



# **European Migration Network**

## **Belgian National Contact Point**

# **The Organisation of Asylum and Migration Policies in Belgium**

September 2012



## EXECUTIVE SUMMARY

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

As becomes clear in *chapter 2* Belgium is a federal state with a complicated structure: the federal level and regional level (Communities and Regions) all have their competences. This is also reflected in the organisation of the migration and asylum policy, where a lot of different levels and actors play their (autonomous) role. There is no single government body responsible for all migration related issues. However, the main departments on migration and asylum, as well as the most relevant law (Aliens Act of 15 December 1980) are still a federal competence, which makes a more or less uniform policy possible. Since 2008 the federal government appoints among its members a Minister or State Secretary for Migration and Asylum policies. In the current government (appointed in December 2011), the State Secretary for Migration and Asylum policy is also responsible for Social Integration (incl. the reception policy of asylum seekers). In other fields, e.g. integration that is a competence of the Communities, we can see divergent policies: Flanders has a standard and mandatory integration programme (at least for certain categories of migrants and residents); whereas in the Wallonia and in Brussels Capital this is not (yet) the case.

*Chapter 3* gives an overview of the evolution of the asylum and migration systems in Belgium. After World War II Belgium was in great need of foreign labour and organised labour migration mainly through bilateral agreements. The economic crisis of the 1970s led to an official labour migration stop that is still standing in 2012. However, the pressure on other migration channels such as family reunification and asylum rose. Nowadays, national politics are in this field very much influenced by European legislation and there is also a growing awareness of realities and practices in the neighbouring countries, e.g. on family reunification. The focus of debate (and in new legislation) lies today on tackling perceived misuses of the existing migration canals. There is also a clear tendency to attach more conditions concerning income or integration on the issuance of a residence permit or to acquire citizenship.

In *Chapter 4* the different aspects of the organisation of the asylum and migration policies are described. To legally enter and reside on the territory, every foreigner has to go through these procedures. Starting with entry procedures, admission conditions, legal residence, integration, citizenship and access to the labour market, and finally leading to the return possibilities. However, a migration policy is not standing alone and has links with other policy areas. It is obvious that the labour market policy in general is also affected. Concern has also been given to the national policy concerning the combat against racism and discrimination. Finally, foreign affairs and development policies have an important role to play in the global phenomenon of migration.

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

This study on the organisation of the Belgian migration and asylum policies is an update from a study from 2008-2009, and is part of a broader study on European level. All of the national studies allow the European Commission to make up “summary factsheets”. In this way policy makers on the national levels, but also on the European level, can hopefully take into consideration the realities, the “best practices” and “lessons learned” of the other member states, when further developing their own migration and asylum systems.

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## **1. INTRODUCTION : PURPOSE AND METHODOLOGY FOLLOWED**

Before you lies the EMN Study 2012 on “The organisation of Asylum and Migration Policy in Belgium”, which is an update of the study from 2008.<sup>1</sup> This study aims to provide an overview of the organisation of this policy to all actors involved as well as to all persons who show interest in this subject.

The outcome of this study is primarily intended for the Commission and the EMN NCPs, to help them understand the different institutional and organisational contexts in each Member State. The study will also be of interest to policymakers at EU and national level, as well as other EU and national stakeholders, such as experts (universities, research institutions, etc), non-governmental organisations (NGOs) and NGO networks, as well as members of the wider public with an interest in migration and international protection.

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

The period covered in this study is more or less since the end of the 1990s up till mid 2012, with a clear focus on how asylum and migration policy is organized today. We only look back in history in so far as it is necessary to be able to describe the current organisation of the policy.

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

The information used for this study comes from already available sources. These sources are listed in the annexes.

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

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

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<sup>1</sup> The EMN Work Programme 2012 states that an update of this study may be done in order to maintain an up-to-date reference in the Member States.

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

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

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## 2. OVERVIEW OF THE ORGANISATION OF THE POLITICAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN BELGIUM

In this chapter a general overview is given of the political, legislative and institutional framework in Belgium in order to provide a context for the specific issues described in the following chapters.

### 2.1 OVERALL POLITICAL SYSTEM AND INSTITUTIONAL FRAMEWORK

Belgium is a *federal state*<sup>2</sup> with a complicated structure: a federal level, three territory-orientated *Regions* (Flanders, the Walloon Region and the Brussels Capital-Region) and three language-based *Communities* (Dutch-speaking, French-speaking, and German-speaking), each with a government and a parliament. All entities fulfil their assigned responsibilities autonomously. They are equal from the legal viewpoint, but have powers and responsibilities for different fields. The Flemish Community and Region have merged their institutions to create just one government (*Vlaamse overheid* /Flemish authorities) and one parliament. The French (speaking) community and Flemish community in Brussels have competencies for cultural, educational, well-being and health for their respective Brussels' inhabitants. These competences are exercised by the Flemish Community Commission (*Vlaamse Gemeenschapscommissie, VGC*<sup>3</sup>), the French Community Commission (*Commission communautaire française, COCOF*<sup>4</sup>), and the Common Community Commission<sup>5</sup> for matters that are common to both communities.

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

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

Migration policy is a multi-faceted policy. It involves labour migration, asylum, return, regularisation and other policies targeting illegal migration, integration of foreigners, human trafficking and human smuggling, etc. In Belgium the competencies related to migration policy are divided among different departments of the federal state on the one hand and among the federal state and the Communities and Regions on the other hand. In general the main competences concerning immigration, asylum and nationality belong to the federal government, competences on integration are mainly the responsibility of the Communities (in Wallonia transferred to the Region), and e.g. working permits are delivered by the Regions.

So Belgium has no single government body responsible for all migration related issues, and there is no institutionalised consultation structure for migration. However, concerning the competences of the federal

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<sup>2</sup> More information on the Belgian state structure, see: [http://www.belgium.be/en/about\\_belgium/government/](http://www.belgium.be/en/about_belgium/government/)

<sup>3</sup> [www.vgc.be/Site+structuur/leftnav/situering/paspoortHome.html](http://www.vgc.be/Site+structuur/leftnav/situering/paspoortHome.html)

<sup>4</sup> [www.cocof.irisnet.be/site/fr](http://www.cocof.irisnet.be/site/fr)

<sup>5</sup> [www.bruxelles.irisnet.be/fr/region/region\\_de\\_bruelles-capitale/institutions\\_communautaires/cocom.shtml](http://www.bruxelles.irisnet.be/fr/region/region_de_bruelles-capitale/institutions_communautaires/cocom.shtml)

level the political decision to concentrate competences has been taken. Since 2008 there is a separate Minister or State Secretary for Migration and Asylum Policy, but he or she was not competent for Social Integration. The competence of Social Integration includes the reception of asylum seekers. Since December 2011, when the new government was sworn in, one State Secretary (Maggie De Block) became responsible for Migration and Asylum Policy, Social Integration and Poverty (further: *State Secretary for Migration and Asylum*). For the first time one member of the federal government is solely responsible for both Migration and Asylum Policy and the reception of asylum seekers.

The State Secretary is the supervising authority of the Immigration Department, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) and the Council for Alien Law Litigation (CALL), as well as for the Federal Agency for the Reception of Asylum Seekers (Fedasil). However, the State Secretary still has to rely on cooperation agreements with other departments (e.g. on access to labour for foreigners or for access to nationality) and has no authority on matters that are the competences of the other entities (Regions and Communities) of the federal state

Below we give an overview of the main actors on the federal level, and on the level of the Regions and Communities. For a schematic overview, we refer to the Institutional Chart.

## **A. Federal competence**

### **(1.) Federal Public Service Home Affairs<sup>6</sup>**

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

#### Immigration Department<sup>7</sup>

The Immigration Department is responsible for the management of the entry of foreign nationals to the Belgian territory, their stay, their settlement and the removal of (a.o. irregular residing) foreign nationals from the Belgian territory. The service employs almost 2000 people, in its central administration in Brussels and in the detention centres for undocumented foreigners.

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

- To manage migration flows and decide on the validity of applications (such as family reunification and short term stay)
- Adapt and implement national legislation to comply with European law;
- Enhance the struggle against human traffickers in collaboration with other services involved.
- Apply the Dublin-II Regulation; the registration of the asylum seekers’ applications and the management of the applicants’ residence requirements throughout the asylum procedure.
- Organise the return of foreigners who do no longer/not comply with the entry- and residence conditions.

#### Office of the Commissioner General for refugees and stateless people (CGRS)<sup>8</sup>

The CGRS, an independent administrative instance, is the only instance with the competence to examine asylum cases. The CGRS is the competent instance to either grant or refuse the refugee status and to either grant or refuse subsidiary protection. The CGRS automatically examines all asylum applications, first within the framework of the Geneva Convention, then within the framework of subsidiary protection. An

<sup>6</sup> FOD Binnenlandse Zaken/ FPS Intérieur, [www.ibz.fgov.be](http://www.ibz.fgov.be)

<sup>7</sup> Dienst Vreemdelingenzaken/ Office des Etrangers, [www.dofi.fgov.be](http://www.dofi.fgov.be)

<sup>8</sup> Commissariaat-generaal voor de Vluchtelingen en Staatlozen (CGVS)/ Commissariat Général aux Réfugiés et Apatrides (CGRA), [www.cgvs.be](http://www.cgvs.be)

appeal against CGRS's decisions on asylum claims can be lodged with the Council for Alien Law Litigation. The CGVS employs approximately 450 people in Brussels.

### Others

The Aliens Litigation Council and the Council of State have their role as appeal bodies within the asylum and migration procedures (see 2.2 Overview of the legal framework).

## **(2.) Programmatic Public Service Social Integration**<sup>9</sup>

### Federal Agency for the Reception of Asylum seekers (Fedasil)<sup>10</sup>

To manage the network of reception centres in an efficient and co-ordinated way, the federal government decided to set up a federal agency for the reception of asylum seekers in 2001. Fedasil falls under the competence of the PPS Social Integration and employs today more than 1100 people. The agency is responsible for the humane reception of asylum seekers in Belgium.

The reception network includes approximately 24,000 reception places.<sup>11</sup> Fedasil is in charge of the management and coordination of the network, which includes collective and individual reception places. The practical organisation is done in partnership between government bodies, NGOs and non-public partners. The partners include the Red Cross, Vluchtelingenwerk Vlaanderen, Ciré and the Public Centres for Social Welfare (PCSW).

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

## **(3.) Federal Public Service Foreign Affairs**<sup>12</sup>

The FPS Foreign Affairs aims to develop, monitor and outline guidelines for the administration, progression, development and coordination of Belgium's foreign policy on asylum and immigration. The FPS Foreign Affairs promotes a coherent approach to the external aspects of immigration and asylum policy and identifies the contributions the Belgian migration policy can make towards stabilising certain regions. Requests for information about access procedures and any visa requirements for foreign nationals seeking to come to Belgium may also be made to the Visa Section of the Federal Public Service Foreign Affairs or the Belgian Embassies and Consulates General outside Belgium.

## **(4.) Federal Public Service Employment, Labour and Social Dialogue**<sup>13</sup>

The rules for employment of foreign workers are defined in the law of 30 April 1999 regarding the employment of foreign workers and the Royal Decree of 9 June 1999 on the implementation of this law. The legislation comes under the jurisdiction of the Federal Public Service Employment, Labour and Social Dialogue. While this FPS designs the framework<sup>14</sup>, the implementation of the legislation is, to a large extent, the competence of the Regions (see below).

<sup>9</sup> POD Maatschappelijke Integratie/ SPP Intégration Sociale, [www.mi-is.be](http://www.mi-is.be)

<sup>10</sup> Federaal agentschap voor de opvang van asielzoekers/ Agence fédérale pour l'accueil des demandeurs d'asile, [www.fedasil.be](http://www.fedasil.be)

<sup>11</sup> Over the years, the number of places rose quickly. (The number of reception places on January 1: 15,875 in 2006; 18,684 in 2010 and 24,026 in 2012).

<sup>12</sup> FOD Buitenlandse Zaken / FPS Affaires étrangères, [www.diplomatie.be](http://www.diplomatie.be)

<sup>13</sup> FOD Werkgelegenheid, Werk en Sociaal Overleg / FPS Emploi, Travail et Concertation Sociale/, [www.werk.belgie.be](http://www.werk.belgie.be)

<sup>14</sup> Belgian authorities are undertaking preparatory works to rack the federal competence on this issue to the Regions.



## **(5.) Federal Public Service Justice**

### The Guardianship Office<sup>15</sup>

The Guardianship Office<sup>16</sup> has the mission to design a durable solution for unaccompanied foreign minors arriving or residing in Belgium. The Office assists and trains among other things legal guardians. A guardian is appointed and takes responsibility for the unaccompanied minor throughout his or her stay in Belgium. This guardian will then arrange for the minor's reception, and will also ensure that he or she receives medical care, attends school, etc. The guardian shall, if necessary, find a lawyer who can carry out the procedures necessary to obtain a residence permit in Belgium.

### Legislation on Nationality

Within the FPS Justice the "Service Legislation on Nationality"<sup>17</sup> deals with individual files on the obtaining and loss of the Belgian nationality. Besides the operational aspect, the service also handles the legal aspects of nationality at national and international level. The service also provides information on the nationality issue to the wider public.

### Human trafficking and human smuggling<sup>18</sup>

Within the FPS Justice, the "Service of Criminal Policy" has to support the Minister of Justice and the Board of General Prosecutors to elaborate the criminal policy, including the phenomena of human trafficking and smuggling.

## **(6.) Federal Public Service Economy, SMEs, Self-employed and Energy**<sup>19</sup>

The Federal Public Service Economy, SMEs, Self-employed and Energy is competent<sup>20</sup> to issue professional cards (which are obligatory for certain categories of foreigners) and is in charge of the implementation of regulations for self-employed workers, liberal professions and businesses. The SPF is also in charge of the Business one-stop shops spread across the country, which are, among other things, responsible for the registration of: commercial firms, self-employed workers, practitioners of an intellectual profession or a liberal profession and other types of service providers.

## **(7.) Federal Police**

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

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

<sup>15</sup> Dienst Voogdij/ Service des Tutelles ; [www.just.fgov.be/index\\_fr.htm](http://www.just.fgov.be/index_fr.htm)

<sup>16</sup> More information about the Guardianship Office and the policy towards unaccompanied minors can be found in: Belgian Contact Point to the EMN: Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors in Belgium, 2009.

<sup>17</sup> Dienst Nationaliteitsrecht/Service du droit de la nationalité

<sup>18</sup> <http://www.dsb-spc.be/>

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

<sup>20</sup> Belgian authorities are undertaking preparatory works to rack the federal competence on this issue to the Regions.

on illegal stay. Contacting the Immigration Department is one of the duties of the policeman in order to obtain a decision on the further whereabouts of the person in illegal residence.

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

Judicial investigations into facilitated illegal immigration take as well sight on issues of improper use of legal entry and residence modalities, e.g. sham marriages, abuse of visa regimes, manufacturing and obtaining documents, ...

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

### **(8.) Centre for Equal Opportunities and Opposition to Racism**<sup>21</sup>

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

The other main task of the Centre is the supervision of all the grounds covered by the Racial Equality Federal Act and the General Anti-discrimination Act (apart from language and gender)<sup>22</sup>.

As regards this task, in 2013 the institution will be transformed in an inter-federal Centre through a Cooperation Agreement between the Federal government and the governments of the Regions and Communities. A federal body will maintain the tasks mentioned above concerning migration and trafficking in human beings.

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<sup>21</sup> Centrum voor gelijkheid van kansen en voor racismebestrijding / Centre pour l'égalité des chances et la lutte contre le racisme, [www.diversiteit.be](http://www.diversiteit.be)

<sup>22</sup> The Centre's task is to promote equality of opportunity and "to combat all forms of discrimination, exclusion, restriction or preferential treatment based on: a so-called race, skin colour, descent, national or ethnic origin, age, sexual orientation, disability, faith or personal belief, union belief, civil status, birth, wealth, political belief, language, current or future health condition, a physical or genetic characteristic and social origin."

## **B. Competences of the Communities and Regions**

### **(1) Flanders**<sup>23</sup>

#### Integration<sup>24</sup> and Civic Integration<sup>25</sup>

The Flemish integration policy focuses on five target groups: people of foreign origin legally residing in Belgium, recognised refugees, caravan dwellers, the target group for civic integration and irregular migrants. More information on the Flemish civic integration policy can be found in part 4.1.4.

The Flemish competent ministry is the Agency for Interior policy, department Cities policy, Civic integration and Integration (*Agentschap binnenlands bestuur - Afdeling Stedenbeleid, Inburgering en Integratie*). In the administration the Commission on Integration policy (*Commissie integratiebeleid*) develops, coordinates and evaluates an action plan for all policy areas.

Operations are done through Integration Centers at the provincial level and in the Cities Antwerp, Ghent and Brussels and through Integration Services at the local level.<sup>26</sup> The integration policy also supports social and interpreter services.

Civic integration programmes (see 4.1.4) are organised by Welcome Offices (*onthaalbureaus*, at the provincial level and in the Cities Antwerp, Ghent and Brussels). *Kruispunt Migratie-Integratie* (see below, under point D) has a vital coordinating role in between these actors.

