



Legal Migration Fitness Check

Evidence base for practical
implementation

Member State summary

Belgium

Annex 2 BE

Written by ICF Consulting Services
Limited

June 2018



LEGAL NOTICE

Appendix to Annex 2 of "Legal Migration Fitness Check Final evaluation report - Supporting study", ICF Consulting Services Limited (2018).

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More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, **2019**

ISBN 978-92-76-01092-0

doi: 10.2837/316825

Catalogue number : DR-01-19-264-EN-N © European Union, **2019**

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Introduction

This document provides an overview of the legal and practical implementation of EU legal migration acquis in **Belgium**. The legal and practical implementation study is structured according to the eight steps – ‘phases’ of the migration process from the perspective of the migrant¹ for the following Directives:

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Research Workers Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
National parallel scheme		<p>Right to settle (“autorisation d’établissement”)</p> <p>Law of 15 December 1980 on access to the territory, stay, settlement and removal of third-country nationals, Title I, Chap. IV on settlement (“établissement” in French), Articles 14 and 15.</p>	<p>Although Belgium has not transposed the provisions on trainees, there is a national scheme for third-country nationals coming to Belgium for the purpose of a traineeship. Trainees need to obtain a work permit B.</p> <p>Royal Decree of 9 June 1999 on the employment of foreign</p>		<p>Work Permit B</p> <p>Royal Decree of 9 June 1999 on the employment of foreign workers, Chap. IV, Article 9, 6° (the Royal Decree is implementing the Law of 30 April 1999 on the employment of foreign workers)</p>	<p><i>NB. Directive not yet transposed (at the time of completion of the study).</i></p>

¹ See ref document (EU summary) Under each phase, the following aspects are examined: **Legal transposition of the EU legal migration acquis**: including whether the MS has overall complied with the transposition of the relevant EU acquis in the respective phase and whether these non-compliance issues affect the practical application of the Directive; **Practical application of the EU legal migration acquis**: overview of the main application issues/problems arising in the MS per each of the migration phases; **Differences between national statuses and the EU legal migration acquis**: substantial differences at the level of legislation and practical implementation between the EU legal migration Directives and their national equivalents (where these exist).

	workers, Chap. VI on trainees ("stagiaires"). See also, Article 9, 5°.
Options implemented?	No

Main differences between EU statuses and the respective national parallel schemes

BCD: The main difference concerns the gross salary criteria which is set at 39.800€/year which is significantly lower than the threshold applicable to a Blue Card. The national work permit B is valid for up to one year and is renewable. The provision also states that the work contract need not exceed four years, renewable once for four more years. Otherwise the target group is the same.

LTR: Both schemes are quite similar. In order to apply for the national status, a third-country national must be in possession of an unlimited right to residence (which is not the case for the long-term residence status) and five years of continuous and legal stay in Belgium. The right to settlement is however open to family members as well, even though they haven't reached the five year residence requirement. Refugees and beneficiaries of the subsidiary protection status can apply as well. Its relevance in practice has become limited since the introduction of the long term residence status and most people would prefer to apply for citizenship.

1 Pre-application phase

1.1 Legal transposition of the EU legal migration acquis

The SPD had not yet² been transposed completely in national law, according to the BE authorities, due to domestic institutional complexities. The main issue delaying the transposition of the directive concerns the single permit procedure since a cooperation agreement must be signed between the federal State and the Regions. As a result, provisions of the SPD are not transposed as such.

However, even though the SPD is not transposed as such, provisions on information to the general public (Articles 9 and 14) are to a large extent complied with. Relevant authorities do provide information upon request, as the experiential test showed. Also information is available online, yet mainly in French and Dutch, information in English is less comprehensive. However, the information displayed is not always easy to understand and the website is not user-friendly.

To sum up, despite the non-transposition of the SPD, Belgium could be said to comply with Articles 9 and 14 of the Directive but only to the minimum required. Information is available online in accordance with Article 14 of the SPD (and actually not only for those who are looking to work in Belgium) but I bet average users struggle to find answers to their questions.

