the creation of Common Application Centres to apply for a C visa. Belgium has established such a centre in Kinshasa, which was named 'Maison Schengen' and accommodates consular staff from both Belgium and Sweden. This was co-financed by the External Borders Fund.

135 In this regard, see also point 4.1.4 on Turkey.
136 See IS 2010 Annual Report, p. 183-184, https://dofi.ibz.be/sites/dvzoe/NL/Documents/2010NL.pdf.
137 https://dofi.ibz.be/sites/dvzoe/NL/Documents/2010NL.pdf, p. 71.
138 See the term in Article 22 of the Visa Code. This does not prejudice the total decision period of Article 23 of the Visa Code, which, in principle may not exceed 15 days.

All applications for Belgium (and the seven Member States that it represents) and Sweden (and the three Member States that it represents) must from now on be lodged at the same place. This makes visa shopping between the participating Members States more difficult. This appears from the fact that Member States which personally have a consulate in Kinshasa, but do not participate in this Maison Schengen (such as Italy, Spain, Greece and Switserland), experienced a rise in the number of visa applications because these continue to be the only visa shopping possibilities. To make visa shopping more difficult, it would be advisable for all Member States that personally have a consulate in Kinshasa to also participate in this Maison Schengen[139].

**c) Particular prevention and awareness-raising projects**

The Immigration Service has regular missions in the DRC with a view to preventing irregular migration. The Immigration Service 2010 Annual Report summarises a few practical initiatives. For example, the embassy in Kinshasa was supported in dealing with visa files, the return of music and other cultural groups were checked, the contacts with the Congolese Direction Générale de la Migration was expanded and repatriation cases were managed. Agents of the Belgian Federal Police also travelled to the DRC to give special training courses and to perform checks at the departure flights from the DRC to Belgium. Meetings with various airlines were organised, examinations of non-accompanied minors were conducted and cooperation with other Schengen partners was intensified. The attention of the inhabitants of Kinshasa is drawn to the disadvantages of illegal migration and they are encouraged to invest in their own country by means of actions that are successful and popular with the Congolese, such as distributing flyers, posters and having debates on television and the radio. In addition, a play was performed about a young Congolese who dreams of Europe, followed by a debate with the audience[140].

### 4.2.5. Statistics

Preliminary note: the remarks made in point 6 for the statistics listed in the appendix also apply to the statistics below which relate to the DRC.

139 Point of view defended by the Belgian Consul at the Council Work Group on visas of 14 December 2010.
140 https://dofi.ibz.be/sites/dvzoe/NL/Documents/2010NL.pdf, p. 228 and 231-232.

**a) C Visas**

| Applications | Total | Tourism | Business | Visiting family/ friends | Cultural | Sports | Official | Medical reasons | Transit | Other |
|---|---|---|---|---|---|---|---|---|---|---|
| 2006 | 9.072 | 2.810 | 1.448 | 2.871 | 136 | 61 | 991 | 290 | 2 | 463 |
| 2007 | 9.469 | 2.840 | 1.526 | 2.736 | 313 | 24 | 922 | 318 | 1 | 789 |
| 2008 | 9.381 | 2.572 | 1.416 | 2.358 | 105 | 35 | 898 | 346 | 877 | 774 |
| 2009 | 11.840 | 2.912 | 1.811 | 3.194 | 511 | 25 | 1.068 | 363 | 1.009 | 947 |

| Visas issued | Total | Tourism | Business | Visiting family/ friends | Cultural | Sports | Official | Medical reasons | Transit | Other |
|---|---|---|---|---|---|---|---|---|---|---|
| 2006 | 5.248 | 1.615 | 931 | 1.337 | 78 | 5 | 635 | 71 | 0 | 576 |
| 2007 | 6.009 | 1.924 | 1.063 | 1.339 | 232 | 8 | 712 | 192 | 0 | 539 |
| 2008 | 6.119 | 1.713 | 989 | 1.123 | 104 | 25 | 706 | 203 | 691 | 565 |
| 2009 | 7.264 | 1.980 | 1.201 | 1.352 | 211 | 14 | 806 | 186 | 791 | 723 |

*Source: FPS Foreign Affairs*

**b) D visas**

| | Applications | Visas issued | | | | |
|---|---|---|---|---|---|---|
| | | total | education | employ-ment | family | other |
| 2006 | 1.318 | 671 | 264 | 11 | 305 | 91 |
| 2007 | 1.290 | 839 | 239 | 2 | 373 | 225 |
| 2008 | 1.173 | 750 | 297 | 1 | 373 | 79 |
| 2009 | 1.313 | 794 | 268 | 2 | 462 | 62 |
| 2010 | 1.170 | 585 | 252 | 2 | 277 | 54 |

*Source: FPS Foreign Affairs*

The percentage of refusals for both the C and D visas for the DRC is approximately 40%, which is worse than the general averages for all third countries of 18% (for C visas) and 25% (for D visas), respectively.

**c) Residence permits granted annually according to purpose**

| | Total | Education | Employment | Family | Other | Change of purpose |
|---|---|---|---|---|---|---|
| 2008 | 2.193 | 312 | 60 | 639 | 1.182 | 35 |
| 2009 | 2.869 | 297 | 23 | 1.143 | 1.406 | 68 |
| 2010 | 2.643 | 235 | 59 | 812 | 1.537 | 72 |

*Source: IS/Eurostat*

There are no figures available for the number of refusals or withdrawals.

**d) Stock of Congolese people in Belgium**

| 31/12... | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|---|
| number | 12.974 | 13.572 | 13.823 | 13.171 | 13.454 | 14.216 | 15.027 | 20.110 | 20.794 | 19.801 |

*Source: ADSEI (Directorate-General of Statistics and Economic Information)*

With this, the DRC is third on the list of all non-EU nationalities in Belgium. The sharp increase in 2008 can largely be explained because, as of this year, recognised refugees from the DRC were also counted in the statistics as subjects of the DRC, instead of as persons with the fictitious nationality of 'refugee'. For the rest, we refer to the same remarks as those made in the case of Turkey, i.e. the fact that the number of migrants with Congolese roots is much higher as a result of those who have become Belgians.

**e) Entry refusals, interceptions and removals**

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| Entry refusals | 95 | 230 | 120 |
| No valid travel document | 5 | 65 | 50 |
| False travel document | 60 | 55 | 0 |
| No valid visa or residence permit | 10 | 40 | 5 |
| False visa or residence permit | 0 | 15 | 0 |
| Purpose and conditions of stay not justified | 20 | 40 | 60 |
| Already stayed 3 out of 6 months | 0 | 0 | 0 |
| No sufficient means of subsistence | 0 | 15 | 0 |
| Alert has been issued | 0 | 0 | 0 |
| Considered to be a public threat | 0 | 0 | 0 |
| Interceptions | 205 | 205 | 150 |
| Refusals | 80 | 40 | 50 |

*Source: Immigration Service, Federal Police and Eurostat*

## 4.2.6. Findings of the case study on the DRC

Although the migration policy in respect of the DRC is especially aimed at the fight against irregular migration, this did not prevent the increased influx of Congolese citizens to Belgium by using legal migration channels In addition, as is apparent from the large number of residence permits for 'other reasons', this often concerns regularised illegal Congolese. However, this does not necessarily mean that the visa policy does not bear the necessary fruit.

The wish to migrate to economically better regions is, after all, a permanent fact, which has only increased during the last few decades due to globalisation. Without a restrictive visa policy, there would undoubtedly have been an even greater increase in migration. Maison Schengen, in particular, can already be referred to as a success, despite the fact that it has only been in operation for a short time: visa shopping has already fallen without it having endangered the possibility of obtaining a C visa. On the contrary, this also produces various benefits for the Congolese themselves: this Maison Schengen is apparently characterised by a customer-friendly approach to the applicants who are treated with respect and dignity and no additional fees are charged, such as in the case of external service providers.

Insofar as this had to be shown, it clearly appears from the case study, however, that the visa policy cannot solve the entire migration problem. Up to four times as many residence permits are issued to the Congolese than D visas. This concerns not only Congolese who 'misuse' their C visa to apply for a residence permit in the territory, but also persons who entered the country irregularly and gained later on a legal stay as recognized refugee or on humanitarian grounds. It is true that asylum is an absolute right, but this does not at all mean that their Member States must arrange for their entry: there is no such thing as a 'visa with a view to an application for asylum' and visa exemption does not even feature at all: one of the classic criteria to obtain visa exemption is precisely the respect for the fundamental rights of minorities in the relevant third country. For countries such as the DRC, with a high number of asylum applications and recognitions[141], it is therefore normal that a large part of their nationals have not obtained a Belgian residence permit by way of a prior (D) visa.

141 See figures at http://www.cgra.be/nl/cijfers/ , for the last few years, this actually concerns over 500 applications per year and approximately one hundred recognitions per year.

Following on point 2.3, where the national implementation of the EU policy and regulations regarding visas were discussed, the practical consequences of this are examined in more detail in this point.