#### Economic Migration (work permits)

The main task of the Cell Migration of the Section employment of the Administration Employment of the Ministry of the Flemish Region is the handling of labour authorization applications and work permits.<sup>27</sup>

#### CAW (Centres of general welfare work)

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

### **(2.) Wallonia / French speaking community**<sup>28</sup> / **German speaking community**

#### Economic migration (work permits)

Labour cards or working permits are competencies of the Ministry of Employment of the Walloon Region. In the German-speaking community, this is a competence of the Ministry of the German speaking Region.<sup>29</sup>

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<sup>23</sup> For completeness, we need to mention that one centre for Accommodation and Guidance of victims of Human Trafficking and Human Smuggling is subsidised by the Flemish Community and the federal authorities: the non-profit organisation Payoke<sup>23</sup> is situated in Antwerp. Unaccompanied minors victims of human trafficking are assisted by a specialised organisation (Juna) situated in Aalst.

<sup>24</sup> <http://www.integratiebeleid.be/> (legal base: Decree with regard to ethno-cultural minorities of 28.04.1998, modified by the Decree on Integration 22.04.2009.

<sup>25</sup> [www.inburgering.be](http://www.inburgering.be) (legal base: Decree on Inburgering of February 2003, modified in 2007 and 2008.)

<sup>26</sup> Also the *Forum van etnisch-culturele minderheden* (the Dialogue Platform of ethnic-cultural minorities), that brings together all the stakeholders in the field, has its role (see below, under point D).

<sup>27</sup> <http://www.werk.be/online-diensten/werknemers-buitenlandse-nationaliteit>

<sup>28</sup> For completeness, we need to mention that one centre for Accommodation and Guidance of victims of Human Trafficking and Human Smuggling in Wallonia is subsidised by the French-speaking Community and the federal authorities: the non-profit organisation Surya is situated in Liège. Unaccompanied minors victims of human trafficking are assisted by a specialised organisation (Esperanto).

<sup>29</sup> [www.dglive.be](http://www.dglive.be)

## Integration

Integration of foreigners residing on the territory of the Walloon Region is competency of Walloon Minister of Health, Social Care and Equal Opportunities (Regional government) and is administered by the Directorate General Local authorities, Social care and Health (DGO5). In contrast to the Flemish Community the French (speaking) Community has not (yet) proceeded with a targeted and mandatory integration policy (see also 4.1.4).

Regional Centres for Integration (Wallonia). Following the transfer of competencies from the French Community to the regional level in the field of integration, the Walloon Government decided in 1996 to develop its integration policy in relation with local political institutions and NGOs.<sup>30</sup> The decree on the integration of foreigners and citizens with foreign origins instituted seven regional centres for the integration of foreigners, whose mission is to develop regional integration policies at the local level. These centres are legally non-profit organisations. Within its respective regional territory, each Integration Centre can develop initiatives such as individual guidance with respect to: training, vocational orientation and integration of foreigners and people of foreign origin (including assistance and orientation with housing, health, employment and social integration); promotion of social and cultural participation of foreigners and promotion of intercultural dialogue; support to public services and non-profit organisations confronted to a foreign public (e.g. through training of the personnel); networking and reflexion with local actors; statistical data collection and creation of statistical indicators; diffusion of useful information (incl. statistical information) for the integration of foreigners and people of foreign origin; evaluation of local integration initiatives subsidised by the Walloon Region. Recently, every regional integration centre has designed a ‘Local Integration Plan’ that includes clear objectives and a mapping exercise of local stakeholders.

### (3.) Brussels<sup>31</sup>

#### Economic migration (work permits)

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

#### Integration

In the field of integration, integration of foreigners<sup>32</sup> residing on the territory of the Brussels Capital-Region is competency of two local Community instances: the Vlaamse Gemeenschapscommissie (Flemish Community Commission) and the Commission communautaire française (French Community Commission). See also 4.1.4 (on Integration) for further information.

Mandated by the Flemish Community, the Regional Integration centre *De Foyer*<sup>33</sup> organises training and employment projects for migrants residing in the Brussels Capital-Region. The Brussels welcome Office (BON<sup>34</sup>, Brussels onthaalbureau / bureau d’accueil bruxellois) organises civic integration programmes.

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<sup>30</sup> Walloon Decree of 04.07.1996 pertaining to the integration of foreigners and people of foreign origin launched the creation of seven Regional Integration Centres in Wallonia (*Centres Régionaux d’intégration*). These regional integration centres are established in Liège, Mons-Borinage, La Louvière-Région du Centre, Charleroi, Verviers, Namur and Brabant wallon

<sup>31</sup> For completeness, we need to mention that one centre on the territory of the region for Accomodation and Guidance of victims of Human Trafficking and Human Smuggling is subsidised by the Common Community Commission of the Brussels-Capital Region and the federal authorities (Pagasa). Unaccompanied minors victims of human trafficking are assisted by a specialised organisation (Minor N’Dako).

<sup>32</sup> In the 1980s, integration of foreigners became the competence of the three Belgian Communities – the French, the Flemish and the German Communities. Since then, important institutional changes have occurred. In the Brussels-Capital Region, the Flemish Community Commission and the French Community Commission have been competent with regard to integration of foreigners since 1989. In 1994, the French Community transferred parts of its competence with regard to integration of foreigners in the French Community to the Walloon Region and to the French Community Commission of the Brussels-Capital Region.

<sup>33</sup> [www.foyer.be](http://www.foyer.be)

<sup>34</sup> [www.bonvzw.be](http://www.bonvzw.be)

The French Community Commission, on the other hand, subsidises *CBAI*<sup>35</sup> and *CRACS* as respectively ‘knowledge and training centre’ for the promotion of intercultural dialogue, and ‘support and assessment centre’ for social cohesion in the Brussels Capital-Region.

## **C. Local level**

### **Public Centres for Social Welfare (PCSW)**

Through their specialised centres for social aid (PCSW - OCMW in Dutch – CPAS in French), local authorities play an important role in the reception of asylum seekers. As a partner organisation of the government agency Fedasil, PCSW’s organise reception places in Local Reception Initiatives (LRI). At the end of 2011 reception places organised by PCSW counted for 37% of the reception capacity in Belgium. LRI can be collective (centre) or individual (a house) reception facilities.

PCWS are also involved as an aid service for Belgians and foreigners with legal status (financial support), and support for urgent medical care for persons irregularly staying in Belgium.

## **D. Non-governmental and international organisations**

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

### **(1.) Vluchtelingenwerk Vlaanderen and CIRE**<sup>36</sup>

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

### **(2.) Kruispunt Migratie-Integratie (“Intersection Migration-Integration”)**<sup>37</sup>

The Kruispunt Migratie-Integratie is an expert and support centre for all public and private organisations working on migration and integration issues. It is subsidised and recognised by the Flemish authorities. The centre also supports the integration sector and seeks to contribute to the integration of migrants, asylum seekers, recognised refugees, people in the process of family reunion, labour migrants and undocumented migrants in the Flemish society. It advises the Flemish authorities on migration issues including legislative reforms and has a very well-developed website explaining most facets of migration law. Its activities also include the development of methods and instruments to better take into account ethnic and cultural minorities and enhance their participation; the organisation of training sessions; the spreading of information about social cohesion in diverse societies and about migration law; and finally advocacy for improving the legal status of foreigners and minorities.

<sup>35</sup> [www.cbai.be](http://www.cbai.be)

<sup>36</sup> [www.vluchtelingenwerk.be](http://www.vluchtelingenwerk.be) and [www.cire.irisnet.be](http://www.cire.irisnet.be)

<sup>37</sup> Kruispunt M-I is the former Vlaams minderhedencentrum (vmc or Flemish Minorities Centre): [www.kruispuntmi.be/](http://www.kruispuntmi.be/)

### **(3.) National Centre for Development Cooperation**<sup>38</sup>

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

### **(4.) Medimmigrant**<sup>39</sup>

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

### **(5.) Red Cross**<sup>40</sup>

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

The Tracing Service of the Red Cross<sup>41</sup> provides assistance in tracing missing persons in the context of family reunification and the assisted voluntary return programs of IOM.

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<sup>38</sup> Centre National de Coopération au Développement (CNCD) / 11.11.11, [www.cndc.be](http://www.cndc.be) / [www.11.be](http://www.11.be) (Portaal van de Vlaamse Noord-Zuidbeweging)

<sup>39</sup> [www.medimmigrant.be](http://www.medimmigrant.be)

<sup>40</sup> Croix Rouge de Belgique, Communauté Francophone / Rode Kruis Vlaanderen/ Belgisches Rotes Kreuz – Deutschsprachige Gemeinschaft, [www.croix-rouge.be](http://www.croix-rouge.be), [www.rodekruis.be](http://www.rodekruis.be) and [www.rotekreuz.be](http://www.rotekreuz.be)

<sup>41</sup> [tracing.rodekruis.be](http://tracing.rodekruis.be)

## **(6.) Caritas International**<sup>42</sup>

Caritas International Belgium provides social guidance to asylum seekers, refugees and non-EU migrants.. It organises and provides tutoring of non-accompanied foreign minors and participates in a voluntary return programme for asylum seekers.

## **(7.) L'association pour le droit des étrangers (ADDE)**<sup>43</sup>

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

## **(8.) Forum Asiel en Migraties**<sup>44</sup>

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

## **(9.) ORCA**<sup>45</sup>

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

## **(10.) Others**

The UNHCR Representative for Belgium can intervene in every phase of the procedure, with advisory competences. The Belgian Committee for Aid to Refugees (BCAR)<sup>46</sup> is an operational partner of the UNHCR in Belgium as it prepares proposals for UNHCR's advisory opinion to the asylum authorities, drawing on UNHCR's advisory role as specifically provided for in art 57/23 bis of the Belgian Aliens Act. Together with the UNHCR the BCAR also monitors the quality of the asylum procedure by examining, for example, the procedure in closed centres and the application of the EU Dublin Regulation by the Immigration Department.

Thanks to the international position of Brussels also a lot of different international organisations, NGOs and think-tanks are active in Belgium, a.o. IOM<sup>47</sup>, Migration Policy Group<sup>48</sup>, Centre for European Policy Studies<sup>49</sup>, etc.

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<sup>42</sup> [www.caritas-int.be](http://www.caritas-int.be)

<sup>43</sup> [www.adde.be](http://www.adde.be)

<sup>44</sup> [www.f-a-m.be](http://www.f-a-m.be)

<sup>45</sup> [www.orcasite.be](http://www.orcasite.be)

<sup>46</sup> Belgisch Comité voor hulp aan Vluchtelingen, Comité Belge d'Aide aux Réfugiés, [www.cbar-bchv.be](http://www.cbar-bchv.be)

<sup>47</sup> [www.belgium.iom.int](http://www.belgium.iom.int)

## E. Social partners

Both employers' organisations and trade unions participate in the migration debate, mainly but not only with regard to labour migration. They meet one another in the National Labour Council and in the Advisory Board for the employment of foreign workers (*Adviesraad voor de tewerkstelling van buitenlandse werknemers*). The latter is consulted when regulations are modified. However, its advice is not binding. It is composed of employers' organisations, trade unions and representatives of public bodies competent in labour and migration.<sup>50</sup>

## 2.2 OVERVIEW OF THE LEGAL FRAMEWORK

### A. Relevant laws on asylum and migration

The most relevant law regarding migration and asylum issues in Belgium is the *Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals*<sup>51</sup> which has been modified many times since its adoption. The law of 15 December 1980 also governs the asylum procedure and the competencies of the asylum institutions. The Royal Decree of 8 October 1981 pertaining to entry, stay, settlement and removal of foreign nationals (which has also been modified many times) implements the law of 15 December 1980. In addition, many internal regulations have been adopted by the administration for the implementation and the interpretation of the law of 1980 and of the Royal Decree of 1981.

Reception conditions for asylum seekers and certain other categories of foreigners is regulated by the *Law of 12 January 2007*.

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

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

The combat against trafficking in human beings is regulated by the *Law of 13 April 1995* (last modified in 2005), which amended the Criminal Code as well as the above mentioned Aliens Law (of 15 December 1980).

In addition, a Set of Royal Decrees and Circular Letters complete the legislation.

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<sup>48</sup> [www.migpolgroup.com](http://www.migpolgroup.com)

<sup>49</sup> [www.ceps.eu](http://www.ceps.eu)

<sup>50</sup> see [www.werk.be/wg/werknemers\\_buitenlandse\\_nationaliteit](http://www.werk.be/wg/werknemers_buitenlandse_nationaliteit)

<sup>51</sup> A consolidated version of this law can be found on the website of the Immigration Department : [www.dofi.fgov.be/nl/1024/frame.htm](http://www.dofi.fgov.be/nl/1024/frame.htm)



## **B. Judiciary**

### The Council for Alien Law Litigation<sup>52</sup>

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

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

In the field of other (i.e. non-asylum) issues the CALL has more limited competences as it can only annul decisions due to the violation of the rules of procedure. Three types of appeals can be lodged: an action for annulment, a suspension application and an emergency procedure. These appeals can be lodged against following decisions of the Immigration Department: determination of the responsible state, refusal to consider the application, order to leave the territory, decisions of detention, refusal of family reunification, etc.

### The Council of State<sup>53</sup>

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

### Tribunal of First Instance

Persons who want to be recognized as a stateless person need to start a procedure before the Court of First Instance, as these courts have a competence on the issuing of nationality. (Once a person is recognized as being stateless, there is no automatic right to a permit to stay. They need to ask the Immigration Department for regularisation on humanitarian grounds, see further).

In case a migrant/asylum-seeker is detained, an appeal can be lodged with the Tribunal of First Instance and with the Court of Appeal, so that immediate release of the detained foreign national could be ordered by the judicial instance. An appeal against an infringement of the subjective rights can be brought to the President of the Court of First Instance in summary proceedings. The appeals against the decisions of administrative detention are brought in the first place to the ‘Chambre du Conseil’ of the Court of First Instance and, on appeal, to the ‘Chambre des mises en accusation’ of the Court of Appeal<sup>54</sup>.

<sup>52</sup> Raad voor Vreemdelingenbetwisting/ Conseil du Contentieux des Etrangers, [www.rvv-cce.be](http://www.rvv-cce.be)

<sup>53</sup> [www.raadvst-consetat.be](http://www.raadvst-consetat.be)

<sup>54</sup> ‘Raadkamer’ and ‘Kamer van Inbeschuldigingstelling’

### Supreme Court

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

### Constitutional Court

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

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

### 3. DEVELOPMENT OF ASYLUM AND MIGRATION SYSTEMS

In this chapter a brief historical overview<sup>55</sup> is given of how asylum and migration has evolved in Belgium since World War II up till the end of 2110. The relevant social, political and economic evolutions will be included. The role of regularisation, naturalisation and the relevant European legislation is highlighted. Some indicative statistics on migration and asylum are incorporated.

#### 1946-1974

Following World War II, Belgian coal and industrial production was in need for foreign labour. Therefore the government pursued several bilateral agreements: with Spain (1956), Greece (1957), Morocco (1964), Turkey (1964), Tunisia (1969), Algeria (1970), and Yugoslavia (1970).<sup>56</sup> This labour migration was organised in a controlled manner. From then on the number of Turkish and Moroccan citizens living in Belgium grew to become the largest non-European nationality group in Belgium. This is still the case today. Meanwhile, the European Communities started their integration process. Free movement of workers between the Benelux-countries was granted as early as in 1958 (and in 1968 between the six European Community Member States). With the worsening economic situation and the rising unemployment in the late 1960s the government passed new laws with the goal to control and regulate the flows of non-EC immigrants into the country in line with economic needs. In 1974 the government introduced an official ban on economic migration. Belgium regularised around 9.000 people at the end of this period.

#### 1974-1984

Between 1974 and 1983, influxes of foreigners decreased gradually. In 1983, the migration balance was negative. On 15 December 1980 the Aliens Act on entry, stay, settlement and removal of foreign nationals was adopted, the most relevant law regarding migration and asylum issues in Belgium (which has been modified many times). Integration of immigrants was put on the political agenda. For instance, in 1976, a big social and political support existed to grant voting rights on local level to foreigners.<sup>57</sup>

#### 1984-1999

In 1984 the Belgian nationality Law was adopted and the numbers of migrants obtaining the Belgian nationality would rise in the years to come.

Although there was still an official ban on economic migration (and in a context in which Belgium was still recovering from the economic crisis), from 1984 the immigration flows towards Belgium started rising again. Migration had become a global, sometimes lucrative, phenomenon with easy access to information, democratisation of aerial and other means of transport. Although it was thought that the procedure for family reunification would mainly be used for first generation migrants, in practice all generations used this procedure and it became one of the most important channels for legal migration.

The number of asylum applications started rising too in the mid 1980's, reaching an all time high in the nineties (for data see further in this chapter). The fall of the Iron Curtain and the wars in former-

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<sup>55</sup> This overview is mainly based on the "Jaarverslag Migratie 2008" Centrum voor gelijkheid van kansen en voor racismebestrijding.

<sup>56</sup> These bilateral agreements still have an influence on migration to Belgium, as current bilateral conventions with former emigration countries give citizens from these countries more favourable conditions for family reunification in comparison to other non-EU countries.