² As of February 2018 Belgium had only notified measures related to the transposition of article 12 (SPD) to the European Commission. .

1.2 Practical application of the EU legal migration acquis

Directive	FRD (Family Reunification Directive 2003/86/EC)	LTR (Long Term Residency Directive 2003/109/EC)	SD (Students Directive 2004/114/EC)	RD (Research Directive 2005/71/EC)	BCD (Blue Card Directive 2009/50/EC)	SPD (Single Permit Directive 2011/98/EU)
Languages	National languages English	National languages English	National languages English	National languages English	National languages English	National languages English
Is the information easy to find *	2	2	2	2	3	

* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4. Disagree; 5. Strongly disagree

Information can be found on the following aspects of the application procedure:

Application procedure	Conditions for admission	Entry requirements (e.g. visa etc.)	Cost of application	Applicable deadlines	Rights upon admission	Any differences between the Directives
Yes	Yes	Yes	Yes	Yes	No	No information for BCD, LTR on Cost of application (no fee is actually applicable) No information for RD on : Applicable deadlines Only for BCD information as found on rights upon admission

Research have shown, based on interviews with third-country nationals, that finding relevant information online is a problem for most of them. This is due mainly to language barriers as well as to how the information is displayed online. EU obligations in this regard is quite minimal and although information is actually available, nothing is done to help people navigate on the website. For instance, rights upon admission are usually not given which means that the benefits of the different statuses, such as the LTR, are not well explained, if at all. Currently the information is available in a rather blunt way and third-country nationals may not know about the different existing statuses which may hamper the practical enjoyment of the rights set forth in EU Directives.

Another factor is the federal structure of Belgium which means that different authorities are competent, this is particularly the case for prospective migrant

workers. As a result, the information is not centralised and different websites must be consulted.

Information upon request

The immigration office and relevant regional authorities in charge of work permits do have call centers and information desks reachable by email but in practice information is not always easy to obtain, either due to linguistic barriers, busy hot lines, limited opening hours, or the length of response time (although this may vary from one administration to the other).

While information can occasionally be obtained at embassies, this is not automatic and no information desk usually exists in third countries.

1.3 Differences between national statuses and the EU legal migration acquis

The main differences between national statuses and the Directives could be identified with regard to the Blue Card Directive. The national status has been in place for many years now, before the Blue Card was introduced. While the rights granted to Blue Card holders are more favourable, the admission conditions are less restrictive for the national status. The salary threshold being lower and employers being more used to the national work permit B, it is not a surprise that the Blue Card is almost not used in Belgium. Moreover the Blue Card lacks publicity as there is little advertisement for this status and the benefits that come with it. As regards the availability of information, compared to the similar national status the Blue Card is not generally well advertised, in particular the benefits that go with that latter status.

2 Preparation phase

2.1 Legal transposition of the EU legal migration acquis

Some Directives are correctly transposed in domestic law, however, in the context of changes to the institutional setup (6th State reform) further modifications to the Directives have been announced. As these changes have not taken place yet, this paper assesses the existing laws.

A case of non-compliance can however be highlighted regarding Article 7 of the SD. According to the Directive, Belgium is allowed to require candidates to provide evidence of language skills. However such requirement is not enacted in a legislative act but only in a ministerial document.

2.2 Practical application of the EU legal migration acquis

Whether the submission of the application is done in a single step or not, and the general procedure to lodge the application depend on the different directives.

In the case of BCD, the third-country national either apply from abroad at a diplomatic representation or from within Belgium with the local administration. Yet, the employer first need to introduce an application for a blue card with the regional authorities in charge of employment in order to obtain a provisional authorisation.

FRD and SD follow the same general rule: application is introduced either from abroad at diplomatic/consular missions or in Belgium at the local administration. In case a work permit is needed, application is introduced at the relevant regional authority.

