



EU and US approaches to the management of immigration

Jan Niessen, Yongmi Schibel and
Raphaële Magoni (eds.)

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Sonia Gsir, Marco Martiniello and
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Report commissioned by the King
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The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

All papers were presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

Brussels, May 2003

Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US-Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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Chapter 1: The terms of the policy debates

In 1974, the Council of Ministers took three important decisions, which are central to understanding the existing framework. Firstly, it officially stopped any new immigration of workers. Secondly, it took measures to control clandestine immigration. Thirdly, it regularized a few thousand undocumented migrant workers. Since then and until very recently, the doctrine of zero-immigration has dominated the debates and policy-initiatives in the field of immigration. Even though immigration toward Belgium continued under different patterns (family reunification, free movement of EU citizens, foreign students, refugees and asylum-seekers, illegal immigration) which contributed to Belgian diversity, there has never been a proactive policy of immigration based on the political acknowledgment of the fact that Belgium was de facto a country of immigration. The stress has been put on means to reduce immigration as much as possible, to prevent migration and to reverse it.

Since 2000, a new debate has been slowly emerging. The impact of the report on replacement migration published by the Population Division of the UN has certainly contributed to put the issue of a partial reopening of the borders on the media and political agenda. The Belgian corporate world views the immigration of highly skilled workers as a partial solution to labour market shortages. But the government is reluctant to envisage a more open approach to migration in-flows. The logic of the markets and the logic of the state do not move in the same directions.

A glance at the migration data illustrates the fact that there has never been a proactive planning of immigration in Belgium. It also becomes clear that the immigration stop of 1974 is a myth. By and large, demographers agree that the yearly legal admissions since 1962 never dropped below 35,000 units. The patterns of migration and the profile of migrants have changed over the years but legal immigration has continued. Pro-immigration groups tend sometimes to overestimate the restrictive character of Belgian immigration policy. But Belgian officials overestimate the openness of the same policy. Even though there are in theory several ways to be admitted legally in Belgium, it has in practice been increasingly difficult to do so. Most of those who would like to migrate legally to Belgium are not allowed to do so.

In July 1999, the federal government presented its programme in the field of migration. Five main objectives were targeted: the creation of a status for persons displaced by war, the reduction of the length of the asylum procedure, a reform of nationality law to encourage the integration of migrants, launching a campaign of regularisation and expelling undocumented migrants not admitted to regularisation, reforming administration and institutions dealing with immigration.

The government has certainly made progress on some of these key policy areas. But, it has not so far advanced significantly towards a more proactive immigration policy. A major European policy conference on immigration co-ordinated by the Minister of the Interior took place on 16 and 17 October 2001, a few weeks after September 11. Optimists liked to believe that Belgium would seize the opportunity to propose during its presidency of the EU, guidelines for a common proactive immigration policy for the EU. Pessimists said that no advance was to be made before long. They were right. Very few new points emerged from the Belgian presidency in the field of immigration policy.

A few weeks before the general elections to be held in May 2003, it seems clear that Belgian immigration policy is still dominated by a discourse on control and closure. The emerging request in 2000 for new recruitment of workers abroad seems more difficult to argue for in the present economic and political context. Time has clearly come for an independent evaluation of the immigration policy developed by the present government. One crucial

element is that by developing a policy for newcomers, which is more developed in Flanders than in Wallonia, public recognition that we are indeed a county of immigration is indirectly gaining ground and coexists with a political discourse on closure and control. A second point is that we can perhaps expect claims for the regionalisation of immigration policy as well, that would fit the nation-building model adopted by the Flemish government in the EU context. A third related point could be negotiations on the coherence of immigration policy that could be better ensured by either an efficient Inter-ministerial Conference for Immigration Policy or even by a Ministry of Immigration at the federal level. But the future government will deal with these issues. Let us examine now in more detail what happened under the present government.

1.1. Labour migration

For a long time, immigration policy has been synonymous with labour migration. Immigration was decided upon by the needs of the labour market. In times of shortage, workers were recruited abroad; in times of redundancy, the recruitment was stopped (temporarily). After the oil crisis of 1973, the Belgian government, like many other European governments, decided on August 1, 1974 to freeze all future labour migration. A glance at the labour migration statistics after August 1, 1974, shows that the migration stop has not been as complete as proclaimed. It was, in contravention to the rule, in certain circumstances possible to obtain a work permit and/or a work card. And it still is if it is impossible to find an employee in a fair period of time on the local labour market. The onus of proof rests with the company and moreover, only countries that have concluded a bilateral agreement with Belgium are eligible for recruitment.