<sup>57</sup> The right to vote at local level was finally granted to non-EU foreigners in 2004.

Yugoslavia explained a significant part of these figures. The large so-called asylum crises in Belgium were reflecting the instability in the world, but there is also a second analysis. There were large waves of unfounded applications, which tried to exploit the gaps in the asylum procedure.

### 1999-2011

From 1999 on, a large part of the levers of the migration policy shifted to the European level. The European Union became competent to harmonise the national policy. The Treaty of Amsterdam aimed at creating a common area of freedom, security and justice, which includes a common asylum- and migration policy. The European Councils of Tampere and The Hague further developed the idea. Most Member States and also Belgium showed more openness towards an overt economic migration policy.

In the governmental declaration of the government formed in July 1999, the pledge was made to organise a more balanced migration policy, severe and open at the same time. Severe in the sense that the number of removals had to be driven up; while an example of the openness of the migration policy was the fact that in 1999 the government announced a plan to organise a one-shot campaign to legalise the situations of various non-nationals unlawfully residing in the country. More than 50.000 people have benefited from this policy. The nationality law was modified in 2000 to become more liberal (see further) and another important symbolic change was the law granting the right to vote for foreigners at local elections, that eventually passed in 2004.

The high numbers of asylum seekers from around 2000 decreased year by year. The government took a number of policy measures. For example, in 2001 the LIFO (Last In, First Out) principle was applied to have a more efficient procedure, and asylum seekers did no longer receive financial benefits in a first phase of the procedure. But the large numbers and the long procedures for older applications had caused a strong feeling that the asylum procedure needed to be fundamentally reformed. This fact, together with the obligation to transpose a number of European directives, lead to important legal changes in 2006-2007. The asylum procedure was 'simplified' (one phase instead of two) and one body (CGRS) became the central asylum authority. There also became a separate medical procedure, and a new appeal body, the Council for Alien Law Litigation (CALL), was created. The reception policy was reformed too: asylum seekers would only receive material assistance (reception and guidance) during their procedure. Also a number of measures were taken in the field of migration, for example the criteria on family reunification became stricter.

Integration of foreigners, which is not a competence of the federal state but of the communities and regions, followed a different dynamic in the different entities. In Flanders, a lot of effort was put in integration tracks. With a Decree of 2003, and following the principle of 'mutual rights and duties', civic integration became compulsory for certain target groups starting in April 2004 (see part 4.1.4).

Only a few years after the end of the regularization-campaign of 1999, the plea for new regularisation measures started rising again. A number of (non-governmental) organisations argued that (asylum) procedures took too much time, and return measures were only conducted in a minority of the cases. In the meanwhile people integrated (their children went to school). The argument was made that it would be inhuman to send these people back to their country of origin after all this time. After a very long political and societal debate, new temporary regularisation measures were taken by the end of 2009. Applications were decided on a case-by-case basis (see further).

The political idea was that the regularisation had to be part of a package-deal: migration policy needed to be human but strict. Another 'humanitarian' measure was the decision taken in 2008 to no longer detain families with children (administrative detention). On the other hand, negotiations started to make the nationality law stricter, just as the rules on family reunification, and to fight abuses like marriages of convenience.

In the meanwhile, from 2008 onward, the numbers of asylum seekers started rising again. Steady but clearly, the reception network became overcrowded. Also the instances responsible for dealing with the applications became under pressure and the duration of procedures started rising again. Despite all kinds of measures taken, Belgium was faced with a severe “reception crisis”. More than 12.000 asylum seekers were not accommodated at all. Several legal changes were taken to restrict the possibilities for reception/asylum, and the number of reception places.

In 2010 and 2011 the public feeling was that measures had to be taken to control migration. Next to legal changes on asylum and reception, profound changes were made in the existing rules on family reunification, and concerning the stay for medical reasons. Also concerning return there was an important policy shift: a range of measures was taken to increase the number of returns and to follow-up on return decisions (see below). At the time of writing (Summer 2012), a political agreement was also found on a new legislative proposal to change the nationality law and make it more strict.

### Asylum and Migration Statistics

**Asylum.** In the early 1980’s, Belgium was receiving fewer than 5,000 asylum applications per year. The numbers started to increase in the mid 1980’s, however, reaching a peak of 26,000 in 1992 and another peak of 42,000 in 2000. Annual applications have decreased considerably since the second peak, and in 2006 and 2007, Belgium received around 11,000 applications per year. Since 2009 there has been a continuous sharp increase: 17.186 cases (22.000 persons) in 2009; 19.941 cases (26.560 persons) in 2010; and 25.479 cases (31.915 persons) in 2011. In 2012, there seems to be a stabilisation, with numbers comparable to 2011.

In the 1990’s, most claims came from Zaire (now the Democratic Republic of Congo), Romania, India and the former Yugoslavia. Since 2000, most claims have come from Russia, the former Yugoslavia, Iraq, Iran and Afghanistan. Top nationalities in 2011 are Afghanistan, Guinea, Iraq (see table below), three countries with among the most recognised refugees in 2011. .

**Table 1: Countries of origin of asylum applications in 2011**

Country of Origin	Number	%
Afghanistan	2.758	10.8%
Guinea	2.134	8.4%
Iraq	1.948	7.6%
Russia	1.618	6.4%
Kosovo	1.458	5.7%
Serbia	1.109	4.4%
Congo RD	1.007	4.0%
Pakistan	933	3.7%
Macedonia	819	3.2%
Albania	809	3.2%
Other countries	10.886	42.7%
<b>Total 2011</b>	<b>25.479</b>	<b>100%</b>
Percentage top 10	57.3%	

Source: Commissioner-general for refugees and stateless people

**Migration.** Since the middle of the 1980ies there is a continuous increase of the number of immigrations of foreigners towards Belgium. 140.083 immigrations of foreigners (EU and non-EU) were registered in 2010. This is an increase of 11% from 2009 to 2010. Asylum seekers are not included in these statistics, but since 2008 (and retroactive) recognized refugees or asylum seekers who received a residence permit on another basis, are included. In 2010 also 55.175 foreigners emigrated from Belgium.

**Table 2: Number of immigrants to Belgium between 2000 and 2009 (excl. asylum seekers but including recognised refugees or asylum seekers when they receive a legal status on another basis).**

Nationality	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Total</b>	68.599	77.572	82.637	81.890	85.370	90.337	96.290	129.828	164.152	166.479
<b>Belgians</b>	11.320	11.610	12.423	13.113	12.932	12.950	12.857	36.483	38.083	39.602
<b>Foreigners</b>	57.279	65.962	70.214	68.777	72.438	77.387	83.433	93.345	126.069	126.877
Europe (Turkey included)	37.133	40.294	41.581	41.602	45.231	50.615	55.531	64.233	82.983	79.489
EU-27	32.451	34.916	35.139	35.185	39.362	44.500	49.573	57.973	72.008	66.855
EU-15	29.593	29.685	30.220	30.446	32.356	34.872	37.435	38.395	48.178	42.766
Last 12 EU Member States	2.858	5.231	4.919	4.739	7.006	9.628	12.138	19.578	23.830	24.089
European countries without EU (Turkey included)	4.682	5.378	6.442	6.417	5.869	6.115	5.958	6.260	10.975	12.634
Asia (without Turkey)	4.917	6.074	7.281	7.072	7.385	7.370	7.772	7.801	12.902	14.655
Africa	9.741	12.884	15.025	14.435	14.012	13.388	13.690	14.933	22.190	24.319
North America	3.360	3.430	3.331	3.110	3.181	3.073	3.137	3.081	3.327	3.381
Latin America	1.760	2.587	2.450	2.196	2.294	2.594	2.969	2.925	3415	3812
Oceania	263	278	241	259	234	240	212	262	296	261
Stateless and unknown citizenship	105	415	305	103	101	107	122	110	956	960

Source : Population Register/Statistics Belgium<sup>58</sup>

At the time of writing, the general data for 2010 were available, but they were not disaggregated by nationality. These data are available for 2009 (Table 2). Out of 126.877 immigrations (excl. Belgians) in 2009, more than 50% was of EU-origin (the neighbouring countries are at the top). More or less 34% of the immigration of foreigners concerns citizens from the EU-15; 19% are citizens from the other 12 Member States, and 10% are European citizens from outside the EU (including Turkey). Regarding the non-European immigration, it is the immigration out of Morocco that is on top. The Congolese (DRC) immigration is the third largest group of immigration to Belgium, and the colonial past of Belgium is a partial explanation for this. Africa is the continent that comes second in the statistics of legal immigration. There is also a rise in the Asian immigration (Turkey not included), with large contingents of migrants out of India, China and Japan, but also Armenia, Iran or Iraq.

### Types of immigration of TCN

On the basis of regulation no 862/2007 Belgium provides statistics on the number of residence permits issued to third country nationals. This is an important information source, because these data are disaggregated by the reason for the permit being issued. In 2010 Belgium issued 67653 first residence

<sup>58</sup> The data used in this part on immigration and emigration of foreigners are national data (on the basis of national definitions) and differ slightly from the Belgian data used in Eurostat.

permits to TCN. The highest share of permits (42.5%) was granted for reasons related to family reunification. The share of permits granted for employment purposes, including researchers, highly skilled and seasonal workers, represented only 6.1%. Permits granted for education represented 8.4%. Humanitarian reasons account for 17.7 % and this is due to the regularisation policy. Permits issued for reasons of international protection represent 3.7% of the total. An important number (21.8%) of the permits relates to other reasons.

### Regularisation mechanism

More information on the regularisation mechanism that exists in Belgium can be found in part 4.1.2.2. The number of people regularised on medical and humanitarian grounds was 11,630 in 2005; 10,207 in 2006; 11,335 in 2007; 8,369 in 2008; 14,830 in 2009; 24,199 in 2010 and 9,509 in 2011.

### Acquiring the Belgian nationality

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

However, at the time of writing (Summer 2012) a political agreement was found on a bill to tighten the conditions for acquiring the Belgian nationality. Where the current law sees the acquiring of the nationality as a step on the way to integration, in the future there will be language and integration requirements. The procedure of naturalisation will become an exception for people that made exceptional achievements for Belgium. For more information: see part 4.1.5.

The table below gives an overview of the number of foreigners that acquired the Belgian nationality between 1996 and 2010. These numbers pose an interesting statistical challenge: as more and more immigrants and descendants of immigrants today hold the Belgian nationality, they "disappear" from the official immigration statistics, which are primarily based on a distinction between nationalities and not on place of birth.

Table: evolution of number of foreigners that became Belgian citizen 1996-2010

<i>year</i>	<i>number</i>
<b>1996</b>	24.581
<b>1997</b>	31.687
<b>1998</b>	34.034
<b>1999</b>	24.196
<b>2000</b>	61.982
<b>2001</b>	62.982
<b>2002</b>	46.417
<b>2003</b>	33.709
<b>2004</b>	34.754
<b>2005</b>	31.512
<b>2006</b>	31.860

<b>2007</b>	36.063
<b>2008</b>	37.710
<b>2009</b>	32.767
<b>2010</b>	34.916

**Source: Population Register/Statistics Belgium**

When looking at the previous nationality before obtaining the Belgian citizenship, citizens from Morocco and Turkey are on number one and two of the list. This is the case since 2003, but today the share of this group in the total of new Belgian citizens is diminishing. The origin of the new Belgian citizens is becoming more divers.<sup>59</sup>

### EU legislation

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

- 2001/51/EC (Schengen);
- 2003/9/EC (Reception Act);
- 2003/109/EC (EU long-term resident status)
- 2004/38/EC (Right of EU-citizens and their family members to move and reside freely within the territory of the Member States)
- 2004/81/EC (Victims of human trafficking)
- 2004/83/EC (Qualification Directive)
- 2004/114/EC (third country nationals, students, volunteers)
- 2005/71/EC (Third country nationals, scientific research)
- 2005/85/EC (Procedures on asylum)
- 2008/115/EC (Return)
- 2009/50/EC (Blue Card)
- 2009/52/EC (Employer Sanctions)
- 2011/36/EU (Human Trafficking)

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<sup>59</sup> Centre for Equal Opportunities and Opposition to Racism, *Annual Report Migration 2009* (available in Dutch and French), p. 192.



## 4. ORGANISATION OF POLICY

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

### 4.1 ASYLUM AND MIGRATION

#### 4.1.1 Entry procedures

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

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

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

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

Upon entry into Belgium all foreign nationals (except EU citizens and their family members) wishing to come to Belgium (whether or not they require a visa), must meet the conditions described in article 5 of the Schengen Borders Code.<sup>60</sup>

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<sup>60</sup> REGULATION (EC) No 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 borders (Schengen Borders Code): article 5 on 'Entry conditions for third-country nationals':

"1. For stays not exceeding three months per six-month period, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document or documents authorising them to cross the border;

(b) they are in possession of a valid visa, if required pursuant to 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 (1), except where they hold a valid residence permit;

(c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country

of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;

#### 4.1.1.1 Asylum<sup>61</sup>

A person who has been refused entry to the Schengen territory at a border post will be notified of a decision to return. However, in such cases, the person may submit an asylum application to the border police, which will carry out an interrogation to clarify his/her reasons for entering the country. In this case return will be suspended and the case will be examined without triggering a right to enter Belgian territory. In principle the person will be detained in a detention centre for the duration of the asylum procedure (with a maximum of two months). The asylum procedure in a closed centre or housing unit is similar to the normal procedure described below, although determinations are made within a shorter timeframe (the decision to take an application into consideration is made within a 15 day limit). If the asylum claim is rejected, the asylum-seeker may be removed from Belgium through the responsibility of the carrier (Chicago Convention). Families with children will be placed in so-called ‘open housing units’, which are more adapted to their specific needs, but which are in legal terms considered as detention centres.

If a person arrives in Belgium with the documents needed to enter the territory, and the person is allowed by the border police to enter the Belgian territory, an application for asylum should be made within 8 working days of arrival on the territory. All asylum applications inside the territory (even if the person is in an irregular situation) have to be lodged with the *Immigration Department* within eight days of arrival on the territory. The ID will first of all register the asylum application, i.e. constitute a file which will be completed by the asylum instances as the procedure progresses. The asylum-seeker is required to complete a form indicating the reasons of the claim; provide relevant information such as identity documents and date of arrival; have his photograph and fingerprints taken; undergo a chest x-ray to detect tuberculosis; and appear at an interview with the immigration officials.

Children of asylum-seekers may have their asylum claims included with those of one of their parents. Persons over the age of 18 must file their own asylum claim. Unaccompanied minors have the right to apply for asylum themselves, but this can also be done by a guardian appointed by the Guardianship Office. The asylum claim will be treated according to the same criteria as for adults, however some specific practical treatment (e.g. heard by specialised case workers) will apply. In general, the Office of the Commissioner General for refugees and stateless people (CGRS) does take into account the vulnerable position of a minor (or other vulnerable groups).

The ID will determine whether Belgium is responsible for processing an asylum claim under the Dublin-II Regulation. The asylum seeker has the right to free legal representation. Persons whose claims are considered to be Dublin cases may in certain cases be detained for a maximum period of one month while the ID determines which country is responsible for the claim. In particularly complex cases, detention may be extended for an additional month.

(See also 4.1.2. Admission conditions).

In case of a subsequent application for asylum, the application will be ‘taken into consideration’ when the Immigration Department determines that the new information that has been provided indicates a well-founded fear of persecution or a real risk of serious harm. The file will be forwarded to the CGRS.

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(d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;

(e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States’ national data bases for the purposes of refusing entry on the same grounds.”

<sup>61</sup> Information based on the Belgian contribution to the coming IGC Blue Book 2012: IGC, *Report on Asylum procedures: Report on Policies and Practices in IGC Participating States*.

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

Belgium engaged in the past in ad-hoc resettlement of refugees (upon request by UNHCR): in 2011, 25 refugees from Libya were resettled towards Belgium and in 2009 the resettlement programme involved 47 refugees from Iraq. In 2012, following the adoption of the EU Resettlement Programme, Belgium took the commitment towards the European Commission to resettle 100 refugees in 2013. An older example dates from 1996, when a group of refugees was resettled from Zepa and Sebrenica (former-Yugoslavia).

#### **4.1.1.2 Migration**

##### Visa policy

The border-free Schengen Area cannot function efficiently without a common visa policy. The EU has set up a **common visa policy for short stays**, i.e. stays up to three months (maximum of 90 days in one half-year period), which is applied through the delivery of so-called "Schengen visas". As a general rule, Schengen visa are valid for the territory of all the Schengen states. Once such a visa has been obtained, a person thus has the right to enter and stay for a short period in the territory of the Schengen countries. In exceptional circumstances it is still possible to issue a national visa with limited territorial validity, on humanitarian grounds, on national interests or international obligations grounds.