Finally, in the LTR and RD cases, a one-step procedure is applied. However, in the first case (LTR) the application is introduced exclusively in the local authorities (town hall). Whereas in the case of RD the application can be also introduced from abroad at diplomatic/consular missions.

Ease of the application procedure:

Step	FRD	LTR	SD	RD	BCD	SPD
The information that applicants need to complete is not extensive	4	1	2	2	2	
The application form is user-friendly	4	1	3	2	2	

* 1: Strongly agree; 2: Agree; 3: Neither agree/nor disagree; 4. Disagree; 5. Strongly disagree

Key information/ documents required:

Type of information	FRD	LTR	SD	RD	BCD
Family ties	Yes, T, C, R				
Continuous legal residence		Yes, R			
Sufficient resources	Yes, T, C, R	Yes, T, C, R	Yes, T, C, R (students) Yes, T, C, R (trainees)	Yes, R	
Accommodation/Address in territory	Yes, T, C, R				
Sickness insurance	Yes, T, C, R	Yes	No	Yes	Yes, R
Work contract (for RD host agreement)				Yes, C, R	Yes, R
Minimum salary threshold					Yes, R
Professional qualifications				No	No
(Pre-) Integration measures	Yes (post-arrival)	No	No	No	No
Pre-departure conditions			Yes, T, C, R (students)		
Proof no threat to public	Yes	Yes	Yes	Yes	Yes
Medical examination certificate	Yes, R		Yes	Yes, T, C	No
Valid travel document	Yes	Yes	Yes, C, R	Yes, C, R	Yes

Entry visa	Yes (if needed)	NA	Yes (if needed)	Yes (if needed)	Yes (if needed)
Other					

T = Translation; C = Certified, R = Requirement, i.e. without this proof the application cannot be lodged.

The main issue here concerns the application of the requirements under the FRD, and in particular the condition of stable and regular resources. Article 10, paragraph 5, of the law on Aliens sets a minimum threshold (of around 1400€/month) in order to evaluate whether this condition is met. However the possibility to use a threshold is not set forth in the FRD and the CJEU has ruled against it in the Chakroun case. The law however states that this threshold does not prevent people with lower resources from applying for family reunification for the threshold is simply an amount of reference that guides the individual assessment. This is confirmed by the case-law of national courts, including the Constitutional Court. As a result, national practice can be said to comply with EU law³. This nonetheless illustrates the tightening of admission criteria and the minimum threshold used by the Immigration Office remains relevant in practice.

A potential issue that concerns all applications under any status is the fact that documents must be translated into a national language (French, Dutch or German) by an approved translator. Also, official documents must be legalised or carry an apostil. In practice such requirements can put an excessive burden on applicants. Documents to be issued to the Belgian consulate or at the local administration in Belgium must be translated into an official language of the country and by approved translator. It is also required that foreign documents are certified to be original documents (*être légalisés ou porter un timbre officiel*).

2.3 Differences between national statuses and the EU legal migration acquis

With regards to the LTR Directive and the equivalent national status, it should be noted that evidence of stable and regular resources is not a requirement in order to obtain the latter.

For highly skilled workers, the national status can be obtained on the basis of a job offer while a work contract must be signed in order to apply for a Blue Card.

3 Application phase

3.1 Legal transposition of the EU legal migration acquis

With the notable exception of the SPD, national law complies with EU Directives⁴.

The conformity assessment highlighted that with regards to the processing of applications under the SD, domestic law does not set a maximum time-limit. The practical application of the SD is however not necessarily hampered because of this as decisions are usually taken before the start of the academic year.

The major issue here results from the non-transposition of the SPD. The procedure remains duplicated as the application for a work permit is introduced before the relevant regional authorities while residence permits are of the competence of federal authorities. Given the lack of coordination between the relevant authorities, the duplicated procedure might be problematic and cause of uncertainties.