## 5.1. C visas

### a) Visa obligation and exemption

The EU is authorised to decide what nationalities are exempt from visas and what nationalities need visas to enter the Schengen territory. Seeing that there are no more border controls within the Schengen territory anyway, national visa obligations would not really serve any purpose[142]. This is regulated by Regulation 539/2001, which contains the lists of those nationalities who require visas, on the one hand and those who are exempt from visas on the other. Since the coming into force of this Regulation ten years ago, the number of moves between the two lists has remained relatively limited: in 2003 and 2006, Ecuador and Bolivia, respectively were moved from the positive to the negative list. Romania (2001), a number of micro-countries (2006) and Taiwan (2011) were moved to the positive list. The impact of this was rather limited in each case.

However, this cannot be said for the exemption of five western Balkan countries: Serbia, Montenegro and the Former Yugoslav Republic of Macedonia at the end of 2009 and Albania and Bosnia-Herzegovina at the end of 2010. To obtain exemption these countries nonetheless had to meet the criteria regarding document security, illegal migration, public order and fundamental rights. Although the assessments of the Commission of these four criteria left some room for interpretation, the criteria for every country were deemed to have been met. This process lasted a little longer for Albania and Bosnia-Herzegovina but even the negative experiences that some Member States, including Belgium, had in the meantime experienced regarding the exemption at the end of 2009 could not prevent these countries from subsequently also being exempted. This was also because of the pressure by the European Parliament, which had, by way of the Lisbon Treaty, in the meantime acquired codecision authority and which attached much importance to regional coherence. As a political compromise however, this last exemption was accompanied by a declaration of the Commission of 8 November 2010, in which they commit themselves to continue to follow up the criteria for exemption, as well as to remedy possible abuses or great influxes.[143]

142 This does not diminish the fact that Regulation 539/2001 still allows various cases of national derogation regarding the visa obligation or exemption, even though the recent proposal by the Commission for an amendment of this Regulation (published on 24 May 2011, document COM(2011)290) does make a further attempt at European harmonisation.

143 Document 15926/1/10, can be found at http://register.consilium.europa.eu/servlet/driver?typ=&page=Simple&lang=NL&cmsid=638

In Belgium one could perceive a really strong increase in the number of asylum seekers coming from ***Serbia and FYROM***. In 2009, before the exemption, we had 1015 asylum seekers from Serbia and 300 from FYROM, after the exemption in 2010 this went to 2220 and 1735, respectively. The consequences for the other countries are less dramatic. There have been various initiatives to reduce this influx or, in any event to process it better:

- various information and dissuasive campaigns were organised, as already announced in the Commission declaration referred. In this regard the competent Belgian government members also visited Serbia and FYROM;
- in Belgium the people involved no longer receive a premium for voluntary return;
- Belgium has provided additional staff to deal with these applications for asylum that are receiving priority treatment. This has caused the average processing period, including appeal, to fall from one year to five months.

It does not seem as though further unilateral measures are possible, after all, one is bound by European minimum standards regarding asylum procedure and the Geneva Convention. The procedure Directive 2005/85 does, however, provide the possibility to indicate safe countries of origin but there is no such possibility in Belgian law at the moment (although members of Belgian parliament have such plans). In addition, Belgium still recognises more than 5% of the Serbian asylum seekers as refugees, which is difficult to reconcile with the concept of safe country of origin. Conversely, this percentage of recognition raises doubts on the extent to which the fundamental minority rights are actually respected (although this is one of the criteria for exemption).

As was announced in the declaration of 8 November 2010, the report of the European Commission on continued fulfilment of the criteria for exemption, on the one hand and the management of the influx and prevention of misuses, on the other, was published on 30 May 2011[144]. For the former, the Commission also held in situ missions (to which Belgium was also invited as one of the worst-hit Member States) and for the latter, it based itself in particular on various 'tailored risk analyses' by Frontex.

For Belgium it must be established that, despite all aforementioned measures, the influx is still very high. To date a possible re-implementation of the visa obligation is only possible by way of the classic procedure, i.e. 'definitive' move to the negative list by way of a co-decision by the Council (with qualified majority) and the European Parliament. Such a serious sanction does not really seem viable, however. Even if it were possible to temporarily re-implement the visa obligation by way of a simplified procedure[145], this would have more of a preventive deterrent function and it is not easy to implement such a measure: this would likewise be politically sensitive and, in addition, it

: 'The Commission would stress in this context the great importance which it attaches to effective implementation of the measures taken by the countries of the Western Balkans to enduringly meet the benchmarks of the roadmaps for the visa liberalisation process. To that end, the Commission is stepping up its efforts to establish a follow-up mechanism which will cover inter alia border management, document security, combating organised crime and corruption, effective implementation of readmission agreements and management of migration flows between the EU and the countries concerned.'

144 Document SEC(2011)695, can be found at http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=nl

145 The European Commission has issued a draft regulation in this regard, see document COM(2011)290 of 24 May 2011, can be found at http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=en

encounters various practical problems, for example the local consular missions would again need the necessary staff and equipment to process visa applications and issue visas.

All this clearly shows that a European decision on exemption can lead to great problems on illegal migration which are difficult to remedy at national or even European level. Belgium can *learn lessons* from this, for a start regarding the visa dialogues with a view to exemption, which are currently being conducted with Russia, Ukraine and Moldavia. More than has been the case to date, it is of primary importance to Belgian policy makers that there are clear pre-requisite criteria, not only regarding the policy measures but also regarding actual implementation with practical on-site progress. In that regard the action plans with Ukraine and Moldavia[146] are already an improvement with reference to the roadmap, which applied to the western Balkan countries. No agreement has yet been reached with Russia on the common steps (the EU countries themselves also have a visa obligation for Russia, therefore this does not concern criteria that the EU can unilaterally impose on Russia) but Belgium has expressed its concerns to the Commission in this regard on various occasions, of which the first was as early as June 2010. In addition, it will have to be shown that these countries will have to comply unequivocally with all criteria before making the decision on exemption.

The Stockholm Programme[147] and/or Stockholm Action Plan[148] provide for the start of a visa dialogue, which will lead to visa exemption in the long term, also for the other Eastern Partnership countries (Georgia, Belarus, Armenia and Azerbaijan) and the only remaining western Balkan country (Kosovo). A recent communication by the Commission likewise opens the door to possible future liberalisation for the southern neighbouring countries.[149]

It will be clear that, having regard to our experiences with exemption, Belgium is taking up a rather hesitant stance on this on the European forums. As has already been said (see point 2.1.a) with regard to the two categories of reasons that Regulation 539/2001 provides for decisions regarding visa obligation, i.e. migration and public order on the one hand and regional cohesion on the other, Belgium will especially invoke the former. The European evolution to let regional cohesion, in particular, play a role as argument in favour of liberalisation is, however, a two-way cutting sword: this also has the result that, possibly as a result of the backlash that Belgium has experienced, it will be hesitant to exempt countries entailing no danger of migration, only to prevent a precedent in the geographic region concerned (with other countries that clearly do entail a danger of migration).

Belgium is also weighing up the possibility of visa facilitation agreements (VFA) against the impact that they could have on the exemption process. Such agreements can indeed be regarded as a further step towards full exemption[150], therefore with a possible acceleration of the exemption

146 Approved in November and December 2010, respectively.

147 The five-year plan of the Council on Justice and Home Affairs, see Official Journal of the European Union of 4 May 2010

148 The accompanying plan of the Commission with timing for concrete initiatives that execute this Council programme, see document COM(2010)171 of 20 April 2010, can be found at http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=en

149 See document COM(2011)292: 'In the long-term, provided that visa facilitation and readmission agreements are effectively implemented, gradual steps towards visa liberalisation for individual partner countries could be considered on a case-by-case basis'.

150 For example, all current VFA contain a provision in the considerations which assume visa exemption as a long-term prospect.

process as a result. On the other hand, one could argue that a VFA can just be a limited compromise that can (temporarily) reduce the pressure for liberalisation. These VFAs are discussed in the following point.

### b) Visa facilitation agreements

In 2007 the EU concluded visa facility agreements with Russia, Ukraine and Moldavia and with Georgia in 2011[151]. Furthermore, the Council has authorised the Commission to negotiate a VFA with Cape Verde and Belarus in June 2009 and February 2011, respectively. Draft mandates for Armenia and Azerbaijan are also being compiled. Such VFAs are never concluded without accompanying readmission agreement. According to the Commission VFAs are, in principle, migration-neutral: they contain only procedural benefits, there are no changes to the contextual requirements to obtain a visa at all[152]. In that respect they would promote only legal migration by simplifying the procedure (see also point 3.2.2), without the chances of illegal migration streams increasing.