Whether one requires a visa to enter the Belgian/Schengen territory depends on the nationality of the foreign national.<sup>62</sup> Furthermore, several exceptions apply to the visa obligation: e.g. certain holders of diplomatic and consular passports, civil aviation personnel, civil naval personnel, refugees and stateless persons.<sup>63</sup>

For Belgium visas for nationals of member states required to have a visa are issued by the Belgian embassies and consulates and the Visa Department of the Immigration Department. The consulates are charged to quickly issue bona fide travellers with a visa. Therefore foreign nationals subject to the visa requirement must contact the diplomatic or consular authorities competent for their place of residence or the place of residence abroad. Representation by another member state is also possible for short term visa. The conditions and procedures for this C-visa is harmonised at European level by the Visa Code 810/2009 (and previously by the Common Consular Instructions).<sup>64</sup>

**Long term visa** (D-visa) for Belgium always have to be applied at a Belgian consular post. 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 had to be transposed into national law.

In both cases, the application is according to the Belgian legislation examined by the ID. The consular posts however have also the possibility to issue visa themselves for clear-cut cases, which is in practice the majority of all applications. The decision to refuse a visa is always taken by the ID. An appeal against this motivated refusal is always possible.

If the respective diplomatic or consular authorities have doubts as to the bona fide character of a visa application, they give that specific dossier a negative assessment, following which it will be electronically

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<sup>62</sup> See: 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.

<sup>63</sup> More details on : [www.dofi.fgov.be/RG/BORDER/NL/Start\\_NL.htm](http://www.dofi.fgov.be/RG/BORDER/NL/Start_NL.htm)

<sup>64</sup> A visa application may also be made to an Embassy or a Consulate in a third country in which the applicant is only passing through, although in such cases, the application will need to be submitted for a prior decision by the Immigration Department (ID).

relayed to the ID for a decision. The decision of the ID is then also in turn electronically relayed to the diplomatic representation that needs to call the applicant to notify the decision. The decision can also be consulted on-line on the website of the ID. The necessary VISION<sup>65</sup> consultations are effectuated in collaboration with the Schengen partners.

**Table 1 : overview of visa applications and visas issued for visa type C en D, 2005-2010<sup>66</sup>**

	Visa C		Visa D	
	Applied	Issued	Applied	Issued
2005	167.445	132.644		23.049
2006	179.789	148.098	31.221	25.030
2007	213.524	177.384	31.488	22.780
2008	209.235	172.886	33.540	26.033
2009	194.029	158.973	32.494	24.588
2010	215.978	175.961	33.309	24.656

Source : Foreign Affairs / Geert Tiri (Immigration Department), *Visa policy as migration channel in Belgium*, Belgian NCP of EMN, October 2011, p. 79.

### Types of visa

There are different visa types for short stays. As elsewhere in the Schengen area, following visa types exist in Belgium<sup>67</sup>:

- Type A: Airport transit visa. This visa requirement represents an exception to the general rule allowing individuals to remain without a visa within the international transit area. This document authorises transit solely through the international area of the airport.
- Type C: Short term visa or travel visa, visa for several entries: a visa allowing foreign nationals to enter the territory of the Schengen States for an uninterrupted maximum stay of 90 days or for one or more successive visits over a period of six months, with the total period not exceeding 90 days. Validity of type C visas issued by the Belgian diplomatic and consular authorities may not exceed one year, i.e. the timeframe within which the authorised visit may be made. The visa may be issued for one or more entries.
- Type A or C collective visa: It consists of a transit visa for a visit of no more than 30 days that may be affixed to a collective passport and is issued to foreign nationals travelling as a group. The group must have been in existence for a certain time and be organised socially and institutionally; it should be composed of at least 5 up to 50 persons and it must include one individual in charge of the documents. The group must enter the Schengen territory, remain there and leave as a group.
- Type D: National visa for a stay exceeding 90 days that is valid (1) for the territory of the Schengen State that issued it; (2) for transit through the territory of other Schengen States for the purpose of reaching the State that issued the visa. This type of visa can be used for family reunification, studies, employment, etc. Belgium normally issues D visa that are valid from three to a maximum of six months and which must be converted into a residence permit upon arrival.<sup>68</sup>

<sup>65</sup> Vision is a network between the Schengen countries that enables them to consult each other in a fast and efficient way on certain visa applications from more “sensible” countries.

<sup>66</sup> For valuable remarks considering these statistics: see Geert Tiri (ID), *Visa policy as migration channel in Belgium*, Belgian EMN NCP, October 2011, p.69 -73

<sup>67</sup> Since 5 April 2010 ‘Transit visa B’ no longer exist. This document authorised transit through several countries starting from a third State and with a third State as destination (for a period not exceeding five days). For a transit in the Schengen zone a visa C is now delivered, with the remark ‘transit’. The visa is delivered for the period necessary for the transit.

<sup>68</sup> Visa Type D + C are no longer issued. With the entry into force of Regulation 265/2010 (amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa) holders of D visa are allowed to move around in the Schengen countries for three months.

- Visa with limited territorial validity  
Normally a Schengen visa is valid for travel to all Schengen countries. However, in some special cases, Schengen visa may be issued with limited territorial validity. Such persons are authorised to transit or travel only to authorised countries and leave only from authorised countries. Such visa may be issued on humanitarian grounds or because of national interest and international obligations grounds where it is necessary to issue a Schengen visa to a person who does not comply with the requirements of the regular Schengen visa.
- Visa declaration  
In case a travel document is not valid for one or more Schengen states, or the passport is issued by a State or authority not recognised by Schengen states, a visa in the form of a visa declaration (separate paper) can be issued.
- Laissez-passer  
In case a foreigner has a well-founded reason to come to Belgium but he/she is in the impossibility to provide a valid travel document, (e.g. loss or theft of passport) and in the normal circumstances he/she would be able to obtain a visa, the Belgian diplomatic or consular authorities can provide a laissez-passer. This document is only valid for the trip to Belgium.

### Border control

As mentioned before, Belgium has 13 external borders: six airports, six seaports, and one international train station (Eurostar-station Brussels).<sup>69</sup>

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

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

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

## **4.1.2 Admission conditions**

### **4.1.2.1 Asylum<sup>70</sup>**

Refugee status is granted on the basis of the 1951 Geneva Convention. The **asylum procedure**<sup>71</sup> and the competencies of asylum institutions are governed by the Aliens Act of 15 December 1980 (Law regarding

<sup>69</sup> The railway station Brussels-Midi is a Schengen external border insofar as the Eurostar line guarantees a direct connection between St-Pancras station (London, UK) and Brussels-Midi.

<sup>70</sup> Information based on the Belgian contribution to the coming IGC Blue Book 2012: IGC, *Report on Asylum procedures: Report on Policies and Practices in IGC Participating States*.

<sup>71</sup> CIRÉ. Guide on the asylum procedure in Belgium. Edition 2008. Can be found on following website : [www.cire.irisnet.be/ressources/guides/guide-asile-en.pdf](http://www.cire.irisnet.be/ressources/guides/guide-asile-en.pdf)

the entry, residence, settlement and removal of foreign nationals). The Aliens Act also includes provisions for subsidiary protection and for residence permits granted for medical or humanitarian reasons.

Institutions involved in the asylum procedure are the following:

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

Once an asylum application is lodged, the *Immigration Department* (ID) determines a.o. whether Belgium is responsible for processing an asylum claim under the Dublin-II Regulation (*see also 4.1 entry*).<sup>72</sup>

If Belgium is responsible, the asylum-seekers' complete file will be forwarded to the *Office of the Commissioner General for Refugees and Stateless Persons* (CGRS). The CGRS is the central body responsible for the adjudication of asylum claims, and first examines claims within the framework of the Geneva Convention and then considers grounds for subsidiary protection. So Belgium has put in place a single asylum procedure. The asylum-seeker will be heard by a protection officer (a case-worker belonging to one of the six geographical desks). The CGRS grants the Convention refugee status if it is plausible that applicants have a well-founded reason for fearing persecution. The status of subsidiary protection is granted if an asylum applicant does not meet the criteria of the Refugee Convention but there is a real risk of serious harm if returned to their country of origin. The CGRS may also exclude asylum-seekers from the refugee status (according to art.1F of the Geneva Convention). The exclusion clauses for subsidiary protection are more elaborated; also a serious crime committed in Belgium may lead to an exclusion of the subsidiary protection status.

For citizens originating from a country considered to be safe country of origin an accelerated procedure applies at the CGRS. Their claim will be treated within 15 working days.<sup>73</sup> There are also provisions in place to apply an accelerated procedure in cases where the asylum seeker is being held in a closed centre, is subject to a security measure or is detained in a penitentiary. The CGRS must give priority to the examination of these types of cases and should decide within 15 days.

The *Council for Alien Law Litigation* (CALL) has full competence to confirm, change (review) or annul a decision taken by the CGRS. Appeals must be made within 30 days of a CGRS decision (in case the asylum seeker is detained, appeals must be made within 15 days); appeals automatically suspend implementation of the decision. If the CALL decides to annul a decision of the CGRS for reasons of substantial irregularities which cannot be repaired by the Council or because essential elements are lacking, which prevents the Council from reaching a decision without additional research, the case is returned to the CGRS for a new decision. The CALL does not dispose of a power of investigation of its own.

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<sup>72</sup> The applicant needs to apply at the Immigration Department and gets a document stating that an asylum application has been submitted. Within eight working days following the submission of the asylum application, he must go to the municipality of his/her principal residence. The municipality will issue a "certificate of immatriculation" (A.I.) type A, valid for three months from the date of issue. This certificate will be renewed (the first three renewals will be for three months, thereafter it will have to be renewed) as long as the examination of the asylum procedure is pending. The application will also be registered in the "Waiting Register" (wachtregister/register d'attente) and the applicant will receive a file number which is called the "public security number".

<sup>73</sup> In this case, only an appeal for annulment will be open to them, and the Council for Aliens Law Litigation will have to render a judgment within two months.

The *Minister of Immigration and Asylum Policy* (or the responsible State Secretary) may appeal a CGRS decision to grant Convention refugee status or subsidiary protection within 30 days of the decision. This appeal is made before the CALL.

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

The *Federal Agency for the reception of asylum seekers* (Fedasil) is not involved in the procedure, but is responsible for the execution of the **reception** policy.

According to the Reception Act, every asylum seeker has the right to reception conditions that would allow him to lead a life of human dignity. Since the 2007 reform of the asylum system, state aid for asylum seekers has shifted completely from financial aid to material aid. This material aid comprises accommodation, food, clothing, medical, social and psychological help, access to interpretation services, access to legal representation, access to training, access to a voluntary return programme, and a small daily allowance (so-called pocket money). An asylum seeker can however also choose not to accept the offered place in a reception center and to stay at a private address, but in that case he will not be entitled to this material aid (except for medical assistance).

Since 12 January 2010 asylum seekers who fulfil certain criteria are allowed to **work** with a labour card C for which they have to apply (note that before the reform of the asylum procedure in 2007, asylum seekers also had the right to work under certain conditions). It concerns asylum seekers who have not yet received a first instance decision in their asylum case within six months following the registration of their asylum application. These asylum seekers can work until a decision is taken by the CGRS, or in case of an appeal, until a decision has been notified by the CALL. This labour card C allows the asylum seeker to do whatever job in salaried employment for whatever employer, and is valid for 12 months (renewable).

More information on the rights of persons granted international protection, can be found in part 4.1.3.1. If the asylum application is definitively rejected, the asylum-seeker is expected to comply with the order to leave the territory received by the Immigration Department within the timeframe mentioned in the decision (in general 30 days<sup>74</sup>). He/she should do this at his/her own initiative, although he/she can claim assistance from the International Organisation for Migration (IOM).

#### **4.1.2.2 Migration**

A distinction can be made between third-country nationals coming for a short stay (not exceeding three months per six-month period) and those coming for a longer stay (more than three months on a six-month period). There are no integration measures as prerequisite for admission to the Belgian territory.

##### **A. Short stay (up to three months)**

Certain foreigners are not submitted to visa obligations (see part 4.1.1.2, above) to visit Belgium for a short stay. Those that fall under the visa obligation can stay up to three months in Belgium if they have a

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<sup>74</sup> Only recently the duration foreseen in the order to leave the country was extended from (in principle) 5 days till (in principle) 30 days. For more information: see part 4.1.7 Return (part on "Return possibilities").

short stay visa (type C). Short stay visas encompass a.o. following categories: tourists, businessmen, family visit, medical treatment, etc.

(a) Tourists, businessmen, family visit, sporting or cultural event, journalists

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

Following documents need to be presented:

- a valid travel document
- a proof of solvency, either of the applicant's own financial means (e.g. hotel reservation, cash, cheques and credit cards accepted in Belgium, an employment contract, bank statements, proof of enrolment on the trade register and/or of professional activity); or the guarantor's financial means (e.g. pledge of financial support from a guarantor of Belgian nationality or a legal foreign resident in Belgium). This document has to be duly certified by the relevant Belgian municipality. An official document, proof of the guarantor's solvency and copies of his/her identity or residence permit are to be attached.
- a proof of subscribing to a travel insurance
- information (e.g. transport arrangements) to show your readiness to leave the Schengen area before the end of the duration of the visa.
- documents justifying the purpose and conditions of the planned stay
  - In case of a family visit: documented proof of relationship with the person to be visited.
  - In case of a business visit: visa applications are often submitted by business operators and/or representatives of foreign companies invited by companies operating in Belgium to visit them in Belgium. These business visits generally come under the general regulations; however documents applying more specifically to the business sector may also be provided to substantiate the purpose of the trip and to prove the existence of sufficient means of support. The letter prepared by the Belgian company or the Belgium-based company should state the purpose of the visit and the duration, along with the type of business relations between the host company and the foreign business operator or the operator's company. The business operator must also provide evidence that the application is justified. In certain cases a businessman can apply for a multiple entry visa, with duration of 6 months, a year or even 3 years. This means that a visa can be used multiple times in the course of a year, without the total of the subsequent stays in the Schengen area being more than 90 days.  
*Note:* Since 2008 a Service for Economic Migration was established within the Immigration Department (in cooperation with Foreign Affairs). The aim is to offer economic migrants a faster visa application procedure and to become an information and contact point for all actors involved.
  - In case of a non-related person: a non-transferable invitation explaining the links between the host and the person invited, and the purpose of the visit.
  - In case of a minor: a permission to travel issued by both parents of the underage applicant

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



(b) Medical reasons<sup>75</sup>

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

Following documents are required for the application:

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

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

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

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

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

(c) Internship

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

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

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<sup>75</sup> See also [www.medimmigrant.be/mm.publicaties.nl.htm](http://www.medimmigrant.be/mm.publicaties.nl.htm)

## **B. Long stay (longer than 3 months)**

Some long stays will in principle be of limited duration (such as stays for reasons of (self-)employment, au pairs, students and internships) and those of possibly unlimited duration (stays for reasons of family reunification, or from victims of trafficking in human beings, refugees<sup>76</sup> and most of the regularised persons<sup>77</sup>).

### *(a) Employees and self-employed*

Third-country nationals who wish to come to Belgium for the purpose of employment will in principle need two kinds of permits: on the one hand a residence permit and on the other hand a work permit (employees) or professional card (self-employed). A work permit is not valid without a residence permit/authorisation to stay in Belgium. For more information: see part 4.1.5 on access to the labour market.

### *(b) Au pair*

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

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

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

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

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

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<sup>76</sup> See 4.1.2.1 admission conditions, asylum

<sup>77</sup> See 3. Development of Asylum and Migration systems; regularisation mechanism

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

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

(c) Students<sup>78</sup>

Besides the basic entry conditions<sup>79</sup> following documents have to be provided by higher education students:

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

A special procedure applies for primary and secondary school education

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

(d) Family reunification/formation

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

The rules on family reunification have been modified by the Law of 8 July 2011, which came into force without temporary provisions. Below the general framework is presented concerning the right to family reunification of third-country nationals legally residing in Belgium. However, in reality many exceptions exist and the rules differ between TCN with an unlimited residence permit (art. 10 of the Law of 15 December 1980) and those with a limited (art. 10bis) residence permit (e.g. a waiting period is introduced for TCN with an unlimited residence permit: in principle they need to be in the possession of this permit

<sup>78</sup> For more information: see EMN study, *Immigration of international students to the EU*, Country report of Belgium, 2012.

<sup>79</sup> See part 4.1.1 entry procedures.

for at least one year before they can apply for family reunification. This waiting period does not exist for TCN with limited residence permit).

The following family members of TCN legally residing in Belgium are entitled to benefit from reunification:

- the **spouse or registered partner** (partnership equivalent to marriage)<sup>80</sup>, provided both spouses or partners are over 21 years of age (this is reduced to 18 year if the partnership already existed before arrival in Belgium);
- the **unmarried partner** on the grounds of a duly attested stable and durable relationship<sup>81</sup>, provided both spouses or partners are over 21 years of age (this is reduced to 18 year if they already lived together for one year before arrival in Belgium)<sup>82</sup>;
- the **minor children** (less than 18 years old) if they are single; and the minor children of the spouse or partner upon the conditions that they are single, dependent, and the person(s) concerned has the legal custody of the children;
- the **disabled, dependent child** (of the TCN or of his spouse or partner) **older than 18 years**.

In general, the following material conditions need to be fulfilled:

- a **medical insurance** that covers himself and his family in Belgium;
- sufficient **accommodation** for himself and the family;
- stable, regular and sufficient **financial resources** for himself and the family, corresponding at least to an amount of 120% of the legal monthly subsistence minimum (also called 'living wage': currently 1.047,48 EUR, 120%= 1.256,976 EUR).<sup>83</sup> The resources may not be originating from the living wage or from family allowances, and may only originate from unemployment benefits under the precondition that the concerned person is able to demonstrate that he/she is looking actively for employment.