³ J.-Y. Carlier and S. Sarolea, *Le droit des étrangers*, Bruxelles, Bruylant, 2016.

⁴ The transposition of Directives 2014/36/EU, 2017/66/EU and (EU) N° 2016/801 are not covered by this analysis.

3.2 Practical application of the EU legal migration acquis

Generally, the common procedure is to apply from abroad. In that case, the third-country national must introduce his/her application at the relevant diplomatic missions or consulate. Long term visa application are introduced in person at the embassy/consulate, usually through an appointment. It may happen that the treatment of visa applications are outsourced to private service providers. The application form can be uploaded online, needs to be printed out and filled in. Alternatively, Belgium has set up an online application procedure (Visa-On-Web system) but it is not being used consistently and this does not prevent people from going to the embassy/consulate in person. In some situations, in-country applications are allowed if the third-country national is already staying legally in Belgium. Then individuals must go to the local administration in person.

There are two different authorities involved in the receipt of the application and the delivery of the permit, depending on where the applicant is; if the applicant is abroad the competent authority which receives the application and ultimately delivers the permit/visa is the embassy/consulate while if the applicant is in Belgium the competent authority is the local administration.

Applicants are informed of the decision in writing either by post or email, depending on how the application is introduced, unless they introduced their application to an embassy/consulate: in that case applicants can track their application online. For notifying the applicant of a decision, the country issues one administrative act or decision. However, this is not applied in the case of work permits, in which more administrative acts or decisions are issued.

In case of a rejection of the application, the reasons for the rejection are provided in writing and regarding the language, it is either French, Dutch or German, depending on the language of the procedure. If the applicant is the employer rather than the third-country national, the third-country national is not at all involved in the application process and s/he is neither notified of the decision.

The concept of administrative silence exists in Belgium and the concept is regulated by national law. In case processing deadlines are set by the law, legal effects may result from not respecting the deadline. It is the case here since in case no decision is taken within the maximum time-limit, the decision must be positive (for instance, applications for long term residence permits, the Blue Card and family reunification). In case of administrative silence, the residence permit must be delivered by the embassy/consulate or the local administration. Therefore there is no real redress procedure and applicants are not informed of the redress procedure.

Directive	General	FRD	LTR	SD	RD	BCD	SPD
Application from third country (Q3a)	Yes / No	Add if different					
Permit received in third country	No		NA				NA
Number of authorities involved in the application	1					2	
Number of authorities	1					2	

involved in the issuance of the residence permit							
Application modalities	In person						
Existence of a standard application form for all statuses	No						
Language of the application form	National language(s)						
Fees charged	200€	NI	200€	200€	350€	NA	
Other fees charged?	No	No	No	No	No	No	
Fees charged for permit issuance	Yes						
Fees charged for renewal / replacement of the permit	25€						

The processing times are as follows:

Directive	FRD	LTR	SD	RD	BCD	SPD
Processing time /deadlines (according to law) (SQ3e(i))	274.5 days (9 months)	152.5 days (5 months)	NA	NA	90 days	NA (not transposed yet)
Processing time (in practice) (SQ3e(i))	NI	NI	NI	NI	NI	

Fees that must be paid while introducing an application for a residence permit have recently increased. The amounts are quite significant, most notably in the case of the FRD and the BCD. Regarding the FRD, the fee can be an impediment to the enjoyment of the right to family reunification. In addition, if a DNA test is required (as it is increasingly the case), the total amount can be quite significant.

In the case of the BCD and the equivalent national status, the fee, while higher in absolute terms, will have a more limited deterrent effect. It could however be said to contradict the objective of the Directive to attract highly skilled workers. EU Directives do not however deal with this issue, therefore the application of fees does not contradict EU law.

Another issue concerns the effectiveness of the appeal procedure. Since the procedure is lengthy and costly, it is actually easier and faster to introduce a new application, making the appeal procedure ineffective.