Critical remarks can be made regarding this reasoning, however. The common-law procedures, either those of the old Common Visa Instructions or the current Visa Code, are there precisely because they come to be regarded as essential to properly combat illegal migration. If one provides for certain easing in a VFA, such as a restrictive summary of documents in support of the journey purpose and a shorter decision period of 10 working days instead of 15 working days, this means either that the Visa Code makes unnecessary provision for difficult procedures or that the VFAs could indeed have a negative impact on illegal migration. According to Belgium the latter is rather the case: statistics show that most Member States have a very low percentage of visa refusals for countries with which they have concluded a VFA, which makes one assume that the entry requirement control is less strict. For its part, Belgium in any event still adheres to a thorough control of the entry requirements, insofar as this is still possible within the framework imposed by the VFAs. Belgium's percentage of visa refusals for Russia, for example, is approximately 10%, which is lower than the general Belgian percentage of 18%, but higher than the European percentage of refusal for Russia, which amounts to only 2%.

Seeing that it has been proven in practice that VFAs can have a negative impact on illegal migration, (and, in addition they can expedite visa exemption - see previous point), one may ask the question whether the exchange of readmission agreements are still worth all the trouble. In addition, the recent evaluation report by the Commission on these readmission agreements is not undecidedly

151 Can be found at http://ec.europa.eu/home-affairs/doc_centre/borders/borders_visa_en.htm. There are also VFAs with the western Balkan countries but those have largely become devoid of purpose because they have in the meantime been exempted from visas. Moreover, the VFAs with Russia, Ukraine and Moldavia are currently being re-negotiated with a view to additional facilities, the Commission received a mandate for this in April 2011.

152 See point 2.2 of the Commission evaluation report of 15 October 2009, document SEC(2009)1401, can be found at http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=en: 'Above all, the implementation of VFAs did not – and could not – increase security risks or risks of irregular immigration towards the EU, as VFAs provide only procedural facilitations without altering the actual conditions for issuing visas […]. In particular, visa applicants must not constitute threats to the security of the EU Member States and must demonstrate their willingness to return to their country of residence upon expiry of the visa; where visa applicants fail to satisfy these conditions, their applications continue to be refused.'

positive.[153] Instead of facilities that go beyond the Visa Code, it may also be sufficient to have a broad application of the Visa Code in exchange for readmission[154].

### c) Visa Code

To date, the consequences of the Visa Code (and accompanying Visa Handbook) have remained rather limited. The majority of the provisions of this Code are not new but only a codification of the old Common Visa Instructions. Belgium has in any event already been applying a few of the most important novelties, such as mandatory justification and the possibility to appeal, for many years. A few problems with reference to the Visa Code should normally be remedied when the VIS comes into operation on 11 October 2011 (see point 2.3). Moreover, as it is difficult, to be able to establish all the consequences after a little more than one year after coming into force, there is good reason why the Commission evaluation report on this Visa Code is only expected by April 2013[155].

Finally, the Visa Code has allocated a large role to the local Schengen Cooperation to achieve practical results in this field, such as preventing visa shopping and more clarity for visa applicants. It is to be established, however, that many consulates (also Belgian ones) cling to old habits and that this cooperation between Schengen consulates in third countries is slow to take off. The following is an illustration of this: the Visa Code provides for drawing up harmonised lists in the local Schengen cooperation on the supporting documents for visa applications, which must subsequently be ratified in comitology (Article 48.1 of the Visa Code) but after one year's application this had only been done in four countries, i.e. Indonesia, China, Saudi-Arabia and Vietnam[156]. However, a part of the responsibility for this can be put at the door of the European Commission itself: the Visa Code does, after all, provide that the local Schengen Cooperation is, in principle, chaired by the EU delegation but these often do not (yet) have the required expertise.

## 5.2. D visas

### a) Regulation 265/2010

This Regulation makes particular provision for the possibility of staying in other Member States with a D visa during the course of three months, as is the case for residence permits. This did not immediately have a great impact on Belgian D visas, which are usually quickly converted into residence permits. Moreover, Belgium was one of the few Member States which used to issue D+C visas regularly, which had almost the same effect as these new D visas. Conversely, Belgium could possibly experience an increase on its territory of persons with a D visa issued by other

153 Both documents can be found at http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=nl
154 See the case study on Turkey in point 4.1.4.
155 See Article 57.1 of the Visa Code and also the Stockholm Action Plan.
156 Se Commission document C(2011)5500.

Member States as a result of this Regulation but this also remained limited. In this regard we must mention, however, that it is not a simple matter to detect these persons, they must in principle only report their presence to the local community, the central authorities do not receive any systematic information on this.

The biometrics problem was raised at the discussions of this Regulation: residence permits as in the template of Regulation 1030/2002 will in all cases have to contain fingerprints during the course of 2012 but, technically speaking, this will not be possible for D visas that are issued in the form of a sticker and, until further notice, fall outside the scope of the VIS. No great misuse has been established to date but as of 2012 it may be that D visas can be misused more often by mala fide foreign nationals who wish to avoid fingerprints. The Commission added a declaration to the Regulation, according to which the European Commission was requested to present a possible solution by 31 July 2011 to consider this.

### b) Migration Directives

The three migration Directives that impose the necessary facilities for D visas also did not have great in situ consequences for Belgium, because these facilities were mostly not explicitly transposed or implemented (see also points 2.1.c and 2.3). Belgium already had similar regulations for *family members* before the transposition of the Directive. In addition, the visa statistics enclosed in this regard are of little use, seeing that no division is made in them for family members on the one hand and third-country nationals (under the scope of Directive 2003/86 and the national transposition) and, on the other, Belgian and other EU nationals (outside the scope of this Directive). Before the Directive, Belgium also had a similar national system for *students*, what is more: to date no amendment whatsoever has been made to the law with reference to Directive 2004/114. *Researchers* are, in any event, a rather small category which, moreover do not form a separate category in Belgian visa statistics, so that very few concrete consequences can be established for Directive 2005/71.

## 5.3. Future developments

In the (distant) future, the whole concept of visas will be examined at European level. Having regard to the premature nature of these developments, Belgium has not yet communicated any official point of view but we found it interesting to nonetheless discuss this within the scope of this study.

The complex issue of the extent to which foreign nationals, who already illegally reside in the territory for some reason or another, can be considered for economic migration or, conversely, whether this must continue to be reserved for foreign nationals who adhere to the standard procedures has already been discussed under point 2.1.d. The same matter is currently also being discussed at European level and, in particular, within the framework of the draft Directive on seasonal workers[157]: in contrast to the Commission in its draft Directive, the European Parliament is of the opinion that

157 COM(2010)379, can be found at http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=en .

illegal foreign nationals in the territory for at least a transitional period must also be able to lodge an application as seasonal workers[158]. From a humanitarian perspective, it does seem undesirable to remove a foreign national who possibly already has social ties in Belgium and is able to do the seasonal work, only to attract another foreign national by way of a visa for that same seasonal work who does not yet have any ties whatsoever with Belgium. The other side of the coin is that in this way one rewards foreign nationals who have not complied with the rules. Even if this is officially a one-shot measure and only applies for a transitional period, chances are that foreign nationals will expect that illegal behaviour is rewarded in the long term, also in the future.

Another problem which also becomes an issue at the discussions of the draft Directive for seasonal workers concerns the proportion between long and short stay. In principle, the former falls under the authority designated by the EU Regulations. The latter remains the authority of the Member States, even though particular categories are regulated by way of Directives. Within the current European context it is not obvious to issue rules regarding seasonal workers who can stay for both shorter and longer than three months.

Moreover, the calculation for the three-month term of stay allowed within the scope of the short stay is all but simple: this concerns three months per period of six months, to be calculated as of 'first entry', whereby the interpretation of judgement Bot (C-241/05) applies to the latter. By creatively applying this rule, one can stay 179 days out of 180 days, on condition that one is absent for one day in the middle of this period. However, it is not impossible that residence period allowed within the scope of 'short stay', which currently amounts to three months without interruption, is increased to six months without interruption, for example. This was not possible before the Treaty of Lisbon, this term of three months was actually included in the EU treaty itself (former Article 62). However, since Lisbon, there is no longer any explicit reference to three months in the EU treaty, but there is a reference to 'visas and other short-stay residence permits' (Article 77) on the one hand and 'long-stay visas and residence permits' (Article 79).

Nationality is currently used to determine which persons require visas even for a 'short stay' (however long this 'short stay' may be) in Europe but this is also no longer necessary since the Lisbon Treaty: this treaty has actually abolished the reference to nationality as sole criterion for subjection to visa requirements. In accordance with the Stockholm Programme, the Commission is requested to examine 'to what extent the assessment of an individual risk could complement the risk analysis allied to the applicant's nationality'. According to the Stockholm Action Plan, a Commission study on this is, however, only expected in 2014. A possible European system to require a type of prior travel authorisation, also for those exempt from visas ('electronic system for travel authorization', ESTA) would produce useful information in this regard and, according to this same action plan, a study on this is expected during the course of 2011. Such an EU-ESTA can, however, be regarded by the third countries as a limitation of international movement: in any event, the EU regards the current ESTA of the USA with suspicion[159].