In addition to this, there are specific exceptions, where the needs of the labour market do not come in. This counts for the highly skilled (with a minimum wage of € 29,400/year) who can stay for 4 years; researchers and visiting professors who can also stay for four years; management staff (when they earn more than € 48,983.76/year) who can also stay for four years; specialised technicians who come to Belgium for a specific job and trainees aged 30 or less, who can stay in the country for 1 year. Recent changes introduced the labour card C, to simplify the formalities for employers and to ease the recruitment of foreign labour, already residing in the country. Another change is that certain categories of highly skilled workers can prolong their stay up to eight years. The changes are not intended to simplify access to the labour market of non-resident or illegally resident foreigners (see also Chapter 2).

1.2. Asylum seekers and refugees

Since the mid-eighties, asylum policy has become more and more clearly a matter of intergovernmental cooperation on a European and even greater international scale. Belgian sovereignty in matters of asylum, like that of its EU partners, has progressively been eroded. However, it would be incorrect to claim that member states have lost all autonomy in their application of the general principles regulating asylum. Each state enjoys relatively large freedom of interpretation in the definition of examination and application criteria for asylum requests. Thus national sovereignty is not entirely replaced by the European framework.

Asylum policy in Belgium has evolved considerably over the last 15 years. Asylum procedure was modified several times between 1987 and 2000. The decisions made by Belgium were often influenced by European constraints and by the European debate on asylum and refugees. The 1987 Belgian initiative concerning the imposition of sanctions on transporters who bring asylum candidates without papers onto Belgian territory, for example, preceded by a few weeks a decision by the European ministers charged with immigration affairs. Similar decisions were made in several European countries at about the same time. Belgium could not hesitate to follow the direction of its European partners. Such was also

the case for the provisions of 1991, 1993 and 1996. These texts reflect some common concerns of EU-member states. They also take up provisions introduced in previous legislation of other European states.

Between 1988 and 1999 more than 180,000 people applied for asylum in Belgium. In 2000 only a little more than 42,000 asylum applications were introduced. In the end, the rate of acceptance as refugee as defined by the Geneva Convention rarely exceeded 5-10 % of the total of the applications. Those who are definitely not recognised as refugee must in theory leave the country. Those whose application is not even taken into consideration are deprived of their liberty in "closed detention centres" in which they wait for repatriation.

During the 1980's and the 1990's the procedure of examination of these applications was very slow. It has been a major concern for Belgian policy makers and asylum seekers themselves. They have often to wait for more than 2 years, sometimes up to 7 years for the decision on their application. In most cases it is rejected. During that period, they now receive material aid instead of financial support, as was the case before 2000 and they are not entitled to work during the admission phase. The length of the procedure is a dramatic problem since it leads to the expulsion of people who had more than enough time to integrate in the Belgian social fabric. Many other dismissed applicants opt for the clandestine life and become undocumented. There have been discussions within the government to reform completely the procedure but so far no agreement has been reached as to how to deal with this complex issue that divides the government.

1.3. Illegal migration

As in other countries, there are endless discussions between specialists about the vocabulary to be used in order to describe accurately phenomena related to migration. But the general public does not seem to differentiate between illegal, clandestine, undocumented and often also asylum-seekers. This is not the place to discuss the important issues of categories. It nevertheless seems clear that people enter Belgium illegally, that some people work clandestinely in the country and that others overstay after their legal document has expired. Unfortunately nobody has a clear figure of this very versatile reality, which is not new at all.

Furthermore, Belgium is also a country of passage for migrants who want to reach the United Kingdom and from there, North America. Migrants' smugglers operate by boat on the Belgian coast. They help migrants cross the North Sea in return for huge sums of money. Other migrants are offered a passage on board one of the thousands of commercial lorries that cross the channel every month. Last year, the tragic death of 58 young Chinese people in a refrigerated truck bound for Dover, England revealed probably just the tip of an iceberg. Policing this traffic is not an easy task. It implies cooperation with neighbouring states, some are part of the Schengen agreement and some are not. This cooperation is far from always being harmonious.