In the case that the concerned spouses and partners of TCN's are originating from countries with visa requirement for entering Belgium, it is not possible any more to apply first for a visa of short stay in order to change the residence status towards a long stay after arriving in Belgium. It becomes obligatory for this particular group of persons to apply in the authorized Belgian embassies or consulates for a visa with the aim of family reunification if the couple is already married or in a legal partnership, or for a visa with the aim to marry or to enter legal cohabitation in Belgium.

Persons not meeting the above criteria in principle<sup>84</sup> do not have a right to family reunification, but may apply nevertheless (art 9 Aliens Act). They have little chance of succeeding, but allowing or refusing their stay in Belgium is at the discretion of the relevant authorities.

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<sup>80</sup> Belgium recognizes registered partnerships from Denmark, Germany ("lebenspartnerschaft"), Finland, Iceland, Norway, United Kingdom ("civil partnership") and Sweden as equivalent to marriage.

<sup>81</sup> To prove the stable and durable relationship, they must

- o have been living together continuously in Belgium or another country for at least 1 year;
- o Or, have known one other for at least 2 years and had regular contact (by telephone, mail or e-mail) and they met during this time at least 3 times and the total duration of these encounters was at least 45 days.
- o Or, have a common child

<sup>82</sup> To be eligible for this category, the partners cannot be married or cannot have no relationship with someone else, cannot be related, and an earlier attempt to marriage cannot be rejected.

<sup>83</sup> Amount on 1 February 2012. Information in English about the Belgian system of equivalent living wage ("leefloon" or "revenue d'integration") and its different categories are accessible at the website of the Programmatory Public Service 'Social Integration': <http://www.mi-is.be/en/public-social-welfare-centers/equivalent-living-wages>

<sup>84</sup> As said, for each requirement exceptions exist in the law. Also, in a very limited number of cases, more favourable conditions can apply for third-country workers whose country of origin has a bilateral agreement with Belgium. E.g. workers of Turkish nationality can have a family reunification with ascending family members; or with a spouse younger than 18.

**For recognised refugees and beneficiaries of subsidiary protection** (with unlimited permit), there is no waiting period and in some cases the material conditions (accommodation, medical insurance and sufficient resources) do not apply to them: namely, if on the one hand the family ties already existed before entry into Belgium and on the other hand the demand for family reunification was made within the year after the granting of the refugee status. Also, the minor child, who entered the territory as a non-accompanied minor and is recognised as refugee or beneficiary of subsidiary protection, is allowed to reunify with its parents. They need to come and live with the child and after three years of (temporary) stay in Belgium, the parents need to proof they fulfil the condition of sufficient resources.

For family reunification of TCN with EU-citizens legally residing in Belgium (art. 40bis) more favourable conditions apply based on Directive 2004/38: no minimum age for spouses or partners on the basis of a partnership equivalent to marriage, in general no material conditions, possibility of family reunification for ascendants and children older than 21 if they are dependent. Family reunification of TCN with Belgians (art. 40ter) became stricter since the Law of 8 July 2011. In general the rules match with those applicable for TCN, except for the procedural rules, which are more favourable.

(e) Victims of trafficking in human beings<sup>85</sup>

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

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

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

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

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

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<sup>85</sup> See also EMN Belgian reply on EE Ad hoc query on preventing and combating trafficking in human beings and protecting its victims requested on 29 June 2012.

(f) Medical reasons

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

Legal as well as illegal residents in Belgium can apply for an authorisation of residence by submitting it to the Immigration Department. The following documents and information should be provided: a copy of the national passport or identity card or other proof of identity (under certain conditions) ; proof of factual residence in Belgium; a recent (< 3 months) medical certificate using a standardised form ; other useful information or evidence regarding the illness and the possibilities and accessibility to an adequate treatment in the country of origin or in the country of residence.

When the application is declared admissible and after a positive control of the residence, one receives a *Certificate of Immatriculation type A* valid for three months, which will be extended until there is a decision on the claim. Because there were a lot of (false) applications, a medical filter was introduced in 2012: an application can be declared inadmissible when the medical condition is clearly not founded (not serious enough). When the request is admissible, the grounds of the claim are examined. The decision is taken on the basis of a medical advice and other elements like public security. When a positive decision is taken one obtains a foreigner card type A of limited duration. After 5 years of stay for medical reasons, one receives a foreigner card B for an unlimited duration.

(g) Long term residents<sup>86</sup>

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

(h) Stateless Persons<sup>87</sup>

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

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<sup>86</sup> This status for third country nationals does not strictly fall within the scope of this study, but is mentioned for the sake of completeness. More information can be found on : <http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=6014>

<sup>87</sup> <http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=113>

to leave the territory or grant a temporary stay. In case the regularisation procedure is successful, the stateless person will receive a foreigner card. The governmental declaration of December 2011 does mention the intention to make the asylum authorities (the CGRS) responsible to recognize statelessness. The recognition will then in principle give the concerned person the right to a temporary residence permit.

(i) Regularisation mechanism

The Aliens Act sets out a procedure for granting a residence permit to persons who, due to “exceptional circumstances”, cannot return to their country of origin to submit their request. There are no criteria foreseen in the law, but it falls under the responsibility of the State Secretary and the competent administration. The exceptional circumstances are examined on a case-by-case basis. Up till 1 June 2007, the legal basis was article 9§3 of the Aliens Act. Since then it is article 9bis for humanitarian reasons and article 9ter for medical cases (serious medical conditions and a lack of proper medical care in the country of origin).

In 2009 a public instruction was given by the government to the administration with a number of criteria to assess requests for regularisations on a humanitarian basis. The instruction included a number of temporary criteria [a one-shot measure for people who were ‘durably anchored in Belgium could apply between the 15<sup>th</sup> of September 2009 till the 15<sup>th</sup> of December 2009] and a number of more lasting criteria [(1) an unreasonably long asylum procedure; (2) a pressing humanitarian situation (e.g. a handicap; parents having a child who holds the Belgian nationality; ...)].

### 4.1.3 Legal residence

All foreigners who have received the authorisation to reside on the Belgian territory are registered in the Foreigners Register (*Vreemdelingenregister/Registre des Etrangers*) or in the Population Register (*Bevolkingregister/ Registre de la population*).

All foreigners legally residing in Belgium need a valid residence permit. There are different kinds of resident permits depending on the different resident statuses:

- **foreigner card type A:** certificate of registration on the Foreigners Register for limited duration;
- **foreigner card type B:** certificate of registration on the Foreigners Register for unlimited duration;
- **foreigner card type C:** non-EU/EEA citizen with a right of establishment (registration in the Population Register);
- **foreigner card type D:** EU residence permit for long-term residents (registration in the Population Register);
- **foreigner card type E:** declaration of inscription for more than three months for EU citizen (registration in the Foreigners Register);
- **foreigner card type E+ :** right to remain permanently for EU citizen<sup>88</sup> (registration in the Population Register);
- **foreigner card type F:** residence permit for more than three months for a family member of EU citizen (registration in the Foreigners Register);
- **foreigner card type F+:** right of residence for family member of EU citizen (registration in the Population Register);
- **foreigner card type H:** EU blue card (registration in the Foreigners Register).

A residence permit for foreign nationals in the form of a “residence card for foreigners” is issued to all foreigners over the age of 12, who have acquired a right or permission of residence in Belgium. The resident cards used to be in a paper form, had different colors and were produced at municipal level. As this way of issuing cards was out-dated, often targeted by criminals, and prone to falsifications, the federal government decided to issue electronic foreigner identity card in a centralised way. The replacement of the old cards started from 2006 onwards. The electronic foreigner identity cards have a lot in common with the Belgian electronic identity cards, as they also have the size of a bank card and they have a microchip incorporated in the card. In the future, biometric data can be incorporated. This microchip also allows the foreigner to participate in all kind of applications of the e-government (tax on web, electronic signature for on-line transactions, etc). The new cards are in principle valid for 5 years, unless otherwise indicated.

Next to the electronic foreigner cards, there is also the so-called “certificate of immatriculation/registration” (*immatriculatie attest, attestation d’immatriculation*). This document is issued as a temporary residence permit for several months (three months in general, six months in case of family reunification, in most cases renewable) to persons who have filled an application for a procedure that gives right to a residence permit (asylum, family reunification, student, etc), while their application is still being considered/investigated. There were two types of certificates of immatriculation: A and B. The type B was specifically for EU-citizens who have applied for establishment. This has mainly been abolished since June 2008, but is still in use specifically for EU-family members of Swiss citizens. Type A is issued for asylum seekers, family reunification, non-EU students, foreigners applying for residence for

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<sup>88</sup> The foreigner card type E and E+ are not considered to be real residence permits as they are not mandatory. The EU-citizen can instead obtain a paper form document (annex 8 or 8bis) free of charge.



medical reasons, for certain non-accompanied minors and for victims of human trafficking. The validity of this document depends on the status of the applicant (see elsewhere in this document ).

#### **4.1.3.1 Asylum<sup>89</sup>**

When the applicant is recognised as a refugee, a right of residence for an indefinite period of time on the Belgian territory is granted. The foreigner is registered in the Foreigner's Register and a foreigner card type B is issued. This card is valid for five years and after these five years this card will be renewed without any condition. He/she also access to the labour market without having to obtain a work permit. He/she is entitled to a living allowance if necessary (social integration income) and has a right to family reunification and the right to travel with a refugee passport issued by the Belgian authorities (except to the country of origin). Today a recognised refugee can ask to obtain the Belgian nationality already after two years of residence in Belgium, but the nationality law will change in the near future: recognised refugees will be subject to the general procedure to acquire the Belgian nationality.

When the applicant has been granted the status of subsidiary protection, he/she is authorised to reside in Belgium for a limited period of time. He/she is granted a foreigner card type A valid for one year and is registered in the Foreigner's Register. At the end of the year, the asylum instances verify whether the conditions under which the protection was granted are still met. If this is the case, the residence permit will be renewed for another year. After five years (counting from the date of the registration of the asylum application), if the right has been extended every year, the person will be granted a right of residence (foreigner card type B) for an unlimited period of time in Belgium. A beneficiary of subsidiary protection status has the right to work, but must obtain a work permit C which will be renewed as long as the person is authorised to reside in Belgium. Once he/she is granted a right of residence (foreigner card type B) he/she is exempted from the obligation to obtain a work permit C. He/she is entitled to social assistance, to family reunification and has the right to travel if he/she obtains a passport from the authorities of his country of origin. If the person does not have a passport, the Ministry of Foreign Affairs can issue travel documents to foreign nationals when he/she becomes eligible for a permanent residence permit and cannot get national documents from the authorities of his country of origin.

#### **4.1.3.2. Migration**

##### **Types of residence permits**

##### *Foreigner card type A: BIVR/CIRE for limited duration*

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

- 1) Beneficiaries of subsidiary protection status (see also 4.1.3.1).
- 2) Foreigners who have been regularised on humanitarian grounds according to article 9bis of the Aliens Act<sup>90</sup>. In first instance this stay is often granted on a temporary basis. This card is in principle valid for a limited duration. To obtain a prolongation of the validity of the card the Immigration Department sets out certain conditions (e.g. employment, etc.). If the applicant fulfills three subsequent times the set conditions, he/she will be in practice be granted a foreigner card type B for unlimited duration.

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<sup>89</sup>Ciré, Guide on the asylum procedure in Belgium, edition 2008 and Belgian contribution to the coming IGC Blue Book 2012: IGC, *Report on Asylum procedures: Report on Policies and Practices in IGC Participating States*.

<sup>90</sup> See also <http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=616>.

- 3) Foreigners who have been regularised on medical grounds according to article 9ter of the Aliens Act. The foreigner will receive a temporary right to stay for the limited duration of one year. When the foreigner, five years after submitting the application, still falls under the conditions of this medical status, he/she will receive a right to stay of unlimited duration (electronic card type B).
- 4) Family reunification with non-EU citizens.
- 5) Non-EU student.
- 6) Victims of human trafficking. According to the specific procedure (see also 4.1.2.2) a victim of human trafficking can receive a residence permit valid for 6 months, and this can be prolonged.
- 7) Non-EU labour migrant.
- 8) Foreigners who obtained the long term resident status in another EU-country and who have a second residence in Belgium.

Unaccompanied minors who filed an application for a specific protection status.<sup>91</sup> This specific procedure is for unaccompanied minors who have not applied for asylum, and are no victim of human trafficking. When there is no durable solution six months after filing the application, a foreigner card type A for six or twelve months is issued. When the unaccompanied minor has lived for three years with this permit A, he/she can obtain a residence permit for unlimited duration.

If the foreigner wants to apply for renewal of his temporary stay (and thus his/her card A), the application must be made with the municipal authorities between forty-five and thirty days before the expiry date.

*Foreigner card type B: BIVR/CIRE for unlimited duration*

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

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

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

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

The type C foreigner card is issued to the non-EU/EEA citizen with a permanent right of residence in Belgium and a minimum of five years of legal right to stay. He needs to file an application and will then receive the right for establishment. The foreigner will have an unlimited right of residence (registration in the Population register). The type C foreigner card is valid for five years and will thereafter be renewed without conditions. The foreigner has to apply for renewal of his card with the municipal authorities between forty-five and thirty days before the expiry date.

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<sup>91</sup> This procedure is since 8 December 2011 foreseen in the Aliens Act (art. 61/14 till 61/25). Before this special protection status was foreseen in a circular (from 15 September 2005).

### Foreigner card D

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

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

These foreigner cards are related to EU-citizens:

Type E to EU-citizens (or their family members who are themselves EU-citizens) with a right of residence for more than three months (registration in the Foreigners Register).

Type E+ to EU-citizens (or their family members who are themselves EU-citizens) who have the right to stay permanently (registration in the Population Register).

Type F to non-EU family members who have obtained the right to family reunification with a EU-citizen (registration in the Foreigners Register).

Type F+ to non-EU family members who have the right to stay permanently with a EU-citizen (registration in the Population register).

### Foreigner card H

This card is issued to high qualified workers from third countries who successfully applied for a Blue Card (according to EU Directive 2009/50/EC) in Belgium. This card is a combined residence and work permit. The foreigner card H is initially valid for 13 months, which can be renewed once. When renewing after two years, a residence of 3 years will be assigned.

## **4.1.4 Integration measures**

Until now, no integration requirements of any kind apply in Belgian migration law for being granted a residence permit; there are only material conditions (housing, insurance, resources) applying mainly to forms of family reunification and student migration. One of the reasons might be that the federal state, responsible for the residence of foreigners, is not competent for integration policies. However, in 2012 a (federal) agreement was found to impose integration conditions to obtain the Belgian nationality. The text will become law on the 1<sup>st</sup> of January 2013 (see 4.1.5).

In Belgium, the Communities<sup>92</sup> and Regions are mainly responsible for integration policy:

- Flemish Community.<sup>93</sup>
  - In Flanders (excl. Brussels Region): Flanders organises a civic integration programme for foreigners (so called *inburgering*: Flemish Civic Integration Decree of 2003, adapted in 2007 and 2008). The programme is obligatory for various target groups of foreigners,

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<sup>92</sup> In the 1980s, competency over integration was “defederalised”, meaning that the three Belgian Communities – the French-speaking, the German-speaking and the Dutch-speaking – became fully competent in these matters. Three important points :First, in 1989, a Flemish Community Commission and a French Community Commission were established competent for matters related to integration matters in the Brussels-Capital Region. Second, in 1994, the French Community delegated certain competences in the field of integration to the Walloon Region and the French Community Commission in the Brussels-Capital Region. Third, the national or federal level still retained competence over a few integration programmes mainly supporting the integration policies in the Communities/Regions. As a consequence, different authority levels can issue and have issued different integration policies. [Text from the European Website on Integration, available on: [http://ec.europa.eu/ewsi/en/info\\_sheet.cfm?ID\\_CSHEET=42](http://ec.europa.eu/ewsi/en/info_sheet.cfm?ID_CSHEET=42)]

<sup>93</sup> See also part 2.1 of this report, under B “Competences of the Communities and the Regions”.

voluntary for others.<sup>94</sup> Next to (1) a basic language course (Dutch as a second language) the primary civic integration programme in Flanders consists of, (2) a social orientation course, which consists of an introduction to the Flemish and Belgian society; (3) career orientation, which implies coaching in the search of employment or studies, and toward the provision in terms of culture and leisure activities; and (4) programme counseling, which implies an individual counseling of the person integrating. After successful completion of the first civic integration programme a certificate is given, and people can enroll in a secondary integration programme (e.g. with follow-up language courses).