158 See amendment 6 (new consideration under point 11a) to the draft Directive of the European Parliament: http://www.europarl.europa.eu/RegData/commissions/libe/projet_rapport/2011/464960/LIBE_PR(2011)464960_EN.pdf

159 See, for example, the most recent reciprocity report: 'Sixth report on certain countries' maintenance of visa requirements in breach of the principle of reciprocity', document COM(2010)620 of 5 November 2010.

Detailed statistics regarding the following have been enclosed in the annex:

- applications for and issue of A, C and D visas, according to the consulates (Tables 1 and 2);
- C visas issued according to nationality and reasons (Tables 3.1 and 3.2);
- D visas issued according to nationality and reasons (Tables 4.1 and 4.2);
- residence permits issued according to nationality and reasons (Tables 5.1 and 5.2);
- entry refusals according to nationality, with additional division according to most important reasons for refusal (Tables 6.1 and 6.2);
- interceptions of illegal foreign nationals in the territory according to nationality (Table 7).

A few *general remarks* in this regard. More detailed figures are mostly only available as of 2006 and, in particular, as of 2008: insofar as there might already be an obligation to keep record of (some) statistics, e.g. on the grounds of Regulation 862/2007 or Annex XII of the Visa Code, this also only applies to the last few years. Detailed statistics within the scope of the applying consulate or the foreign national's previous residence were not available either. It is presumed, however, that this would not produce any great surprises, one can assume that the country of which the foreign national is a subject, is the same country as the country where he or she lived and lodged his or her visa application[160]. Regarding the requested statistics for residence permits per consulate: this does not apply for Belgium, seeing that it does not issue residence permits in consulates but only in the municipality in the territory.

Furthermore, it is worth making various notes in the margin when it comes to *visa statistics.*

- C visas issued at the border are not included in these statistics. Moreover, such visas are not listed in the statistics listed on the Council website either[161]. For Belgium this concerns approximately 20,000 visas at the border, which must be added to these statistics - this mostly concerns seafarers in transit;

- Furthermore, one must take into account that in mid-2007, when a photograph on the visa sticker became mandatory,[162] group C visas could be issued: until that date C visas could therefore relate to various persons, although this was only counted as one visa in the statistics[163]. Group D visas, in which, for example, minor children were included in their parents' visas, have, in principle, only been legally excluded since April 2010, on the grounds of Regulation

160 In principle, consulates are actually only authorised for visa application insofar as the foreign national legally lives there. For C visas: see Article 6.1 of the Visa Code; for D visas: see point 3.1.a.

161 http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&ssf=DATE_DOCUMENT+DESC&fc=REGAISEN&srm=25&md=400&typ=Simple&cmsid=638&ff_TITRE=statistical+information+on+uniform+visas&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=VISA&dd_DATE_REUNION

162 See Article 8, third paragraph, Regulation 1683/95.

163 Such group visas were, however, issued especially at the border and which are, in any event, also not included in the statistics.

265/2010 which also makes the use of the visa sticker of Regulation 1683/95 (and therefore also the rule of '1 visa, 1 person') for the D visa mandatory. Nonetheless, Belgian consulates have been dissuaded from issuing group D visas during the last few years;

- Representation is possible for C visas. The visa issued in representation of another Schengen country is just added to the statistics of the representative. If Belgium therefore decides to represent another Member State, this will lead to an increase in the issue of C visas. Conversely, if Belgium is represented by another Member State, this will result in a decrease in the visa statistics for Belgium;

- C visas can be issued for single or multiple entries and can be valid for up to five years. If a consulate maintains a flexible issue policy for multiple-entry visas (such as for Russia, Ukraine and Serbia since 2008, on the grounds of the visa facilitation agreement concluded), the statistics of the total number of C visas will therefore possibly decrease: the foreign national need then no longer apply for individual visas for every new journey, but only one single visa can be enough for a period of five years;

- The origin of a few remarkable falls in the statistics of C and D visas are indisputably to be found when the EU was extended by ten countries in May 2004 and by Romania and Bulgaria in January 2007. Here is only one practical example to illustrate this: in 2006 1,468 visas were issued for self-employed persons (part of 'other reasons not specified'). This mainly concerned Romanians and Bulgarians who could obtain residence as self-employed persons under flexible terms on the grounds of their association agreements with the EU of 1993[164]. In 2007, in the light of free movement of self-employed persons in the EU, the D visa became devoid of all purpose for self-employed Romanians and Bulgarians and the number of D visas for self-employed persons decreased to only 129 in 2007.

It appears from the above that it is no simple matter to make the causal link between a possible increase or decrease in the visa statistics and the Belgian visa policy. Added to this, such increases or decreases can concern external factors of the country of origin or of other Member States just as much, as has been stated above in point 1.2.

If one attempts to make the link between the statistics for *visas according to reason* and *residence permits according to reason*, which should be one of the most important objectives of this study, there will probably be even more warnings. The division according to study, employment and family reunification is actually done in terms of various criteria for visas and residence permits. For example, in the case of visas, self-employed persons do not fall under 'employment', but rather under 'other reasons not specified'. However, in the case of residence permits, they are counted under 'employment' (and this is in accordance the guidelines of Regulation 862/2007, where self-employed persons and employees are actually also counted in a single category called 'remunerated activities').

164 In this regard, see circular of 22 December 1999, published in the Belgian Official Gazette of 4 February 2000 (lifted in the meantime by circular of 21 December 2006).

Moreover, the Belgian Eurostat statistics for *residence permits* differ from one year to the next according to the calculation method and division per reason for the stay. Such counting was done manually in 2008 and 2009. In addition, the (extensive) category of regularised foreign nationals was added to 'other reasons not specified' in 2008 and to 'other reasons humanitarian / international protection' in 2009: this explains the large increase in this humanitarian / international protection category. Then, in 2010, a particular calculation method was maintained for the first time, which was directly based on different codes that were created in the national registry to accommodate Regulation 862/2007, and which is presumably the most important reason for the increase in the total number of residence permits issued that year. It is obvious that all these matters make it difficult to make a comparison between the visas and residence permits per reason for migration from one year to the next.

We can therefore also only make a few very rudimentary *findings*. The percentage of visa refusals has remained consistent during the last few years: approximately one out of six applications for C visas is refused and, for D visas, refusals even make up a quarter of the applications. Belgian consulates issue approximately between 150,000 and 180,000 C visas and the most important reasons are business (almost 40%), visits by family or friends (20%) and tourism (20%). The consecutive top 3 have for many years been India, Russia and China. Approximately half of an average of 25,000 D visas concerns family reunification, even though this concerns mostly family reunification with regard to (naturalised) Belgians who are treated in accordance with the freedom of movement Directive and do therefore not fall within the scope of this study. In this respect Morocco and Turkey lead the list of countries. Students represent approximately a quarter of all D visas and have for the past few years come particularly from the United States, China and Cameroon. Approximately 10% are employees and come mainly from India.

It appears from the statistics on residence permits that, in total, double as many residence permits as D visas are issued. There are therefore approximately as many foreign nationals who lodge their applications directly in the territory (whether they entered illegally or legally within the scope of a short stay with or without C visa, depending on the visa requirement) as foreign nationals who have applied in advance for a D visa. This largely concerns residence categories for which, per definition, it is not possible to have a visa (asylum or regularisation after actual long stay in the territory) and also family members (where it will again concern, in particular, those favoured due to freedom of movement for whom specific visa and entry rules apply).

The figures for entry refusals are relatively low for Belgium, especially because of the absence of classic land borders. To reach the Belgian air border, the foreign national requiring a visa will in all cases have to have a visa, and if he or she does not have one, the airline will, in principle, not allow him or her on board[165]. Although a visa does not signify an automatic entry right (see point 3.1.c, above), the number of entry refusals for persons who have a visa is rather slight because all entry requirements are checked when a visa is granted. Most entry refusals concern Moroccans, Turks and Congolese.

165 The airline actually risks a monetary fine, see Article 74/4bis of the Immigration Law (based on the Chicago Convention).

Finally, as regards interceptions of illegal foreign nationals in the territory, we find Algerians, Moroccans and Indians in particular. This may concern persons who have entered legally but have stayed longer than the term allowed or persons who have passed an external Schengen border illegally right from the start.

Although, at European level, visas are often regarded as a tool within the framework of external relations or as quid pro quo for readmission agreements, Belgium adheres to visas as a pure migration tool, with particular attention for the impact on irregular migration streams and public order.

Despite this, visas are treated negatively in this migration policy and these regulations. The policy statements regarding migration mention visas only sporadically. In the Immigration Law, too, visas are only dealt with very briefly. For example, the distribution of authority for visas between consulates and the Immigration Service is a grey area and decision periods for visas are also not stated (except for family members since 2007).

In addition, a foreigner can obtain a Belgian residence permit for a particular reason without it being essential for him or her to have come to Belgium with the accompanying (D) visa. In this way the regulations explicitly provide for the possibility of lodging an application in the territory for a residence permit for more than three months during a short stay (with a C visa). In addition, many residence permits are also granted for asylum or humanitarian regularisation, for which no visa can in any event be issued. There is therefore no absolute connection between D visas and residence permits. This also appears from the fact that almost twice as many residence permits (over 50,000) as D visas (approximately 25,000) are issued every year.