3.3 Differences between national statuses and the EU legal migration acquis

When applying for a national work permit as a highly skilled worker, national law does not set a deadline, contrary to applications for a Blue Card. However, the 90 days time-limit applicable to the BCD is relatively long and decisions are usually taken in a much shorter period, for both the national work permit and the Blue Card. Therefore, there is no significant difference.

4 Entry and travel phase

4.1 Legal transposition of the EU legal migration acquis

Contrary to Article 14 (4) of the RD, researchers do not enjoy all facilities once they have introduced their application. We do not know of a special fast-track procedure for researchers.

With the exception of the SPD, no major issue of legal compliance is reported here.

4.2 Practical application of the EU legal migration acquis

As the third-country national is not yet in the possession of a residence permit, the Member State issues a visa and but has not put a specific timeframe for issuing the latter.

The employer is the main applicant but the third-country national needs to request the visa.

The Member State allows third country nationals who hold a valid permit and valid travel document to enter and re-enter their national territory only on the basis of the permit.

The third-country national is allowed to travel to other Schengen Member States only on the basis of the permit and valid travel document.

The Member State does not impose specific entry requirements to third-country nationals of a visa free country.

Upon arrival, third-country nationals are required to register with local authority and with healthcare providers.

4.3 Differences between national statuses and the EU legal migration acquis

Regarding this phase, there is no difference between national statuses and EU Directives.

5 Post-application phase

5.1 Legal transposition of the EU legal migration acquis

With the exception of the SPD, no major issue of legal compliance is reported under this phase. Today application for residence permits and work permits remain separate due to the internal division of competences which have caused huge delays in the transposition of chapter II of the SPD.

5.2 Practical application of the EU legal migration acquis

Directive	FRD	LTR	SD	RD	BCD	SPD
-----------	-----	-----	----	----	-----	-----

Minimum validity of the first permit	12 months	5 years	12 months	Length of the project	NI	NI
Maximum validity of first permit	12 months	60 months	12 months	12 months	13 months	NI
Minimum validity of permit renewal	NI	NI	NI	NI	NI	NI
Maximum validity of permit renewal (Q6b(ii))	12 months	60 months	12 months	Length of the project	13 months	NI

The Member State does not have a set timeframe to deliver the permit following the notification of the decision.

The employer is the main applicant but is not involved in the delivery of the permit.

A possible concern is the lack of a timeframe within which relevant authorities must deliver the permit upon arrival. The third-country national must go to the local administration to receive his/her residence permit but there is no timeframe. In the meantime, third-country nationals are provided with a temporary document allowing them to stay. However they are not allowed to work. Since there is not yet a single procedure, third-country nationals who need a work permit can only apply for it once they have received their residence permit.

5.3 Differences between national statuses and the EU legal migration acquis

Regarding this phase, there is no difference between national statuses and EU Directives.

6 Residency phase

6.1 Legal transposition of the EU legal migration acquis

Overall, there is no major issue with the legal transposition of EU directive under this phase.

However, in the conformity assessment concerns were raised at different occasions regarding equality requirements. For instance, Article 14 of the BCD requiring equality with regards to social security benefits is not transposed as such but compliance is guaranteed by application of specific provisions found in social security law. The same is true for Article 12 of the SPD. Therefore, through general equality provisions, found for instance in the Constitution, and specific provisions in the relevant legislation, the practical application of equality provisions found in EU Directives is guaranteed.

Concerning the SD in particular, domestic law provides for the possibility to refuse the renewal of the residence permit in case the length of studies is deemed excessive. In Belgium many foreign students have no choice but continue studying and renew their residence permit in order to stay in Belgium while looking for a job at the end of their degree. It is unclear whether the current provision complies with the SD but the situation should change with the transposition of the S&RD which allow students to remain on the territory for nine months at the end of their studies in order to look for a job.