- Categories of foreigners **entitled** to take part in the primary integration program:
    - 1) foreign nationals aged 18 and more who permanently reside in Flanders or in the Brussels Capital-Region; 2) Belgian nationals who were not born in Belgium and of whom at least one parent was not born in Belgium are also a target group of the Flemish integration policy.
  - Within the two categories described above, some categories of foreign nationals are also **obligated** to take part in the primary integration programme: foreign nationals who received their first residence permit valid for more than three months; people who acquired the Belgian nationality abroad and established themselves on the Belgian territory for the first time; foreign religious personnel of officially recognised religions in Belgium.<sup>95</sup>
  - All foreign nationals and people of foreign origin can benefit from integration measures (cf. Flemish Integration Decree of 22.04.2009.); this sometimes includes undocumented migrants.
- In the Brussels-Capital Region:
    - If residing in the Brussels-Capital Region, all foreigners entitled to take part in the primary integration programme can benefit from a part of the Flemish integration programme or the entire programme, without any obligation.
- Walloon Region<sup>96</sup>
    - The Walloon decree of 04/07/1996<sup>97</sup> pertaining to the integration of foreigners and people of foreign origin launched the creation of Regional Integration Centres. Within its respective regional territory, each Integration Centre can develop initiatives. All foreign nationals and people of foreign origin (this sometimes includes undocumented migrants) can benefit from the integration measures taken, without any obligation. However, a political agreement has been found in July 2012 to create a standardised integration track for all new TCN (who came to Belgium less than 3 months ago) with a residence permit of more than 3 months. The integration track will be partly obligatory and will consist of four parts: reception by a local office, a French language course, a module on citizenship and socio-economic orientation. The new decree should be in place by the beginning of 2013.<sup>98</sup>
  - Brussels-Capital Region
    - Initiatives by the Flemish Community Commission:

<sup>94</sup> More detailed information (in English) is available on the website: <http://www.inburgering.be/inburgering/en/>. See also, answer of the BE NCP to the DE Ad-hoc query on programmes for the linguistic integration of immigrants (July 2012).

<sup>95</sup> More information on: <http://www.inburgering.be/en/integration-obligation>. Foreigners who are obligated to take part in the Flemish integration scheme can be exempted from that obligation if they meet conditions for exemption. A detail account of possible grounds for exemption is available at: <http://www.kruispuntmi.be/thema.aspx?id=344>

<sup>96</sup> The competence of integration was transferred from the French Community to the Walloon Region.

<sup>97</sup> <http://socialsante.wallonie.be/?q=action-sociale/integration-personne-origine-etrangere/legislation/centre-regional-integration>

<sup>98</sup> More information on: <http://www.wallonie.be/fr/actualites/parcours-dintegration-et-daccueil-pour-les-primoarrivants> and <http://tillieux.wallonie.be/le-parcours-d-accueil-en-wallonie-un-nouveau-texte-sur-la-table-du-gouvernement>

- The Flemish Community implements the Flemish policies in Brussels, but participation to civic integration programmes is voluntary (not an obligation). All foreign nationals and people of foreign origin (this sometimes includes undocumented migrants) can benefit from the integration measures taken.
- In addition to offering the standard Flemish integration programme, the *Flemish Community Commission* supports a number of non-profit organisations that assist, valorise and help organise migrant ethnic minority communities in the Brussels-Capital Region. The participation to these integration measures is voluntary for the foreigner.
- Initiatives by the French Community Commission:
  - Many public and private initiatives are financially supported by the French Community Commission to improve the integration of migrants and ethnic minorities in the Brussels-Capital Region. Reception and integration of newcomers is one of the five core themes of the decree pertaining to social cohesion<sup>99</sup>. The overall objectives of that decree are 1) enhancing active citizenship and 2) maintaining social cohesion in a socially and culturally diverse society. Reception of newcomers is approached as a global issue that is to be addressed through networking with existing social care providers, health care providers, guidance service, etc. Particular attention is given to French language courses. Participation is on a voluntary basis.

#### 4.1.5 Obtaining Belgian citizenship<sup>100</sup>

The Belgian nationality law distinguishes four ways to acquire the Belgian citizenship<sup>101</sup> (we do not mention the rules for children born Belgian):

- a) Belgian citizenship by declaration;
- b) Opting for Belgian nationality between 18 and 22 years of age;
- c) Belgian citizenship by marriage;
- d) Naturalisation as a Belgian citizen (treatment by a special commission of the Belgian Chamber of Representatives).

Neither language skills nor historical knowledge is required. By making an application for Belgian citizenship the will to integrate is automatically presumed. All procedures are free of charge. In general four kinds of procedures can be distinguished:

##### *a) Belgian citizenship by declaration*

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

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

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

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

- born in Belgium OR

<sup>99</sup> Décret du 30 Avril 2004 relatif à la cohésion sociale. More information is available at : [www.cocof.irisnet.be/site/fr/affsoc/cohesion](http://www.cocof.irisnet.be/site/fr/affsoc/cohesion)

<sup>100</sup> [www.just.fgov.be/nl\\_htm/informatie/htm\\_justitie\\_atotz/nationaliteit\\_verkrijgen.html](http://www.just.fgov.be/nl_htm/informatie/htm_justitie_atotz/nationaliteit_verkrijgen.html)

<sup>101</sup> See also EMN, BE answer to AT Ad hoc query on naturalisation laws requested on 18/09/2008

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

All applicants must also meet the following criteria:

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

*c) Belgian citizenship by marriage*

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

*d) Naturalisation as a Belgian citizen*

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

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

Overhead we describe the simplified version of legislation that is currently in force. However, mid 2012 a political agreement was reached on a proposition to tighten the conditions for acquiring the Belgian nationality. The draft-bill<sup>102</sup> will be applicable (probably) from the 1<sup>st</sup> of January 2013 onwards, and from that moment there will be integration requirements to acquire the Belgian nationality (except for the procedure described in the first bullet). After the reform, foreigners over the age of 18 can (in general) acquire the Belgian nationality using one of the following procedures:

- A procedure for the person who is born in Belgium and had been living in Belgium ever since (no integration requirements).
- In the short procedure, after five years of legal residence, the person will need to prove its knowledge of one of the languages of the country; show evidence of its civil integration and of its economic participation (exceptions for the person married to a Belgian, for handicapped or retired persons, ...)
- In the longer procedure, after ten years of legal residence, he will need to prove its knowledge of one of the languages and its participation to the welcoming community.

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<sup>102</sup> The text approved by the Chamber of Representatives can be found on their website: <http://www.dekamer.be/FLWB/PDF/53/0476/53K0476019.pdf>

- The procedure of naturalisation (by a special commission of the Belgian Chamber of Representatives).will become an exceptional procedure for people that made exceptional achievements for Belgium.

#### 4.1.6 Access to the labour market

This paragraph describes the conditions a third country national has to fulfill to gain access to the Belgian labour market (employment and self-employment).

##### 4.1.6.1 Asylum<sup>103</sup>

A distinction has to be made between asylum seekers still in the procedure and asylum seekers who have been granted either the status of refugee or the status of subsidiary protection.

In 2006 the Belgian government decided to reform the asylum procedure. The new single procedure came into effect on 1 June 2007, replacing the former two phases (admissibility and eligibility) procedure. In the beginning after the new procedure came into effect, **asylum seekers who were still in procedure** could not work (except those still falling under transitional measures from the old procedure<sup>104</sup>). Since 12 January 2010, asylum seekers who have not yet received a first instance decision in their asylum case within six months following the registration of their asylum application are allowed to work. Therefore, they need to apply for a work permit C. These asylum seekers can work until a decision is taken by the CGRS, or in case of an appeal, until a decision has been notified by the Council for Alien Law Litigation. This work permit C allows the asylum seeker to do whatever job in salaried employment for whatever employer, and is valid for 12 months (renewable).

Asylum seekers (with an attestation of immatriculation) are also eligible for self-employed labour under the condition that they apply for a professional card. However they have to take into account that their right of residence can be temporary and uncertain so that the self-employed activity cannot require neither excessive investments nor long-term obligations. Only small-scale and risk-free projects can be admitted.

For the time being asylum seekers are not allowed to do voluntary work. But they are entitled to perform certain community services (maintenance, cleaning) within their reception centre in order to raise their pocket money.

Adult asylum seekers who have access to the labour market can register as job-seeker at one of the four Offices for Employment and is then entitled to a free assistance programme and vocational training.

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

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

<sup>103</sup> Information based on the Belgian contribution to the coming IGC Blue Book 2012: IGC, *Report on Asylum procedures: Report on Policies and Practices in IGC Participating States*.

<sup>104</sup> Since the Access to the labour market in the former system: Asylum seekers whose demand was deemed eligible (according to the old procedure), and were still awaiting a final decision, were entitled to the so-called work permit C.

#### ***4.1.6.2 Migration***

Third-country nationals who wish to come to Belgium for the purpose of employment will in principle need two kind of permits: on the one hand a residence permit and on the other hand a work permit (in case of employment) or a professional card (in case of self-employment). A work permit is not valid without a residence permit/authorisation to stay in Belgium. There are several exceptions on the obligation to have a work permit / professional card.

In 2008 the Service for Economic Migration within the Immigration Department was established to offer the economic migrants a faster deliverance of the visa for labour purposes, a faster inscription in the Foreigner's Register and a faster deliverance of the residence permit.

Third country nationals living in Belgium with a residence permit for an unlimited duration do not need a work permit or a professional card.

#### ***Relevant laws***

The core of the legislation concerning the entry, residence, settlement and removal of foreigners (Aliens Act of 15 December 1980) does not contain any specific provisions regarding the entry of third country nationals to Belgium for the purpose of paid employment. The rules for employment of foreign workers are defined principally in the law of 30 April 1999 regarding the employment of foreign workers and in the Royal Decrees of 9 June 1999 on the implementation of this law.<sup>105</sup> For a more elaborate overview of the relevant legislation we can refer to the website<sup>106</sup>.

#### ***Work permit***

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

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

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

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

<sup>105</sup> [www.werk.belgie.be/moduleTab.aspx?id=5690&idM=102](http://www.werk.belgie.be/moduleTab.aspx?id=5690&idM=102)

<sup>106</sup> [www.emploi.belgique.be/defaultTab.aspx?id=4888](http://www.emploi.belgique.be/defaultTab.aspx?id=4888)



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

Category C: work permit issued for a definite period to persons who come to Belgium for other reasons than “employment”. It is valid for maximum one year and it can be extended under certain conditions. It is up to the candidate-worker himself to make the application. It is valid for all employers and salaried professions. This Category C is given a.o. to asylum seekers (under the above mentioned conditions), people with a temporary<sup>107</sup> right to stay in the context of family reunification (unless they are reuniting with EU-citizens or Belgians, which are exempted), students, victims of human trafficking, beneficiaries of subsidiary protection during the first five years, etc.

Conditions to obtain a work authorisation / work permit B as a third country national:

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

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

However, **several important exceptions** to the general conditions of deliverance of work authorisations and work permits exist. Foreign nationals do not have to comply with conditions 1 and 2 if they belong to

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<sup>107</sup> Like mentioned above, once these family members have an unlimited residence permit, they are exempt from the obligation to have a work permit (or professional card).

one of the 33 categories mentioned in the law.<sup>108</sup> In practice, workers are then exempted from satisfying to the labour market criterion; they can be nationals of countries with which Belgium has not concluded a bilateral agreement; employers can apply for an authorisation even if the worker already lives in Belgium (e.g. when the employee has already a work permit C) and no signed model work contract is needed in advance.

The main categories are:<sup>109</sup>

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

Belgian law targets highly qualified workers by facilitating their admission to the labour market. Third-country nationals having at least finished higher education (meaning university studies or equivalent) may obtain a work permit without a prior labour market study if their gross salary is higher than 37.721 EUR per year (for the year 2012). Their employment is in theory limited to a maximum of four years, which can be renewed once for a new period of 4 years. The period can however be prolonged for an unlimited time if the salary is of a minimum of 62.934 EUR per year (for the year 2012) for managerial functions. In practice, the majority of these persons will easily subsequently be granted an unlimited residence permit (after 5 years) allowing them to work in Belgium without the restriction of a work permit.<sup>110</sup> It can be noted that this system is not based on a waiver of the acquisition of a work permit, but on an facilitated procedure.

The European “**Blue Card**” directive for highly qualified third-country nationals (directive 2009/50/EC) has been recently transposed into Belgian law (entered into force on 10 September 2012). The Belgium Blue Card system exists next to the above described legal rules for high skilled workers via a work permit B. For issuing a Blue Card (a combined residence card and work permit) one should be able to provide documents attesting higher education of at least 3 years (at a recognised institution) and one should have a work contract with a minimum annual salary of 49.995 EUR gross (in comparison with work permit B: 37.721 EUR). The minimum annual income will be adapted annually. The Blue Card will be issued for 13 months, renewable for another 13 months and after that for 3 years. In the case the employee changes his/her employment, the permit has to be renewed. The Immigration Office will have a maximum of 3 months to process a request. Blue Card holders have specific rights concerning mobility and family reunification, and they have access to the status of a long term residence after 5 years legal stay in the EU and 2 years in Belgium.<sup>111</sup>

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<sup>108</sup> Article 9 of Royal Decree 9/6/1999

<sup>109</sup> A detail account of all categories can be found by consulting Article 9 of the Royal Decree of 9/6/1999 For the specific conditions applying to these categories we can refer to <http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=660>.

<sup>110</sup> See also: <http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=185>. [www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=185](http://www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=185)

<sup>111</sup> More information: <http://www.werk.belgie.be/defaultTab.aspx?id=37215>

### Self-employment

As a system of authorisation exists for workers, special authorisation is also needed for foreign self-employed workers. Instead of a work permit, people who want to set up a business in Belgium will have to apply for a **professional card**.<sup>112</sup> The delivery of professional cards for self-employed third-country nationals falls within the competence of the federal power (as opposed to the work permit which is the competence of a regional power).

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

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

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

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

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

Certain categories benefit from a waiver, and thus do not need to apply for a professional card. The main categories are:<sup>113</sup>

- professional sportsmen, for a period of time not exceeding 3 consecutive months
- musicians and artists coming to Belgium for purpose of a show, for a period of time not exceeding 3 consecutive months
- journalists or business-people residing abroad who are coming to Belgium on business trips for no more than three consecutive months

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<sup>112</sup> For more information see : [http://mineco.fgov.be/sme/Reglementation/beroepskaart\\_nl.htm#P19\\_1049](http://mineco.fgov.be/sme/Reglementation/beroepskaart_nl.htm#P19_1049)

<sup>113</sup> Royal Decree of 11 December 1980.

- foreign students in Belgium performing an internship
- lawyers/barristers who meet the conditions to be registered with or “to be called to” the Belgian Bar.

### Residence permit

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

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

When the duration of the work permit B is extended, the residence permit will also be extended for the same duration. In case a foreigner has already worked for several years with a work permit B, he will be able to apply for a work permit A with an unlimited duration and the duration of the residence permit will be altered accordingly.<sup>114</sup>

### Institutional framework

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

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

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

The **FPS Economy, SMEs, self-employed and Energy**<sup>115</sup> examines requests and delivers professional cards to third-country nationals who wish to undertake a self-employed activity in Belgium.

The Federal government, by means of the **Federal Public Service of Employment, Labour and Social Dialogue** (FPS Emploi, Travail et Concertation Sociale / FOD Tewerkstelling, Werk en Sociale Dialoog) is responsible for determining and interpreting the conditions under which a third-country national can work. The **Advisory Council for the Employment for Foreign Workers**<sup>116</sup> is hereby consulted for a (non-binding) advice.

The implementation of the law, and thus the competence<sup>117</sup> to deliver work permits to third country nationals has been decentralised to the **regional authorities**. The three regions and the German Community possess

<sup>114</sup> See also : <http://www.kruispuntmi.be/vreemdelingenrecht/wegwijs.aspx?id=270>.

<sup>115</sup> FOD Middenstand/ FPS Classes Moyennes ; [http://mineco.fgov.be/SME/Reglementation/Beroepskaart\\_nl.htm#14](http://mineco.fgov.be/SME/Reglementation/Beroepskaart_nl.htm#14)

<sup>116</sup> Advisory Council for the Employment for Foreign Workers is made up of representatives of the employers, employees, several (federal and regional) state departments who are involved in this field

the executive competence and thus apply the rules adopted by the Federal power with respect to work permits. In each Region, the competent authority is the Ministry of Employment.

- the Ministry of the Flemish Community<sup>117</sup>
- the Ministry of the Region of Brussels Capital<sup>118</sup>
- the Ministry of the Walloon Region<sup>119</sup>
- the Ministry of the German-speaking Community<sup>120</sup>

The competent office of each of these entities decides on the issuance of a work permit, and in case of a work permit B they will notify the employer of its decision in writing.

In the government agreement of December 2012, the federal government expresses the political intention to further regionalise the competences concerning work permits and professional cards. The legal framework concerning work permits A and B and professional cards – today the competence of the federal government – would become the competence of the entities. The political agreement (which is not yet transposed) mentions that after the regionalisation foreign employees with a work permit A, issued by one of the entities, will also be able to work on grounds of this permit in the other entities of the country. Self-employed workers, who will receive their professional card in one of the entities, will also be able to perform their services in the other entities. However, the registered office may not be established in another entity.