Nonetheless, visas are an important migration policy tool. It is precisely because there are various possibilities in Belgium to indeed obtain residence of longer than three months without a D visa that it is becoming more important to manage the entry of foreign nationals. The concept, per se, of requiring visas has appeared to be extremely effective in this regard: the European decision to exempt a few western Balkan countries from requiring a visa for a stay of a maximum of three months has led to a great increase in the number of asylum applications in Belgium. The entry requirements as such are, however, the same for both those nationalities that are subject to visa requirements and those that are exempt from visa requirements. The possibility of being able to examine the entry requirements more closely for those subject to visa requirements therefore bears fruit in all cases when it comes to the fight against illegal migration.

In addition, such examination is thorough, particularly for D visas for which there are longer decision periods. In principle, all residence terms and conditions are examined in advance within the scope of the application for a D visa and the residence permit is then issued in the territory without any further intrinsic examination. From a prevention perspective, this working method seems to be the most effective. For the rest, illegal migration is fought on the grounds of particular initiatives tailored to the relevant third country. In this regard, Vision consulting and the establishment of the Maison Schengen can be referred.

Visas play less of a role in promoting legal migration in Belgium, firstly because the policy prefers to attract the rather limited target group of economic migrants. Even for this limited target group this migration occurs not only by means of visas for foreign nationals abroad but also by regularisation of foreign nationals who already reside in the territory. With reference to a few countries such as Turkey, in particular, there are still various international standards facilitating migration, which date back to before the migration stop of 1974 but these are experienced more as undesirable today, in 2011, and are interpreted and applied as restrictively as possible.

Insofar as Belgium does indeed wish to attract migrants, one will have to be competitive in respect of other countries that are probably also intent on attracting these migrants. A speedy visa and residence procedure seems crucial in this regard. The procedure whereby there is no longer any need for any additional residence examination in the territory once one has a D visa is therefore interesting, not only from a prevention point of view but also because it contributes to promoting legal migration due to the simplicity and speed of the procedure.

In principle, fighting illegal migration and promoting legal migration can therefore be combined without any problems; they are not necessarily one another's opposites. However, it will not be easy to find a good balance between the two aspects, proof of which is also a few European initiatives that particularly fall within the framework of the fight against illegal migration and that are expected in the near or distant future (VIS, point 3.3.3 and ESTA, point 5.3, respectively).

## Regulations

### International


- Agreement establishing an Association between the European Economic Community and Turkey of 12 September 1963
- Additional Protocol of 23 November 1970 to the Agreement establishing an Association between the EEC and Turkey of 12 September 1963
- Agreement of 16 July 1964 on the employment of Turkish workers
- Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000
- Agreement of 25 May 2006 between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation;
- Agreement of 18 June 2007 between the European Community and Ukraine on the facilitation of the issuance of visas
- Agreement of 10 October 2007 between the European Community and the Republic of Moldova on the facilitation of the issuance of visas
- Agreement of 17 June 2010 between the European Union and Georgia on the facilitation of the issuance of visas


### European


- Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders
- Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
- Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service
- Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research

- Regulation (EC) N° 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across the borders (Schengen Borders Code)
- Council directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment
- Regulation (EC) No 810/2009 of the European parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)

### National

- Law of 15 December 1980 on access to the territory, residence, settlement and expulsion of foreign nationals
- Royal Decree of 8 October 1981 on access to the territory, residence, settlement and expulsion of foreign nationals
- Royal Decree of 9 June 1999 executing the law of 30 April 1999 concerning the employment of foreign workers.

## Official documents and websites

### European

***Council:***

- Press releases: http://www.consilium.europa.eu/press/press-releases/latest-press-releases.aspx
- General database: http://register.consilium.europa.eu/servlet/driver?typ=&page=Simple&lang=NL&cmsid=638

***Parliament:***

- General database committees: http://www.europarl.europa.eu/activities/committees/globalSearch.do;jsessionid=B0BF308B34019D7254B21318EE6718FA.node1?language=EN

***Commission:***

- Policy: http://ec.europa.eu/home-affairs/policies/borders/borders_visa_en.htm
- Documentation: http://ec.europa.eu/home-affairs/doc_centre/borders/borders_visa_en.htm
- General database: http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=nl
- Commission Decision of 19th March 2010 establishing the Handbook for the processing of visa applications and the modification of issued visas

***Court of Justice:***

- Bot ruling (C-241/05) of 3 October 2006
- Soysal ruling (C-228/06) of 19 February 2009

## National

- Policy Agreement: http://www.premier.be/nl/regeerakkoord
- Policy notes and preparatory legislative works : http://www.dekamer.be
- FPS Foreign Affairs: http://diplomatie.belgium.be/nl/Diensten/Naar_Belgie_komen/
- Immigration Service: https://dofi.ibz.be/
- Judgements Aliens Litigation Council: http://www.rvv-cce.be/rvv/index.php/nl/arresten/arresten-rvv

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- http://www.kruispuntmi.be/vreemdelingenrecht/index.aspx

**Table 1: Total visas by type**

| | | Total A | Total C | Total D |
|---|---|---|---|---|
| 2003 | Issued | 1.182 | 130.635 | 25.398 |
| 2003 | Applied | | | |
| 2004 | Issued | 2.280 | 130.280 | 18.394 |
| 2004 | Applied | | | |
| 2005 | Issued | 2.338 | 132.644 | 23.049 |
| 2005 | Applied | | 167.445 | |
| 2006 | Issued | 1.250 | 148.098 | 25.030 |
| 2006 | Applied | | 179.798 | 31.221 |
| 2007 | Issued | 1.367 | 177.384 | 22.780 |
| 2007 | Applied | | 213.524 | 31.488 |
| 2008 | Issued | 1.060 | 172.886 | 26.033 |
| 2008 | Applied | | 209.235 | 33.540 |
| 2009 | Issued | 914 | 158.973 | 24.588 |
| 2009 | Applied | | 194.029 | 32.494 |
| 2010 | Issued | 211 | 175.961 | 24.656 |
| 2010 | Applied | | 215.978 | 33.309 |

**Table 2: C and D visas by consular post**

| | consular post | C visas |
|---|---|---|
| **2003** | | |
| 1 | Moscow | 10.915 |
| 2 | Casablanca | 10.865 |
| 3 | Mumbai | 10.265 |

| | consular post | D visas |
|---|---|---|
| **2003** | | |
| 1 | Casablanca | 5.896 |
| 2 | Ankara | 1.997 |
| 3 | Warsaw | 1.246 |

| | | |
|---|---|---|
| 4 | London | 9.343 |
| 5 | Kiev | 5.168 |
| 6 | Kinshasa | 4.619 |
| 7 | Belgrade | 4.370 |
| 8 | Istanbul | 4.327 |
| 9 | Johannesburg | 3.803 |
| 10 | Beijing | 3.645 |
| **2004** | | |
| 1 | Mumbai | 13.407 |
| 2 | Moscow | 12.794 |
| 3 | London | 7.980 |
| 4 | Kiev | 5.730 |
| 5 | Casablanca | 5.644 |
| 6 | Beijing | 5.468 |
| 7 | Istanbul | 4.885 |
| 8 | Kinshasa | 4.730 |
| 9 | Johannesburg | 4.376 |
| 10 | Belgrade | 4.099 |
| **2005** | | |
| 1 | Moscow | 16.152 |
| 2 | Mumbai | 12.322 |
| 3 | London | 6.862 |
| 4 | Kiev | 5.540 |
| 5 | Johannesburg | 4.912 |
| 6 | Beijing | 4.900 |
| 7 | Belgrade | 4.579 |
| 8 | Istanbul | 4.455 |
| 9 | Casablanca | 4.329 |

| | | |
|---|---|---|
| 4 | Beijing | 1.133 |
| 5 | Abidjan | 1.130 |
| 6 | Bangkok | 742 |
| 7 | Dakar | 541 |
| 8 | Sofia | 504 |
| 9 | New Delhi | 482 |
| 10 | Istanbul | 482 |
| **2004** | | |
| 1 | Casablanca | 3.981 |
| 2 | Ankara | 2.038 |
| 3 | Dakar | 1.433 |
| 4 | Beijing | 857 |
| 5 | Mumbai | 731 |
| 6 | Bangkok | 669 |
| 7 | New Delhi | 627 |
| 8 | Bucharest | 610 |
| 9 | Kinshasa | 522 |
| 10 | Sofia | 497 |
| **2005** | | |
| 1 | Casablanca | 3.866 |
| 2 | Ankara | 1.943 |
| 3 | Bucharest | 1.058 |
| 4 | Beijing | 903 |
| 5 | Mumbai | 898 |
| 6 | New Delhi | 789 |
| 7 | Abidjan | 694 |
| 8 | Sofia | 672 |
| 9 | Islamabad | 642 |