6.2 Practical application of the EU legal migration acquis

A new law was adopted earlier this year (2017) allowing federal authorities to withdraw residence permits in case third-country nationals do not show reasonable integration efforts. It is unclear whether such sanction complies with EU law. While some EU Directives do allow Member States to apply integration requirements either before or upon arrival, EU provisions are quite vague regarding the sanctions applicable if these integration requirements are not met. A new provision was added in the law on Aliens of 15 December 1980 which provides that third-country nationals may have their residence permit withdrawn if they do not show reasonable efforts to integrate. Due to the important list of exceptions (students, refugees, blue card holders), this new provision should not raise an issue of compatibility with EU law.

Another concern is the short timeframe within which the renewal of a residence permit must be introduced. There is no apparent reason that justifies the short 15 days timeframe, yet for third-country nationals this may be a source of uncertainty and insecurity.

Another practical concern relates to status change. While status change is possible in most cases as long as the admission conditions are met, in practice status change does not occur very often as third-country nationals face practical and administrative obstacles. Moreover information about status change is very scarce and, as a consequence, even though it is provided by law few people actually know about the conditions and the procedure to apply for status change.

a. Use of the permit:

The residence permit is issued using the format as set out in Regulation (EC) No 1030/2002 for residence permits. The permit has a declaratory value. It gives third-country nationals to right to move freely on the Member State's territory.

The Member State allows third-country nationals holding residence permits from other Member States applying the Schengen acquis (together with a valid travel document) to enter and move freely within its territory.

The permit is required as a legal document for the following other administrative procedures:

Access to education	Access to healthcare	Registration with PES	Fixed telephone subscription	Utility subscription	Open a bank account	Social security registration
	X	X	X		X	X

b. Renewals of the permit:

National or EU law imposes a direct or indirect requirement to renew a valid residence document.

The renewal process follows a single procedure, involving more than one authority. The same authorities are involved as in the first application procedure.

c. Change of status and naturalisation

Status changes are possible for almost all statuses. The procedure for requesting a status change is the same as the first application procedure.

In order to obtain citizenship, third-country nationals need to comply with the following conditions:

There are different modes through which the Belgian nationality can be obtained. Firstly, the Belgian nationality can be obtained by attribution which results mainly from having a Belgian parent. The second mode of acquisition, by declaration, is the most relevant for our purpose here. The Belgian nationality can be obtained through naturalisation as well but this mode of acquisition has become marginal today.

Conditions to obtain the Belgian nationality through declaration (Articles 12bis to 15 of the Belgian Nationality Code of 28 June 1984): a first set of conditions relates to continuous and regular residence in Belgium, while the second concerns integration requirements. The third-country national must have been living regularly and continuously in Belgium for five years and he must be in possession of an unlimited residence permit at the time of application. Integration requirements include economic, social and linguistic integration (this is the general framework but exceptions apply for certain categories of third-country nationals such as for the spouse of a Belgian national). The economic integration condition means that at the time of application a third-country national must have worked 468 days (about 18 months) in the past five years. The social integration requirement is met either through a secondary high school diploma from a Belgian school, a professional training of at least 400 hours, or having passed integration courses. The linguistic requirement can be evidenced through different means, such as work experience, language courses (A2 level), professional training, among others. Overall, social and linguistic integration is however presumed to be met through work which makes the economic integration requirement the most important one.

The acquisition of the Belgian nationality through naturalisation is limited to cases of high merits and statelessness (see Article 19 of the Belgian nationality Code). This procedure is thus exceptional.

What are the procedures for third-country nationals to apply for naturalisation:

Acquisition of the Belgian nationality through declaration: The application is introduced before the local administration where the third-country national resides. Once the file is complete and the 150€ fee paid, the public prosecutor (procureur du Roi) has four months to give an opinion based on the criminal record of the applicant. In case the opinion is positive, the declaration is accepted.

To apply for naturalisation per se (exceptional) the form is introduced before the House of Representatives or at the local administration which forwards the application to the House of Representatives (Article 21 of the Code).