#### Data

The number of first-time work permits issued to foreigners coming to Belgium to work, was around 25 000 in 2008. The number fell to 13 000 in 2009 and 2010, as citizens of new EU member countries (except Bulgaria and Romania) were exempted from permit requirements on 1 May 2009.<sup>121</sup>

#### **4.1.7 Return**

This paragraph describes the Belgian return policy. First we look at the institutional context, the detention centres, followed by the different return possibilities (forced or voluntary). In contrast to the other paragraphs of this chapter, no specific distinction will be made between asylum and migration.

#### Institutional context

As already explained, the State Secretary for Migration and Asylum Policy is responsible for the entry into the territory, the residence and consequently, the removal of foreign nationals from the territory. The competent authority for the implementation of forced return policies is the Immigration Department (ID). Assisted voluntary return falls under the competence of the Federal Agency for Reception of Asylum Seekers (Fedasil), in close cooperation with the International Organisation for Migration (IOM) and a number of NGO's.

The Immigration Department (ID) encompasses the central services located in Brussels, the detention centres spread over the country and at the airport, and the housing units for families (see below) . The ID

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<sup>117</sup> [www.werk.be/wg/werknemers\\_buitenlandse\\_nationaliteit/](http://www.werk.be/wg/werknemers_buitenlandse_nationaliteit/)

<sup>118</sup> [www.brussel.irisnet.be](http://www.brussel.irisnet.be)

<sup>119</sup> [www.wallonie.be](http://www.wallonie.be)

<sup>120</sup> [www.dglive.be](http://www.dglive.be)

<sup>121</sup> OECD, *International Migration Outlook 2012*, Country note on Belgium, available on [http://www.oecd.org/belgium/IMO%202012\\_Country%20note%20Belgium.pdf](http://www.oecd.org/belgium/IMO%202012_Country%20note%20Belgium.pdf)

closely collaborates with other authorities and organisations, such as Belgian and foreign embassies and consulates, municipal authorities, federal and local police services, the social inspectorate, public prosecutor's departments, the International Organisation for Migration (IOM), Child Focus, the FPS Justice and so forth. Actual (physical) return operations are carried out by the Federal police in cooperation with the ID.

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

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

Several removal measures are mentioned in the Aliens Act:

- **Removal at the border:** a foreigner not complying with the conditions of access to the territory is submitted to a measure of removal at the border. This measure is decided by the border control authorities, namely the Immigration Department and notified by the Border Police.
  
- **The order to leave the territory:** this order is delivered to a foreigner who is neither allowed to remain more than three months on the Belgian territory, nor authorised to become 'established'; and thus who is illegally residing on the territory. Article 7 of the Aliens Act specifies eleven situations in which a foreigner who is unlawfully present on the territory or is not established can receive such an order to leave the territory. The order to leave the territory stipulates how much time the recipient has to leave the territory (voluntary):
  - o thirty days in general (at request and when necessary for the preparation of the voluntary departure, the period can be extended)
  - o between seven and thirty days for foreigners that were never allowed to remain three months on the Belgian territory
  - o less than seven days or no term at all in a specific number of cases (e.g. when there is a risk of absconding, when preventive measures were not respected, when the person is a risk for public order and national security, ...)
  - o forty five days for people who have filed an application according to the procedure for victims of human trafficking
  
- **The Ministerial Decision (MD) concerning expulsions and the Royal Decree concerning expulsion:**
  - o The MD concerning Expulsions is a decision taken by the State Secretary of Migration and Asylum with regard to a foreign national having a right to remain more than three months on the territory who threatened public order or national safety and/or did not observe the conditions stipulated for his residence and/or a violation of the rules restricting his freedom. The foreign national will normally have a minimum of 15 days to leave the territory.
  - o The Royal Decree concerning expulsions is applied to established foreign nationals who seriously threatened public order or national safety. Implementation of this Royal Decree must be deliberated in the Council of Ministers if it is based on the political activity of a foreigner. These two measures must be premised on the personal behaviour of the non-national. The time to execute this Royal Decree is in principle one month. As a result the foreigner cannot enter the territory during a period of ten years.

### Detention centres

In order to return a foreign national to his country of origin, or another country, a person can be held in (administrative) detention. The period of detention cannot be longer than strictly necessary to execute the order to return. In principle this is a maximum duration of 5 months. However, for reasons related to public order the competent Minister (or State Secretary) can decide to prolong this to a maximum of 8 months. When an attempt to return the foreign national fails due to the resisting of the foreign national, a new detention period can start, thus the counters are back to zero.

Till 2011 Belgium counted six detention centres (a.k.a. closed centres):

- INAD (INADmissibles) in the transitzone of Brussels Airport (now replaced, see below)
- Transitcentre 127 near Brussels Airport (now replaced, see below)
- Repatriation centre 127bis near Brussels Airport
- Centre for Illegals in Bruges (CIB)
- Centre for Illegals in Merksplas (CIM, near Antwerp)
- Centre for Illegals in Vottem (CIV, near Liège)

Because of the aged infrastructure, the INAD-centre and the Transitcentre 127 were replaced in May 2012 by a new centre called 'Caricole', which is also situated near Brussels Airport. For completeness, we mention that – except for the INAD-centre in the Caricole building - there are also other INAD-centra in five regional airports recognized as Schengen border posts. (The INAD-centra of Liège and Charleroi Airport becomes 2<sup>nd</sup> and 3<sup>rd</sup> after the INAD-centre of Brussels Airport in terms of detainees.)

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

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

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

In the last years different measures have been taken to adapt the detention policy for children.

- With the coming into force of the Reception Act<sup>122</sup> of 12 January 2007, unaccompanied minors are in principle no longer put in one of these detention centres, but in a so-called Observation and Orientation Centre (OOC)<sup>123</sup>, which is open for all unaccompanied minors regardless of their administrative status. These centres are not closed centres but are secured.
- The Belgian government decided that from 1 October 2008 families with children, who are already present on the Belgian territory, should no longer be detained in closed centres but in family units, and that from 1 October 2009 families with children, arriving at the border and who would not be removable within 48 hours after arrival, should also be

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<sup>122</sup> Asylum Seekers and Certain other Categories Aliens Act:  
[www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=nl&caller=summary&pub\\_date=2007-05-07&numac=2007002066#top](http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=2007-05-07&numac=2007002066#top)

<sup>123</sup> There are two OOCs : Steenokkerzeel (Dutch speaking) and Neder-Over-Heembeek (French speaking)

brought to the family units. This family or housing units are individual houses and apartments which are provided for the temporary stay of the concerning families. Formally, these families are detained in the housing units but they have in practice certain liberties of movement. A Family Identification Team (FIT) was created within the Immigration Department (see below, the part on ‘assisted voluntary return in practice’).

### Return possibilities

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

However, in reality this is – in most cases – not the way it works. The framework on return, removal and detention was therefore modified in 2011 and 2012, putting more emphasis on effective return of irregularly staying migrants: the Return Directive (2008/115/EC) has been transposed, the legal framework was modified and initiatives are taken for a better follow-up of return decision, for a strict cooperation with local authorities and for the promotion of voluntary return.

In 2011 the Belgian Immigration Office started the SEFOR-project (meaning "Sensibilisation, Follow-up, Return")<sup>124</sup> which aims at ensuring the follow-up of the migrants having received an order to leave the territory. According to the new Law transposing the Return Directive, (Law of 19 January 2012, published on 17 February 2012) an order to leave the country will in principle provide a period of 30 days (instead of 5 days) for voluntary departure (*see: 4.1.5.1 Institutional context, for more information*). At request and when necessary for the preparation of the voluntary departure, the period can be extended.

When a negative decision is taken, a foreign national is summoned to present himself before the local authorities, where he will have to sign the order to leave the country. Local authorities are obliged to inform at such occasions the person concerned about removal procedures and the possibilities for voluntary return. Additionally, the municipality has the obligation to transfer an identification-form about the person concerned to the SEFOR-unit of the Immigration Department. The person concerned has to leave the country principally independently and must inform the municipality about date and destination of his/her return and additionally has to provide the municipality with a copy of his/her return-ticket. The municipality has the duty to transfer this information to SEFOR. In the case the foreign national concerned does not provide him/herself to the local authorities after issuing an order to leave the territory or the date of the order has elapsed, the municipality has to initiate a control of the dwelling of the concerned TCN, carried out by the local police. The municipality is obliged to verify if the person left his/her place of residence and has to send a report to SEFOR.

If he/she did not leave the territory, the SEFOR desk can call for the arrest of the person in order to organise the repatriation (and the person can be held in a closed centre).

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

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<sup>124</sup> SEFOR is co-financed by the European Return Fund. SEFOR has a website ([www.sefor.be/](http://www.sefor.be/)) for people concerned providing a wide range of information and answering essential questions as regards return with translation in 22 languages. The password protected website [www.gemcom.be](http://www.gemcom.be) provides local authorities with necessary forms and other information.



A kind of cascade system is in place, which means that the possibility to leave voluntarily is offered to everybody (this is the reason why the validity of the order to leave the territory has been prolonged), and this by his proper means or with the assistance of IOM. Only when this process does not work, forced removals are resorted to, if possible without constraint, but if necessary with constraint. Five steps can be discerned:

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

An order to leave the territory allowing a person to be expelled after the expiry of the prescribed deadline for voluntary return specifies that a non-compliant foreign national will be taken to the border and be held towards this end for the time strictly required to carry out this measure. The Law does specify that the use of detention is only justified if the application of less coercive measures would not be sufficient.

An order to leave the territory shall be accompanied by an entry ban of 3 years if no period for voluntary departure has been granted, or if the obligation to return has not been complied with. In cases of fraud, the length of the entry ban can be up to 5 years, and even more than 5 years if the person involved is a serious threat to public order or security. There are possibilities to suspend or withdraw the entry ban.

Concerning asylum seekers staying in reception facilities, a different procedure applies starting from September 2012<sup>125</sup>:

- In an informal phase, asylum seekers are informed on the possibilities of voluntary return on the moment they file their request.
- The next formal phase consists of two parts:
  - i. In the course of five days following a negative first instance decision by the CGRS on the asylum request, asylum seekers in the reception facilities are formally offered return accompaniment (during the period to introduce appeal or the period foreseen by the order to leave the country). An individual project of return must be elaborated and signed by the person involved. The Immigration Department must be informed.
  - ii. The moment a negative appeal decision is taken by the CALL, the person is transferred to special (open) return places foreseen in certain federal reception centres (still under the reception law)<sup>126</sup>, where the return accompaniment continues. During the period of validity of the order to leave the country (in principle 30 days) there will not be a forced return and all effort will be put (with basic procedures) on voluntary return. When the period foreseen by the order to leave the country elapses and the return project was evaluated in a negative way

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<sup>125</sup> Modifications by the Law of 19 January 2012 to the Reception conditions Law of 12 January 2007, and instructions of July 2012.

<sup>126</sup> Fedasil and the Immigration Department will collaborate in providing places for the individual return projects for failed asylum seekers. While Fedasil organises return places in its centres, the Immigration Department will create an open return centre (the legal framework has adopted, but an open return centre has not yet been created).

(no willingness for voluntary return), the Immigration Office can start a forced return (including administrative detention).

### Forced return in practice

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

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

On the evening before the day of departure, the Immigration Department transfer department escorts the non-national to the airport, where the individual will be detained in the INAD-centre. The day of departure, the person is handed over to the Federal Police. The Federal Police officers stationed at the airport are in charge of escorting the interested party to the plane.

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

### Assisted Voluntary Return in practice<sup>127</sup>

Fedasil (Federal Agency for the reception of Asylum seekers) is responsible to ensure that all persons who wish to voluntarily return to their country of origin can make an appeal to a support programme. It organises two programmes: REAB programme (Return and Emigration of Asylum Seekers ex Belgium)<sup>128</sup> which mainly provides logistical support and a financial premium; and a Reintegration Fund to support reintegration programmes (and merely consists of material assistance). In 2012 clear instructions were made to regulate who is eligible for which programme and who is not.

### ***Assisted Voluntary Return: REAB***

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

This humanitarian programme assists migrants, who wish to voluntarily return from Belgium to their country of origin or to emigrate to another country where they have a right of residence and do not have the necessary means. The programme provides mainly logistical support, including a flight and reimbursement of travel documents. There is however a premium of 250 euros per adult (125 euros for a person under the age of 18). This premium is no longer given to citizens of EU-countries or e.g. the countries from the Western Balkan countries with a visa free regime.).

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

<sup>127</sup> [http://www.fedasil.be/en/return/the\\_return](http://www.fedasil.be/en/return/the_return)

<sup>128</sup> [www.belgium.iom.int/REAB/](http://www.belgium.iom.int/REAB/)

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

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

To perform the REAB activities and ensure the opportunity for migrants to easily access the programme at each stage of their stay in Belgium, IOM has developed an extensive network of partners covering the whole territory of Belgium. The REAB network consists of a combination of non-governmental organizations (NGOs), local authorities (cities and municipalities), and governmental structures for the reception of asylum seekers (FEDASIL and Red Cross reception centres) and the social services of the closed detention centres. The role of each REAB partner is crucial to ensure successful implementation of the programme. Through a counseling process, migrants receive from the REAB network information about the voluntary return option and the opportunities to reintegrate into their home country.

### ***Reintegration assistance***

Candidates wishing to return to their country of origin may apply for additional reintegration support depending on their situation. The Reintegration Fund supports tailor-made reintegration projects that are small-scale, individual projects intended to facilitate sustainable return of migrants to their country of origin.

Fedasil does not execute the projects on its own, but collaborates to this end with IOM, the NGO Caritas<sup>129</sup>. These organisations have a network of partners in the countries of origin.

The Reintegration Fund supports reintegration activities by allocating a specific amount benefiting every returnee above 18 years old and his/her family. IOM does not provide cash grants but in-kind assistance to returnees in their country of origin valued at 700 EUR per person (350 euro per child).

The programme pays also special attention to vulnerable groups such as unaccompanied minors, medical cases, victims of trafficking and elderly people. The Vulnerable Cases Funds allocates a specific amount per vulnerable case in order to support reintegration activities benefiting the returnee and his reinsertion in his/her family. Vulnerable persons are entitled to an additional 500 EUR (maximum) in assistance.

With the support of the European Return Fund, the reintegration assistances can be increased for a maximum of 500 returnees to a total of 2.200 EUR per capita. The additional maximal 1.500 EUR is intended to support start-ups of micro-businesses, to support the access to the local labour market by wage-supplements or to finance projects intended to support vulnerable groups.

### ***Assistance for families with children in the housing units***

As said before, from October 2008 irregular migrants with children of minor age are no longer detained, but are being assigned to so-called 'housing units'. An internal service was created inside the Immigration Office: Family Identification Team (part of the Identification Service). In the housing units, the concerned families are accompanied during their stay by supporting officers (coaches), appointed by the Immigration Office. The family has to sign a so-called contract of confidence in which the family engages itself to

<sup>129</sup> [www.caritas-int.be/nl/hulp-aan-migranten/begeleide-vrijwillige-terugkeer.html](http://www.caritas-int.be/nl/hulp-aan-migranten/begeleide-vrijwillige-terugkeer.html)

cooperate towards voluntary return. In that case the family is assured that they will not be put in a detention centre by the Immigration Department. The coaches will also collect information about the identity and nationality of the family so that the Identification Unit can take the necessary steps to obtain the required travel documents. The Family Identification Team is a partner with IOM in order to facilitate the assisted voluntary return for these families.

## **4.2 LINKS WITH OTHER POLICY AREAS**

In this chapter is described how asylum and migration systems are linked to other policy areas for the various stages in the migration process given in chapter 4.1. Although several links can be discerned, the most relevant links are the following: labour market policy, the fight against racism and discrimination, and foreign and development policy. For more information on links with policies on Integration policies, see part 4.1.4.

### **4.2.1 Labour market Policy**

As most European countries, one of the big challenges in labour policy in Belgium is the ageing of the population, which will lead to shortages on the labour market and threatens the sustainability of the current social security system. In this light some politicians promote a controlled system of economic migration. Others are skeptical and they point out the low economic participation rate of persons with an immigration background in Belgium. This remains a very difficult issue.

Certain measures have already been taken such as the foundation of the ‘Service for Economic Migration’ within the Immigration Department. The aim is to offer the economic migrants a faster visa application procedure, as well as an information desk and contact point for all actors involved.

In the aftermath of the global financial crisis started in 2008 and considering the continuing economic crisis the debate to open up the Belgian labour market to more foreign workers fell silent.

### **4.2.2 Policy to fight racism and discrimination**

Immigration is unfortunately also linked with racism and discrimination. Therefore it might be interesting to take a closer look to the public policy towards these issues.

The Directives 2000/43/EU (the so-called “race directive” which deals with equal treatment of persons regardless of race or ethnic origin) and Directive 2000/78/EU (which bans discrimination based on religion or personal beliefs, disability, age and sexual orientation) have been transposed into national legislation (on all levels: federal, communities, regions).

On the federal level three laws of May, 10<sup>th</sup>, 2007 were adopted on (1) gender issues, (2) racism and (3) the different discrimination grounds (age, sexual orientation, disability, faith or personal belief, union belief, civil status, birth, wealth, political belief, language, current or future health condition, a physical or genetic characteristic and social origin).