| | | |
|---|---|---|
| 10 | Kinshasa | 4.121 |
| **2006** | | |
| 1 | Moscow | 20.657 |
| 2 | Mumbai | 15.075 |
| 3 | Beijing | 7.955 |
| 4 | London | 7.352 |
| 5 | Kiev | 6.013 |
| 6 | Casablanca | 5.426 |
| 7 | Istanbul | 5.023 |
| 8 | Johannesburg | 4.977 |
| 9 | Belgrade | 4.703 |
| 10 | Kinshasa | 3.777 |
| **2007** | | |
| 1 | Moscow | 30.295 |
| 2 | Mumbai | 21.022 |
| 3 | London | 10.932 |
| 4 | Kiev | 7.318 |
| 5 | Beijing | 6.866 |
| 6 | Belgrade | 5.746 |
| 7 | Johannesburg | 5.498 |
| 8 | Istanbul | 5.311 |
| 9 | New Delhi | 5.230 |
| 10 | Casablanca | 4.713 |
| **2008** | | |
| 1 | Moscow | 25.501 |
| 2 | Mumbai | 21.263 |
| 3 | London | 11.010 |
| 4 | Kiev | 9.316 |
| 5 | Casablanca | 7.261 |

| | | |
|---|---|---|
| 10 | Kinshasa | 608 |
| **2006** | | |
| 1 | Casablanca | 4.612 |
| 2 | Ankara | 1.881 |
| 3 | Boekarest | 1.608 |
| 4 | Mumbai | 1.146 |
| 5 | Beijing | 1.040 |
| 6 | New Delhi | 788 |
| 7 | Islamabad | 635 |
| 8 | Kinshasa | 576 |
| 9 | Sofia | 567 |
| 10 | Moscow | 552 |
| **2007** | | |
| 1 | Casablanca | 3.228 |
| 2 | Ankara | 1.735 |
| 3 | Mumbai | 1.348 |
| 4 | Abidjan | 1.219 |
| 5 | New Delhi | 868 |
| 6 | New York | 705 |
| 7 | Yaounde | 656 |
| 8 | Moscow | 649 |
| 9 | Kinshasa | 612 |
| 10 | Beijing | 594 |
| **2008** | | |
| 1 | Casablanca | 4.685 |
| 2 | Mumbai | 1.673 |
| 3 | Ankara | 1.673 |
| 4 | Yaounde | 1.112 |
| 5 | New Delhi | 992 |

| | | |
|---|---|---|
| 6 | New Delhi | 5.739 |
| 7 | Beijing | 5.737 |
| 8 | Belgrade | 5.160 |
| 9 | Johannesburg | 5.057 |
| 10 | Istanbul | 4.823 |
| **2009** | | |
| 1 | Mumbai | 19.004 |
| 2 | Moscow | 17.945 |
| 3 | London | 9.207 |
| 4 | Casablanca | 7.830 |
| 5 | Kiev | 6.479 |
| 6 | Beijing | 6.305 |
| 7 | Kinshasa | 5.807 |
| 8 | New Delhi | 5.013 |
| 9 | Johannesburg | 4.580 |
| 10 | Istanbul | 4.333 |
| **2010** | | |
| 1 | Mumbai | 31.871 |
| 2 | Moscow | 19.515 |
| 3 | London | 10.013 |
| 4 | Kiev | 7.893 |
| 5 | Casablanca | 6.737 |
| 6 | Beijing | 6.447 |
| 7 | Kinshasa | 6.320 |
| 8 | New Delhi | 5.628 |
| 9 | Shanghai | 4.300 |
| 10 | Ankara | 4.087 |

| | | |
|---|---|---|
| 6 | New York | 834 |
| 7 | Moscow | 727 |
| 8 | Abidjan | 684 |
| 9 | Kinshasa | 671 |
| 10 | Bangkok | 522 |
| **2009** | | |
| 1 | Casablanca | 4.278 |
| 2 | Ankara | 1.603 |
| 3 | Mumbai | 1.352 |
| 4 | New Delhi | 945 |
| 5 | Yaounde | 884 |
| 6 | Moscow | 659 |
| 7 | New York | 647 |
| 8 | Beijing | 601 |
| 9 | Abidjan | 575 |
| 10 | Algiers | 526 |
| **2010** | | |
| 1 | Casablanca | 2.833 |
| 2 | Mumbai | 1.398 |
| 3 | Ankara | 1.266 |
| 4 | New Delhi | 745 |
| 5 | Yaounde | 725 |
| 6 | Moscow | 646 |
| 7 | Dakar | 627 |
| 8 | New York | 590 |
| 9 | Beijing | 584 |
| 10 | Montreal | 559 |

*Source tables 1 and 2:*
*for 2003-2009: http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&ssf=DATE_DOCUMENT+DESC&fc=REGAISEN&srm=25&md=400&typ=Simple&cmsid=638&ff_TITRE=statistical+information+on+uniform+visas&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=VISA&dd_DATE_REUNION*
*for 2010: "2010 visa statistics" on http://ec.europa.eu/home-affairs/policies/borders/borders_visa_en.htm*

**Table 3.1: C visas issued by reason**

| | **Total** | Tourism | Business | Visiting family/ friends | Cultural | Sports | Official | Medical reasons | Transit | Other |
|---|---|---|---|---|---|---|---|---|---|---|
| **2006** | **149.180** | 25.972 | 67.772 | 30.136 | 4.575 | 2.743 | 7.346 | 1.589 | 136 | 8.911 |
| **2007** | **179.012** | 39.808 | 80.134 | 32.066 | 4.228 | 3.559 | 7.559 | 1.579 | 460 | 9.619 |
| **2008** | **184.732** | 37.867 | 77.933 | 33.008 | 4.695 | 2.878 | 6.760 | 1.452 | 8.749 | 11.390 |
| **2009** | **167.771** | 36.072 | 61.625 | 35.737 | 5.269 | 2.424 | 6.847 | 1.823 | 7.224 | 10.750 |