Which authority/ies is/are involved: The local administration (l'officier d'Etat civil) and the public prosecutor (in case of acquisition by declaration). The House of Representatives in case of naturalisation.

d. Employment rights on the basis of the permit

In general, a work-related permit is linked to an individual employer.

e. Equal treatment

With regard to identifying labour exploitation, the Member State does have a mechanism in place to monitor the exploitation of third-country nationals. There are no other specific measures in place to prevent labour exploitation of third country nationals. However, different information and prevention measures on social fraud targeting employers and/or employees are implemented by public authorities in Belgium, although they do generally not specifically focus on the illegal employment of third-country nationals.

f. Integration:

Specific integration procedures and conditions do apply to third-country nationals once established on the territory of the Member State. There are consequences if the third-country national does not participate in these or fails the integration measure.

6.3 Differences between national statuses and the EU legal migration acquis

Blue Card holders enjoy more favourable rights in relation to family reunification and intra-EU mobility in comparison to the equivalent national status. However, such provisions do not compensate for the more restrictive conditions of admission which means that most highly skilled workers choose the national scheme.

7 Intra-EU mobility phase

7.1 Legal transposition of the EU legal migration acquis

Article 13 (1) of the RD is not transposed as such in domestic law. As a result, researchers may not be aware of their right to work for less than three months and as part of their research in Belgium.

Apart from this, domestic law is compliant with EU Directives regarding intra-EU mobility rights.

7.2 Practical application of the EU legal migration acquis

For short-term mobility, the Member State:

- Does not require the third-country national to notify
- Does not require the third-country national to ask for authorisation.

No major practical obstacles identified to the enjoyment of intra-EU mobility, except the lack of publicity as highlighted above. Overall, the legal framework is fragmented and third-country nationals may not be aware of their intra-EU mobility rights for there is not a single approach to intra-EU mobility applicable to all third-country nationals.

7.3 Differences between national statuses and the EU legal migration acquis

The LTR compared to the equivalent national status provides for intra-EU mobility rights. However, the LTR is not that popular in Belgium, in part because after five years of legal residence in Belgium third-country nationals can apply for citizenship. Therefore if possible third-country nationals would rather apply for the Belgian citizenship (and enjoy free movement rights) than to the long term residence status.

Blue Card holders enjoy intra-EU mobility rights while highly skilled workers under the national scheme do not. However intra-EU mobility rights under the BC are relatively limited and conditional which reduces the attractiveness of the BC for highly skilled workers.

Intra-EU mobility rights are clearly an added-value of EU directives but so far the potential of intra-EU mobility provisions has proven limited for it remains limited and conditional in most cases.

8 End of legal stay / leaving the EU phase

8.1 Legal transposition of the EU legal migration acquis

There is no issue reported in the conformity assessment section. The SPD is however not transposed in domestic law. There was uncertainty as to whether certain social security benefits such as retirement benefits were exportable. Following the case-law of the Court of cassation, such benefits are portable. However, the legal provision has

not been changed accordingly but in practice compliance with EU law should be guaranteed. For the sake of legal security and certainty, there is scope for improvement of domestic law in line with the obligations found in the Directives.

8.2 Practical application of the EU legal migration acquis

There are specific procedures in place for third-country nationals who choose to leave the Member State. These include:

- De-registration from national / local registers

The Member State allows third-country nationals to export certain social security benefits.

Pensions are exportable, including statutory pensions, death pensions (for the partner) and invalidity benefits (due to work accident). Belgium has concluded a number of international treaties in relation to social security benefits. The law provided that the exportability of social security benefits was dependent on the conclusion of such treaties. If there is no such treaty, the rule is that a third-country national must reside in Belgium in order to receive pensions benefit, except for privileged third-country nationals such as Blue Card holders. However, the Court of cassation ruled on 15 December 2014 that this situations creates a difference of treatment that is not justified in light of Article 14 of the European Convention of Human Rights and Article 1 of the first Protocol. Therefore, a treaty is no longer necessary for pensions to be exportable, even though legal provisions have not been changed since. Article 12 of the Single Permit Directive is not transposed as such but following the decision of the Court of cassation, the practice should be in conformity with that provision. Additional social security benefits may be exportable based on the provision of a treaty but the number of countries concerned is limited.