Those legislations have civil and criminal aspects. The civil (short) procedure is aiming at the quick stop of the discrimination. The (classic) criminal procedure allows to pursue incitement to discrimination, hate and violence. Some specific articles in Criminal Law make it possible to enhance the punishment for ‘hate crimes’, for example beating up people inspired by their sexual orientation. Finally, refusing reasonable accommodation for people with disability is also considered as discrimination.

Belgium has a longer legal criminal history concerning the fight against racism but the new legislations focus on tackling discrimination on a civil basis. More cases are now treated by mediation and conciliation. Only few cases, mostly with violence involved, are brought before Court. The Centre for Equal Opportunities and Opposition to Racism is an independent body that helps victims of

discrimination. In July 2012 a political agreement was found to modify the structure of the (federal) Centre and include competences of the Communities and Regions.

### **4.2.3 Foreign Affairs and Development Policy**

#### Policy coherence

Awareness has been raised in Belgium about migration and development synergies. In this regard, the Belgian Minister for Development Cooperation noted in its policy note from 23 December 2011: “the increasingly insistent demand for policy coherence between development cooperation and other policy areas such as climate, migration, trade, raw materials and agriculture.”

#### Institutional capacity and forms of cooperation:

The Federal Public Service (FPS) Foreign Affairs aims to outline, develop and monitor guidelines for the management and coordination of Belgium's foreign policy in the field of asylum and immigration, human trafficking and human smuggling as well as the link between migration and development cooperation. The FPS Foreign Affairs promotes a coherent approach to external aspects of immigration and asylum policy and identifies the contributions that Belgian migration policy can make towards stabilizing certain regions.

The FPS Foreign Affairs maintains contacts with various federal public services concerned by migration-related issues and also with civil society. It updates Belgian diplomatic representations abroad on Belgian migration policy and uses reports from offices abroad as the basis for analyzing trends in migration, asylum, human trafficking and people smuggling for other government departments in Belgium. The FPS Foreign Affairs also facilitates contacts and information exchange between countries of origin - more specifically via diplomatic offices - and the Office of the Commissioner-General for Refugees and Stateless Persons, the Aliens Litigation Council and the Immigration Department.

#### Resources (financial or other)

Belgium allocates resources addressing migration and development links. As the International Organization for Migration (IOM) is one of the twenty partner organizations, the General Directorate for Development Cooperation (DGD) allocates every year a non-earmarked contribution of about 630.000 EUR to the IOM Development Fund.

Belgium also finances specific IOM activities:

- Since 2001, the DGD has been supporting the MIDA Great Lakes Program with an average financial contribution of 900.000 EUR per year. With this program, Belgium encouraged the participation of Diasporas in migration and development related projects, strengthening the local capacities and transferring knowledge and resources to countries of origin.
- The DGD also financed an IOM voluntary return and re-integration programme for irregular Sub Sahara migrants residing in Morocco. This programme contained different migration/development activities i.e. the organization of the return of migrants, the reintegration of the migrants through development projects, and capacity building of the migration services of Morocco. In 2008 a contribution of 280.000 EUR was attributed to IOM for this programme, followed by a second contribution of 800.000 EUR in 2011.
- In 2012 Belgium signed a Memorandum of Understanding with IOM and Morocco on the financing by DGD of a project concerning the Mobilization of Moroccan residents in Belgium for the development of Morocco (MEDMA2). A total contribution of 1.200.000 EUR will be allocated to this.

In addition, the DGD maintains a specific budget line to co-finance (up to 85% of) projects and programs from associations of migrant Diasporas who wish to contribute to the development of their country of origin. Subject to multiannual programs, the resources allocated are estimated at more than 1 million EUR annually.

Another budget line (600.000 EUR per year) is managed by the Immigration Office in consultation with the DGD. Various projects have been supported with a view to enhancing countries of origin's capacities to more effectively manage migration and fight against irregular migration, reinforcing NGOs and local structures to support the reintegration of specific groups, stabilizing population in regions of origin through micro-enterprise development and vocational training, etc.

### *Bilateral, regional and international cooperation*

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

At EU level, Belgium supports the development and implementation of the Global Approach to Migration and Mobility (GAMM) and participates in the main external migration dialogue processes implemented in this framework. Coherence and synergies are in this regard encouraged between Belgian actors as well as with other European Member States, focusing on the four pillars of the Global Approach, namely (i) better organizing legal migration and fostering well-managed mobility, (ii) preventing and combating illegal migration and eradicating trafficking in human beings, (iii) maximizing the development impact of migration and mobility, (iv) promoting international protection and enhancing the external dimension of asylum.

At the global level, Belgium has been supporting the Global Forum on Migration and Development (GFMD) since 2007 when its first meeting was hosted in Brussels. Contributions in kind as well as financial contributions (50.000 Euro per year) are offered to the GFMD. It also participates in the preparatory activities for the 2<sup>nd</sup> UN High Level Dialogue on Migration and Development.

Belgium also sees a role for international organizations in the collection, analysis and dissemination of information on migration and development to aid in policymaking, and in assessing trends. In this regard, Belgium is represented in other international bodies active in this field; inter alia UNHCR, OSCE, ILO, WHO and OECD.

### *Analytical work*

The DGD integrates migration concerns in country analyses. In this regard, offices abroad provide reports on country specific issues related to immigration and asylum and new legislation in that country. On an ad hoc basis, offices in 'sensitive' areas or countries that are important from a migration perspective draw up reports on immigration, asylum, human trafficking and people smuggling.

Studies and debates contribute to developing the analytical basis for identifying synergies between migration and development. Belgium initiates and/or undertakes research projects through different organizations (ICMPD, ECDPM...) and networks (EMN). In addition to this, national colloquia and conferences are organized by the DGD and/or jointly with federal think-tanks such as the King Baudouin Foundation (KBF/FRB) or the Royal Institute for International Relations (IRRI/KIIB).

Finally asylum and migration-related disputes in national courts (Belgian Council of State) and international courts such as those in Arusha and The Hague or the European Court of Human Rights are of interest and closely followed up by the FPS Foreign Affairs.



## **5. ANALYSIS OF THE ASYLUM AND MIGRATION SYSTEM**

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

### **5.1 LESSONS LEARNED-IMPROVEMENTS**

Immigration and asylum are topics capable of sparking heated debate among politicians, the media and the public in general. These subjects touch upon very fundamental issues (human drama’s, the carrying capacity of the country, values and identity,...) and the total numbers of immigrants hide very different personal realities. Public opinion can react emotional and indignant on a poignant individual story that finds its way to the media (e.g. the expulsion of an irregularly staying family), while a month later public reaction can be just as strong on the ‘too high’ numbers of migrants that do get a status.

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

Part 3 of this report (Development of Asylum and Migration Systems) describes the political choices that are made over the last decade. One can notice a continuous search in the Belgian migration policy between ‘humanity and openness’ on the one hand and ‘a more strict policy’ with more conditions for a residence permit and an increased fight against abuses on the other hand.

#### **Asylum and reception**

As mentioned, at the end of the 1990s Belgium was confronted with a peak in asylum applications with more than 40,000 applications in 2000. Belgium was attractive due to the long asylum procedure and to the financial benefits that an asylum applicant could receive while he/she was waiting for a final decision. Different measures were taken, e.g. the LIFO- principle (Last In First Out) was introduced by the asylum authorities, and the reception system changed (asylum seekers could only receive financial support in a second phase of their procedure). The numbers of asylum applications decreased year by year (till 12,000 in 2007). However, it took until 2006 - when transposing different European directives - to execute a major reform of the asylum procedure and of the reception policy. The asylum procedure became faster and more efficient by reducing the number of authorities examining the asylum requests (including to unburden the Council of State), the subsidiary protection status was introduced and the new appeal body (CALL) was made more efficient. The reception policy was also reformed: asylum seekers would only receive material assistance (reception and guidance) during their procedure and no more financial support.

From 2008 onward and despite these measures, the numbers of asylum applications in Belgium started rising again and the authorities were not prepared for this sharp increase (25,500 asylum applications concerning more than 32,000 asylum seekers in 2011). The instances responsible for dealing with the applications became under pressure and the duration of procedures started rising again. Moreover, the reception network became overcrowded. Despite all kinds of measures taken, Belgium was faced with a severe “reception crisis”: the Federal Reception Agency (Fedasil) was in the period from October 2009 to April 2012 no longer able to provide reception places to all asylum seekers. As a consequence around 12,000 asylum seekers were not assigned to a reception centre.

This reception crisis was tackled through on the one hand, the creation of 9.400 new reception places, in military facilities, Red Cross, federal and other reception centres as well as places in hotels. The number of reception places increased from less than 16,000 (July 2007) to almost 25,000 (May 2012). Also some legislative changes to the Reception Act were made in order to include a variety of limitations on the right to reception.<sup>130</sup> On the other hand, the asylum authorities were strengthened through staff increases, different organisational measures were taken to heighten the number of decisions taken and legal changes were introduced (e.g. the principle of safe countries of origin<sup>131</sup>, procedural adjustments concerning appeal,...). In the beginning of 2012 the situation was stable but still critical.

### **Stricter rules and fight against (perceived) abuses**

The focus of debate lies today, on the one hand, on tackling (perceived) misuses of the existing migration canals, and on the other hand, on enforcing more conditions (concerning e.g. income or integration) on the issuance of a residence permit or on the acquisition of citizenship.

The rules on family reunification, the biggest migration channel towards Belgium, were reformed in 2006 (when transposing directive 2003/86) and again in 2011. In 2006, directive 2003/86 was being transposed into national law. Conditions were introduced on housing, health insurance and age (partners need to be 21 years to reunite) and the period was prolonged to control if the conditions for family reunification are still present after the family member came to Belgium. Soon after the reform, the debate on the topic restarted. Politicians argued that the Belgian law was not strict enough when compared to the legislation in the neighbouring countries, and since the law did not apply to family members of Belgians (often from Moroccan or Turkish origin), the law was not effective enough. In 2011 an important reform followed (and came into force without transitional measures). More or less the same conditions apply to both Belgians and third country nationals and an additional requirement on financial resources was introduced (for more information on the reform: see 4.1.2.2).

At the time of writing (mid 2012), the government was working on further measures to combat marriages of convenience and sham legal partnerships and other ways of improper use of existing migration procedures.

Another important point of concern were the increasing numbers of applications for a residence permit on medical grounds (so-called medical regularisation). As a consequence, the procedure to get a permit to stay on medical grounds has been reformed in the beginning of 2012 (for more information: see 4.1.2.2, medical reasons).

In 2000 the Belgian nationality was reformed to become more ‘liberal’ (see chapter 3) – but the reform was controversial during several years. In July 2012 a political agreement was found to tighten the conditions for acquiring the Belgian nationality (with conditions on language, civic integration and economic participation), which will probably become law in the beginning of 2013 (for more information: see 4.1.5).

### **Regularisation**

Belgium has a regularisation mechanism to give a residence permit in ‘exceptional cases’ and in 1999 and in 2009 a one-shot regularisation campaign was done and temporary conditions applied. For more

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<sup>130</sup> Information from the Belgian contribution to the coming IGC Blue Book 2012: IGC, *Report on Asylum procedures: Report on Policies and Practices in IGC Participating States*.

<sup>131</sup> Asylum seekers originated from these countries are subject to an accelerated procedure of 15 days.

information, we refer to Chapter 3 and Chapter 4 (point 4.1.2.2, B i.). There is a clear intention not to repeat a regularisation campaign in the future, because the ‘attractive force’ of such a measure and the consequences for the return policy (less people are willing to return voluntary).

The numbers of people getting a regularisation of their stay fell back in 2011, and the government declared that amnesty shall only be granted in exceptional cases through a case-by-case procedure as stipulated in the law. The intention is that the administration needs to issue decisions within a 6 months term. The current State Secretary is very strict on cases of fraud, and invests in an effective return policy (see below).

### **Return policy and detention**

In 2011 and 2012, the framework on return, removal and detention is being redrawn, putting much more emphasis on effective return of irregularly staying migrants: legal modifications are taken as well as practical initiatives for a better follow-up of return decisions, a strict cooperation with local authorities and the promotion of voluntary return. For more information: see part 4.1.5 of this report.

The last years, different measures are taken to avoid the administrative detention of minors. Unaccompanied minors may in principle not be detained. For the purposes of registration and identification they are housed in specific centres (Observation and Orientation Centres) and they have access to a specific procedure. In 2008 the decision was taken no longer to detain families with children. Special housing units have been created for them (see 4.1.5).

## **5.2 FUTURE DEVELOPMENTS**

In 2008 Belgium had for the first time a federal Minister solely responsible for Migration and Asylum Policy. Since the end of 2011 there is a State Secretary for Migration and Asylum (Maggie De Block) who is also in charge of Social Integration, which makes her also responsible for the reception of asylum seekers. It proves the growing importance and the need for a more coordinated approach in migration and asylum issues. However some will argue that there is not only a need for coordination between different policy departments but also between policy levels (EU, federal level and regional authorities).

After the Federal elections took place in June 2010, the new government was sworn in on 6 December 2011. The coalition agreement<sup>132</sup> is founded on a state reform which has also consequences for the national policy on migration and asylum. The criteria for labour migration and the criteria for student migration shall, according to the coalition agreement, become both a competence of the different entities of the country. However, the issuing of visas and residence permits remains for both migration motives in the authority of the federal authorities. The management of two important public funds on the work field, the so called ‘Impulse-Fund for Migrant Policy’ (IFM/FIPI) and the European Integration Fund will be both transferred to the different Communities.

The coalition agreement defines also the policy guidelines concerning migration and asylum. The new government declares amongst others the following priorities on this policy field:

1. The government commits to a ‘*fast and consistent asylum procedure to guaranty a dignified reception of asylum seekers*’. The government intends to limit therefore the time frame of asylum procedures to a maximum of 6 months. In this context, the procedure shall be made more efficient, both with regard to speed of action and quality of the decision making-process. To achieve the goal, a permanent monitor mechanism shall be implemented. The government hopes

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<sup>132</sup> Available on: [http://www.premier.be/files/20111206/Accord\\_de\\_Gouvernement\\_1er\\_decembre\\_2011.pdf](http://www.premier.be/files/20111206/Accord_de_Gouvernement_1er_decembre_2011.pdf)

herewith to eliminate one of the reasons for the overstraining of the reception system for asylum seekers, which is ongoing since 2008.

2. The government underlines the exclusive priority for material aid to asylum seekers as stipulated in the so called 'Reception Law' of 12 January 2007. Therefore, the government will draft a plan to organise the geographical allocation of asylum seekers in Belgium and hence the distribution of material aid, provided by local authorities. The plan will be based on voluntary terms but will be transformed in an obligatory one, if the local authorities will not create sufficient reception places
3. The government declares the high priority of stimulating the return of irregular migrants and failed asylum seekers, with the preference on voluntary return.
4. The government declared its firm decision to oppose human trafficking and the enrichment of criminal networks involved in these illegal practices. The government stresses the importance to improve the interdepartmental coordination in combating the phenomenon. Victims of human trafficking and exploitation shall be better protected and the specialised centres to shelter them shall be legally recognized.
5. The government stresses the right of family reunification but declares its will to combat fraudulent abuses of this right. In this context the government expressed its will to implement the new legal rules for family reunification as drafted and voted by the Federal Parliament (see 4.1.2.2, B, f). The government also works on a legislative proposal to enhance the fight against marriages of conveniences and the fight against the misuse of the rules on legal cohabitation.
6. Concerning the regularisation of irregular migrants, the government declares that amnesty shall be just granted in case-by-case procedures as stipulated in the law. The administration is to be required to issue decisions within a 6 months term. The procedure for non-accompanied minors shall be improved and the fraudulent practices concerning regularisation on medical grounds shall be opposed more efficiently.
7. The government declares its will to reform the nationality law. The current law sees the acquisition of citizenship as a step on the way to integration. The new law will reverse this concept and will stipulate integration-requirements to start an acquisition procedure. Naturalisations granted by a specialised commission of the Parliament remains possible but will become an exception and not a rule. The legal conditions to deprive the Belgian nationality will be also extended. These reforms will probably become law in January 2013 (see 4.1.5).
8. The government will ratify the 1961 Convention on the Reduction of Statelessness. The asylum authorities will be in charge to recognize statelessness. The recognition will principally concede the concerned person the right to a temporary residence permit.
9. Belgium declares its willingness to further participate in punctual resettlement programs, initiated by the UNHCR.
10. Belgium declares its active support of the European mainstreaming process on migration and asylum.

In January 2012, the State Secretary for Asylum and Migration outlined in the Parliament her policy papers<sup>133</sup> about migration, asylum and the reception of asylum seekers and other entitled beneficiaries. In her policy papers, the State Secretary specified the planned realisation of the policy aims as described in the coalition agreement. Concerning the ongoing crisis of the reception capacity for asylum seekers, the State Secretary focused in her policy paper on a mixture of measures, combining amongst others the reduction of the average duration of the stay of beneficiaries, the increase of reception capacities and the stimulating of the outflow out of the reception system.

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<sup>133</sup> Available on: <http://www.dekamer.be/FLWB/PDF/53/1964/53K1964009.pdf> and on <http://www.dekamer.be/FLWB/PDF/53/1964/53K1964008.pdf>

## 6. ANNEXES

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