**Table 3.2 : C visas issued by reason and 10 main countries of citizenship**

| | Country | **Total** | Tourism | Business | Visiting family/ friends | Cultural | Sports | Official | Medical reasons | Transit | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **2006** | | | | | | | | | | | |
| 1 | India | **22.346** | 6.350 | 11.767 | 2.778 | 394 | 67 | 298 | 36 | 103 | 553 |
| 2 | Russia | **18.500** | 2.238 | 9.634 | 2.953 | 1.224 | 960 | 893 | 57 | - | 541 |
| 3 | China | **12.832** | 2.634 | 8.912 | 652 | 165 | 74 | 256 | 9 | 2 | 128 |
| 4 | Turkey | **8.690** | 870 | 5.043 | 1.882 | 390 | 203 | 5 | 17 | - | 280 |
| 5 | South Africa | **7.178** | 1.504 | 3.316 | 1.423 | 191 | 133 | 299 | 8 | 1 | 303 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 6 | Ukraine | **6.588** | 275 | 3.065 | 1.560 | 474 | 534 | 405 | 10 | 0 | 265 |
| 7 | Morocco | **6.142** | 944 | 876 | 3.308 | 176 | 83 | 191 | 45 | 0 | 519 |
| 8 | DR Congo | **5.248** | 1.615 | 931 | 1.337 | 78 | 5 | 635 | 71 | 0 | 576 |
| 9 | Serbia Montenegro | **4.993** | 223 | 1.883 | 1.456 | 173 | 261 | 662 | 38 | 0 | 297 |
| 10 | Algeria | **3.122** | 53 | 935 | 729 | 26 | 5 | 112 | 651 | 0 | 611 |
| **2007** | | | | | | | | | | | |
| 1 | India | **31.173** | 13.924 | 12.900 | 3.276 | 206 | 38 | 228 | 21 | 53 | 527 |
| 2 | Russia | **26.956** | 5.716 | 14.048 | 3.674 | 897 | 1.168 | 612 | 92 | 293 | 456 |
| 3 | China | **13.037** | 1.323 | 9.914 | 827 | 187 | 27 | 585 | 10 | 0 | 164 |
| 4 | Turkey | **9.519** | 946 | 5.468 | 2.169 | 308 | 225 | 7 | 45 | 4 | 347 |
| 5 | South Africa | **8.016** | 1.747 | 3.407 | 1.533 | 170 | 210 | 421 | 14 | 0 | 514 |
| 6 | Ukraine | **7.757** | 400 | 3.757 | 1.621 | 311 | 593 | 571 | 11 | 62 | 431 |
| 7 | Morocco | **6.849** | 1.121 | 1.311 | 3.299 | 308 | 46 | 298 | 27 | 0 | 439 |
| 8 | DR Congo | **6.009** | 1.924 | 1.063 | 1.339 | 232 | 8 | 712 | 192 | 0 | 539 |
| 9 | Serbia | **5.698** | 200 | 2.461 | 1.332 | 242 | 545 | 576 | 37 | 1 | 304 |
| 10 | Belarus | **3.506** | 36 | 2.791 | 150 | 159 | 62 | 12 | 4 | 0 | 292 |
| **2008** | | | | | | | | | | | |
| 1 | India | **36.338** | 12.903 | 14.135 | 3.551 | 322 | 12 | 214 | 19 | 4.425 | 757 |
| 2 | Russia | **24.619** | 4.777 | 12.508 | 3.848 | 937 | 1.429 | 244 | 60 | 491 | 325 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 3 | China | **12.132** | 1.018 | 9.648 | 878 | 97 | 6 | 172 | 6 | 90 | 217 |
| 4 | Ukraine | **10.172** | 567 | 4.038 | 1.805 | 598 | 419 | 676 | 23 | 497 | 1.549 |
| 5 | Turkey | **9.453** | 1.327 | 5.092 | 2.306 | 225 | 137 | 5 | 10 | 117 | 234 |
| 6 | Morocco | **7.995** | 1.486 | 1.761 | 3.860 | 224 | 50 | 238 | 35 | 34 | 307 |
| 7 | South Africa | **7.188** | 1.535 | 3.074 | 1.545 | 203 | 146 | 294 | 5 | 5 | 381 |
| 8 | DR Congo | **6.119** | 1.713 | 989 | 1.123 | 104 | 25 | 706 | 203 | 691 | 565 |
| 9 | Serbia | **5.467** | 275 | 2.224 | 1.118 | 197 | 219 | 475 | 36 | 87 | 836 |
| 10 | Algeria | **3.587** | 148 | 1.206 | 808 | 41 | 38 | 104 | 441 | 8 | 793 |
| **2009** | | | | | | | | | | | |
| 1 | India | **31.384** | 11.796 | 11.231 | 3.072 | 640 | 106 | 188 | 9 | 3.165 | 1.177 |
| 2 | Russia | **17.482** | 3.714 | 6.873 | 3.734 | 568 | 667 | 441 | 77 | 552 | 856 |
| 3 | China | **12.243** | 946 | 8.134 | 1.104 | 1.013 | 29 | 396 | 1 | 82 | 538 |
| 4 | Turkey | **8.839** | 1.321 | 4.049 | 2.741 | 235 | 168 | 2 | 6 | 69 | 248 |
| 5 | Morocco | **8.591** | 1.356 | 1.187 | 4.857 | 299 | 72 | 272 | 47 | 5 | 496 |
| 6 | DR Congo | **7.264** | 1.980 | 1.201 | 1.352 | 211 | 14 | 806 | 186 | 791 | 723 |
| 7 | Ukraine | **7.155** | 496 | 2.485 | 2.156 | 170 | 296 | 417 | 34 | 690 | 411 |
| 8 | South Africa | **6.108** | 1.322 | 2.356 | 1.410 | 191 | 116 | 190 | 2 | 10 | 511 |
| 9 | Serbia | **4.094** | 320 | 1.790 | 894 | 234 | 164 | 470 | 47 | 97 | 78 |
| 10 | Algeria | **3.255** | 208 | 980 | 795 | 12 | 50 | 103 | 521 | 9 | 577 |

**Table 4.1.: D visas issued by reason**

| | Total | Education | Employment | Family | Other |
|---|---|---|---|---|---|
| **2004** | **18.394** | 4.663 | 1.813 | 9.468 | 2.450 |
| **2005** | **22.855** | 5.565 | 2.547 | 11.605 | 3.138 |
| **2006** | **24.936** | 5.691 | 2.976 | 12.053 | 4.216 |
| **2007** | **23.138** | 5.528 | 3.484 | 11.616 | 2.510 |
| **2008** | **26.829** | 6.350 | 3.955 | 13.916 | 2.608 |
| **2009** | **25.562** | 6.517 | 2.633 | 13.859 | 2.553 |
| **2010** | **24.656** | 6.776 | 3.026 | 12.675 | 2.179 |

**Table 4.2.: D visas issued by reason and 10 main countries of citizenship**

| | Country | **Total** | Education | Employment | Family | Other |
|---|---|---|---|---|---|---|
| **2006** | | | | | | |
| 1 | Morocco | **4.621** | 489 | 24 | 3.948 | 160 |
| 2 | Turkey | **2.331** | 325 | 133 | 1.744 | 129 |
| 3 | India | **1.741** | 123 | 884 | 469 | 265 |
| 4 | Romania | **1.592** | 229 | 122 | 109 | 1.132 |
| 5 | China | **1.393** | 714 | 130 | 307 | 242 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 6 | UnitedStates | **968** | 419 | 352 | 25 | 172 |
| 7 | Pakistan | **721** | 32 | 11 | 369 | 309 |
| 8 | DRCongo | **671** | 264 | 11 | 305 | 91 |
| 9 | Cameroon | **533** | 291 | 3 | 222 | 17 |
| 10 | Japan | **476** | 99 | 324 | 9 | 44 |
| **2007** | | | | | | |
| 1 | Morocco | **4.147** | 530 | 68 | 3.392 | 157 |
| 2 | Turkey | **2.254** | 383 | 208 | 1.542 | 121 |
| 3 | India | **1.941** | 156 | 1.192 | 333 | 260 |
| 4 | UnitedStates | **1.265** | 538 | 363 | 160 | 204 |
| 5 | China | **1.060** | 387 | 166 | 210 | 297 |
| 6 | DRCongo | **839** | 239 | 2 | 373 | 225 |
| 7 | Cameroon | **668** | 352 | 4 | 293 | 19 |
| 8 | Japan | **503** | 84 | 390 | 7 | 22 |
| 9 | Canada | **501** | 299 | 84 | 30 | 88 |
| 10 | Russia | **500** | 82 | 159 | 150 | 109 |
| **2008** | | | | | | |
| 1 | Morocco | **4.710** | 611 | 71 | 3.908 | 120 |
| 2 | India | **2.441** | 159 | 1.513 | 691 | 48 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 3 | Turkey | **2.160** | 356 | 240 | 1.443 | 121 |
| 4 | UnitedStates | **1.400** | 574 | 348 | 322 | 156 |
| 5 | Cameroon | **1.152** | 682 | 10 | 419 | 41 |
| 6 | China | **1.068** | 421 | 143 | 261 | 243 |
| 7 | DRCongo | **750** | 297 | 1 | 373 | 79 |
| 8 | Russia | **633** | 126 | 187 | 206 | 114 |
| 9 | Algeria | **546** | 150 | 11 | 361 | 24 |
| 10 | Japan | **520** | 91 | 365 | 31 | 33 |
| **2009** | | | | | | |
| 1 | Morocco | **4.299** | 527 | 36 | 3.239 | 497 |
| 2 | Turkey | **2.053** | 368 | 165 | 1.429 | 91 |
| 3 | India | **1.973** | 217 | 1.042 | 615 | 99 |
| 4 | UnitedStates | **1.154** | 599 | 198 | 214 | 143 |
| 5 | China | **1.123** | 469 | 113 | 313 | 228 |
| 6 | Cameroon | **942** | 511 | 8 | 363 | 60 |
| 7 | DRCongo | **794** | 268 | 2 | 462 | 62 |
| 8 | Russia | **570** | 136 | 110 | 205 | 119 |
| 9 | Algeria | **545** | 136 | 8 | 377 | 24 |
| 10 | Canada | **522** | 290 | 38 | 46 | 148 |

| 2010 | | | | | | |
|---|---|---|---|---|---|---|
| 1 | Morocco | **3.549** | 470 | 29 | 2.947 | 103 |
| 2 | India | **2.350** | 222 | 1.259 | 779 | 90 |
| 3 | Turkey | **1.801** | 391 | 165 | 1.177 | 68 |
| 4 | China | **1.263** | 595 | 202 | 305 | 161 |
| 5 | UnitedStates | **1.257** | 637 | 194 | 254 | 172 |
| 6 | Cameroon | **973** | 519 | 5 | 404 | 45 |
| 7 | DRCongo | **585** | 252 | 2 | 277 | 54 |
| 8 | Russia | **574** | 176 | 160 | 196 | 42 |
| 9 | Canada | **572** | 312 | 53 | 66 | 141 |
| 10 | Algeria | **550** | 150 | 14 | 363 | 23 |

*Source tables 3.1, 3.2, 4.1 and 4.2: SPF Foreign Affairs / Calculation Immigration Office.*
*Remark: For this breakdown (issuing of visa according to nationality and reason) another database had to be consulted than the one used for tables 1 and 2 (data according to consulate), which resulted in different global figures.*

**Table 5.1: Residence permits by reason**

| | **Total** | Education | Employment | Family | Other reasons: Total | Other reasons: humanitarian or international protection | Other reasons: Residence only | Other reasons not specified * |
|---|---|---|---|---|---|---|---|---|
| 2008 | **46.201** | 6.743 | 7.097 | 20.320 | 12.041 | 3.905 | 17 | 8.119 |
| 2009 | **58.939** | 7.222 | 5.391 | 28.523 | 17.803 | 17.729 | 74 | 0 |
| 2010 | **67.653** | 6.105 | 5.971 | 26.420 | 29.157 | 14.429 | 49 | 14.679 |