Information on the portability of social security benefits is not easy to find and not clear.

A third-country national residing in the Member State is allowed to be absent from the territory for a maximum of 365 (FRD, LTR, RD, BCD), 90 (SD) days before s/he loses the residence permit and/or right to stay. The absence of third-country nationals is monitored by the Member State.

The Member State does not have measures or a scheme in place to allow circular migration.

The consequences of deliberate overstay of the duration of the residence permit are the following:

- His/her stay obviously becomes irregular and he/she will be treated as an irregular third-country national. He/she will be delivered a removal order and recovering a legal status is very difficult.
- Regarding researchers in particular, in case of irregular stay, the research organisation is financially responsible for the (possible) detention and removal incurred by public funds of the researcher, which is detailed in Art.4 of the Royal Decree of 8 June 2007. The responsibility lasts for six months.
- As regard family reunification, if the status was fraudulently acquired or if family ties no longer exist, the third-country nationals concerned may be asked to pay for the removal costs

As said, certain social security benefits such as old-age pension are exportable. However, third-country nationals may encounter difficulties in enjoying such right because the information available online is limited, rarely in English and spread across websites depending on the benefits concerned. Moreover there is limited information as to where such benefits should be claimed, either from Belgium or abroad.

8.3 Differences between national statuses and the EU legal migration acquis

There is no significant difference between national statuses and EU Directives, except concerning the duration of stay allowed outside Belgium. Regarding the exportability of social security benefits, equality is guaranteed following the decision of the Court of cassation.

9 Main findings and conclusions – state of practical implementation of EU legal migration legislation in the Member State

Overall, the practical implementation of EU Directives does not raise major issues and national law is largely compliant with EU law obligations. Even though immigration law is more and more restrictive in particular when it comes to family reunification, it remains largely within the boundaries of EU law.

However, certain areas are somewhat problematic. The most obvious issue concerns the non-transposition of the SPD. The Council of State ruled that a cooperation agreement between the federal State and the Regions was required which has significantly delayed the process. Negotiations are underway but we do not have information as to when the SPD will be transposed in domestic law. The European Commission has referred Belgium to the CJEU.

Another concern is the trend towards a tightening of immigration rules which is taking place through piecemeal reforms, overall immigration to Belgium is becoming more difficult. This is particularly so for the FRD. For instance, the maximum deadline to process an application was extended to nine months (from six months), the list of evidence documents is long, and application fees were recently increased. Belgium remains compliant with EU Directives, yet only to the minimum extent possible. On top of this, integration requirements are increasingly important, as a number of recent measures illustrates.

Another issue relates to the lack of information available and the hardship in obtaining the relevant information. This is often a concern for third-country nationals in Belgium and in the context of this research we have reached a similar conclusion. The information available online is difficult to navigate and to understand for anyone who does not have a certain knowledge of the legal landscape and of a national language. For sure immigration law is particularly complex but nothing is made to explain the rules in a transparent and clear manner. The lack of information available is particularly apparent for phases I and II, yet EU law obligation in this regard are quite limited (even more so due to the non-transposition of the SPD). Also the increasing number of statuses does not help and third-country nationals may not be aware that they are entitled to a more favourable status. In relation to this, status change while allowed in most cases is not facilitated in practice, primarily because few people know about such possibility. Finally, the administration does not play a pro-active role in the application process which explains lengthy and burdensome procedure. Most procedure are introduced in person as it is too rarely done online. To sum up, the lack of information available arguably impedes the practical application of EU directives as individuals may not know about the different statuses and the rights attached.

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doi: 10.2837/316825