** For 2008, the category "other reasons not specified" refers to the number of (positive) humanitarian regularisations*

**Table 5.2: Residence permits by reason and 10 main countries of citizenship**

| | Country | **Total** | Education | Employ-ment | Family | Other reasons: Total | Other reasons: Humanitar-ian or in-ternational protection | Other reasons: Residence only | Other reasons not specified |
|---|---|---|---|---|---|---|---|---|---|
| **2008** | | | | | | | | | |
| 1 | Morocco | **7.093** | 623 | 147 | 5.985 | 338 | 0 | 0 | 338 |
| 2 | Turkey | **3.222** | 393 | 336 | 2.121 | 372 | 74 | 0 | 298 |
| 3 | India | **2.814** | 164 | 1.978 | 645 | 27 | 0 | 0 | 27 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 4 | DR Congo | **2.193** | 312 | 60 | 639 | 1.182 | 176 | 2 | 1.004 |
| 5 | USA | **1.897** | 583 | 723 | 581 | 10 | 0 | 4 | 6 |
| 6 | Russia | **1.777** | 131 | 164 | 352 | 1.130 | 601 | 2 | 527 |
| 7 | China | **1.541** | 479 | 466 | 380 | 216 | 79 | 3 | 134 |
| 8 | Cameroon | **1.528** | 690 | 35 | 430 | 373 | 85 | 1 | 287 |
| 9 | Serbia | **1.210** | 46 | 22 | 110 | 1.032 | 392 | 0 | 640 |
| 10 | Japan | **1.040** | 97 | 496 | 445 | 2 | 0 | 0 | 2 |
| **2009** | | | | | | | | | |
| 1 | Morocco | **9.293** | 581 | 308 | 7.972 | 432 | 418 | 14 | 0 |
| 2 | Turkey | **3.650** | 427 | 208 | 2.526 | 489 | 484 | 5 | 0 |
| 3 | DR Congo | **2.869** | 297 | 23 | 1.143 | 1.406 | 1.404 | 2 | 0 |
| 4 | Russia | **2.510** | 154 | 128 | 615 | 1.613 | 1.613 | 0 | 0 |
| 5 | India | **2.317** | 230 | 1.354 | 671 | 62 | 62 | 0 | 0 |
| 6 | USA | **1.844** | 619 | 555 | 664 | 6 | 1 | 5 | 0 |
| 7 | China | **1.726** | 526 | 341 | 660 | 199 | 198 | 1 | 0 |
| 8 | Cameroon | **1.708** | 569 | 80 | 670 | 389 | 386 | 3 | 0 |
| 9 | Armenia | **1.489** | 13 | 15 | 167 | 1.294 | 1.294 | 0 | 0 |
| 10 | Algeria | **1.346** | 148 | 65 | 854 | 279 | 277 | 2 | 0 |

| 2010 | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1 | Morocco | **10.064** | 492 | 652 | 7.110 | 1.810 | 1.266 | 2 | 542 |
| 2 | Turkey | **3.785** | 342 | 373 | 2.193 | 877 | 498 | 2 | 377 |
| 3 | Russia | **3.183** | 153 | 179 | 891 | 1.960 | 816 | 0 | 1.144 |
| 4 | DR Congo | **2.643** | 235 | 59 | 812 | 1.537 | 861 | 2 | 674 |
| 5 | Kosovo | **2.499** | 10 | 30 | 631 | 1.828 | 319 | 0 | 1.509 |
| 6 | Armenia | **2.278** | 15 | 21 | 298 | 1.944 | 813 | 0 | 1.131 |
| 7 | India | **2.192** | 211 | 1.062 | 601 | 318 | 216 | 1 | 101 |
| 8 | USA | **2.161** | 345 | 594 | 567 | 655 | 22 | 0 | 633 |
| 9 | Guinea | **1.858** | 37 | 24 | 457 | 1.340 | 344 | 1 | 995 |
| 10 | Serbia | **1.807** | 40 | 64 | 491 | 1.212 | 475 | 0 | 737 |

*Source tables 5.1 and 5.2: Immigration Office and Eurostat (tables migr_resfirst and migr_resoth)*

**Table 6.1: Entry refusals at external borders by main reason**

| | **Total** | Absence of a valid visa or residence permit | False visa or residence permit | Already stayed 3 months in 6 months |
|---|---|---|---|---|
| 2008 | **1.170** | 225 | - | 5 |
| 2009 | **2.055** | 450 | 65 | 30 |
| 2010 | **1.855** | 210 | - | 40 |

**Table 6.2: Entry refusals at external borders by main reason and 10 main countries of citizenship**

| | Total | | Absence of a valid visa or residence permit | | False visa or residence permit | | Already stayed 3 months in 6 months | |
|---|---|---|---|---|---|---|---|---|
| | country | # | country | # | country | # | country | # |
| **2008** | | | | | | | | |
| 1 | DR Congo | **95** | Turkey | 30 | | | USA | 5 |
| 2 | Morocco | **90** | DR Congo | 10 | | | | |
| 3 | Turkey | **85** | Morocco | 10 | | | | |
| 4 | Cameroon | **85** | China | 10 | | | | |
| 5 | Senegal | **80** | India | 10 | | | | |
| 6 | Guinea | **50** | Serbia | 10 | | | | |
| 7 | China | **35** | Cameroon | 10 | | | | |
| 8 | Sri Lanka | **30** | United States | 10 | | | | |
| 9 | India | **30** | Dominican rep. | 10 | | | | |
| 10 | Russia | **30** | Guinea | 5 | | | | |
| **2009** | | | | | | | | |
| 1 | DR Congo | **230** | Turkey | 60 | Turkey | 15 | USA | 5 |
| 2 | Turkey | **205** | DR Congo | 40 | DR Congo | 15 | Turkey | 5 |
| 3 | Morocco | **190** | Sri Lanka | 40 | Morocco | 5 | Croatia | 5 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 4 | Sri Lanka | **140** | Morocco | 30 | Tunisia | 5 | Mexico | 5 |
| 5 | Senegal | **115** | India | 25 | Guinea | 5 | | |
| 6 | China | **95** | Iraq | 25 | Senegal | 5 | | |
| 7 | Cameroon | **75** | China | 20 | Sri Lanka | 5 | | |
| 8 | India | **65** | Cameroon | 15 | | | | |
| 9 | Guinea | **65** | Russia | 10 | | | | |
| 10 | Angola | **60** | Guinea | 10 | | | | |
| **2010** | | | | | | | | |
| 1 | Morocco | **235** | Morocco | 25 | | | USA | 15 |
| 2 | Turkey | **120** | China | 15 | | | Turkey | 5 |
| 3 | DR Congo | **120** | Turkey | 10 | | | Croatia | 5 |
| 4 | Serbia | **100** | Angola | 10 | | | Morocco | 5 |
| 5 | China | **95** | Russia | 10 | | | | |
| 6 | Iraq | **95** | India | 10 | | | | |
| 7 | FYROM | **85** | DR Congo | 5 | | | | |
| 8 | Angola | **70** | Cameroon | 5 | | | | |
| 9 | Guinea | **70** | Guinea | 5 | | | | |
| 10 | Senegal | **60** | Iraq | 5 | | | | |

*Source table 6.1. and 6.2.: Immigration Office, Federal Police and Eurostat ( table migr_eirfs).*

**Table 7: Third country nationals found to be illegally present by 10 main countries of citizenship**

| | 2008 | | 2009 | | 2010 | |
|---|---|---|---|---|---|---|
| | country | # | country | # | country | # |
| | **Total** | **13.800** | **Total** | **13.710** | **Total** | **12.115** |
| 1 | Algeria | 2.425 | Morocco | 2.465 | Algeria | 2.605 |
| 2 | Morocco | 2.035 | Algeria | 2.255 | Morocco | 2.180 |
| 3 | India | 1.615 | India | 965 | India | 560 |
| 4 | Iraq | 865 | Afghanistan | 805 | Palestinian Territory | 510 |
| 5 | Brazil | 570 | Brazil | 560 | Iraq | 455 |
| 6 | Palestinian Territory | 560 | Palestinian Territory | 520 | Brazil | 415 |
| 7 | Afghanistan | 440 | Iraq | 435 | Tunisia | 410 |
| 8 | Tunisia | 340 | Tunisia | 405 | Afghanistan | 350 |
| 9 | Serbia | 325 | Turkey | 300 | Iran | 265 |
| 10 | Russia | 315 | China | 270 | Turkey | 250 |

*Source table 7: Immigration Office and Eurostat (table migr_eipre).*

EMN
European Migration Network
Belgian Contact Point

With the support of the European Union

Belgian Immigration Department

Commissioner General for Refugees and Stateless Persons

Centre for Equal Opportunities and Opposition to Racism