At the end of the year 2000, the Belgian government also launched a large campaign of regularisation of undocumented migrants (called '*sans-papiers*' in French) for the second time since 1974. After the tragic story of Semira Adamu, a young Nigerian dismissed asylum-seeker who died by suffocation during her deportation by the Belgian Federal Police, NGO's mobilised for amnesty and supported the self-organisation of undocumented migrants themselves who occupied churches and even universities. After months of discussion and political negotiations, a law on the regularisation of aliens present on the territory before 1 October 1999 was passed on 22 December. In order to be regularised, the applicants were required to fulfill one the 4 following conditions: having been engaged in the asylum procedure for an abnormally long period without having been informed about the decision on

their case (4 years in general, 3 years for families with minor children); not having the objective possibility to return to one's country due to war, for example; suffering a serious illness; having lived for at least 6 years in the country without having received any official notification to leave the country during the last 5 years. This last category of potential applicants is supposed to be integrated into Belgian society.

More than 36,000 applications were submitted during the period of 3 weeks dedicated to the first phase of the regularization campaign. The applications concerned in fact more than 50,000 people from 140 nationalities among which the Congolese and the Moroccans were the largest groups. There is also reason to believe that the regularisation campaign did not reach all undocumented migrants living in the country. Firstly, some of them could not fulfill the conditions established by the law. Secondly, some of them did not really trust the whole process and feared expulsion in case of an application. This one off campaign has not been completed yet. More than two years after having submitted their application, some people are still waiting for a final decision.

1.4. Trafficking and smuggling

The Commission of the Interior organised hearings on immigration in 1999 and 2000. One of the conclusions was the lack of scientific data on human trafficking and smuggling. The Commission decided to create a sub-commission to work on these issues as well as on the issues of prostitution. The aim of the sub-commission was to check if existing legislation was sufficient to tackle trafficking, smuggling and prostitution and to examine the implementation of the legislation by the police.

1.5. Integration policy

Simultaneously facing a migration situation and a post migration situation, Belgium has to design integration policies for newcomers as well as integration policies for the second and third generation. Integration policies developed quite late because, until the eighties, there was a hidden consensus on the provisional character of immigration: both the migrants themselves and the host institutions seemed to consider immigration simply as a temporary adjunction of labour force.

Most issues linked to integration (education, health, housing, partly employment) are dealt with either by the communities or by the region, i.e. the federated entities of the Belgian state (see also Chapter 2). Therefore, there is no Belgian model of integration. Historically, different approaches developed in the North and in the South of the country. To put it very superficially, Flanders' approach was for a long time inspired by the Dutch multicultural model whereas Wallonia was more attracted by the French republican model. Declared multicultural policies were designed in Flanders whereas the Walloon government opted for general anti-exclusion policies. Things started to change in the mid-nineties. Wallonia slowly opened up to issues linked to cultural diversity whereas Flanders, like the Netherlands, gave more weight to social and economic considerations in its integration policies. It remains that integration policies are often different in the north and the south of the country. Even the vocabulary used in legislation is often not the same at all. The region of Brussels, a crossroads between Belgian national groups, newcomers and "old" migrants, is trying to develop its own approach by combining elements from the available models.

At the federal level, access to citizenship has been seen as a means to stimulate integration. Belgian nationality law changed several times in the past 15 years. The most recent change took place in March 2000. The new nationality law presents three main novelties. Firstly, the acquisition of Belgian citizenship by a simple declaration is now open to foreigners who have legally resided in Belgium for 7 years with an unrestricted permit. Secondly, access to

naturalization is made easier. Three years of legal residence for foreigners and 2 years for refugees are required to apply for naturalisation. The procedure is free. Thirdly, the notion of willingness to integrate has been suppressed as a basic condition to be granted naturalization. It is fair to say that Belgium has some of the most liberal legislation on nationality in the European Union. However, the implementation of the law is highly problematic. It seems that the administration often privileges a very restrictive interpretation of this liberal legislation with the result of creating a growing backlog of applications.

1.6. The European level

Immigration policy, whether it deals with the regulation of migratory flows or with policies of integration of immigrants, is traditionally an exclusive right of nation-states. However, since the signing of the Treaty of Rome, the European construction has had an increasing influence on certain aspects of the migratory policies of the member States of the Union. While the latter try to keep control over these policies, the process of suppressing national boundaries within the European space and the free circulation of European citizens have produced a European convergence of national immigration legislation, which deals more with the control of migratory flows than with integration policies. The member states of the Union are no longer free to decide on their own which immigration policy to implement. In the field of integration, their margin of autonomy remains wider.

Chapter 2: The stakeholders

2.1. Introduction

A migration policy is a multi-faceted policy. It involves labour migration, asylum, (forced) return, regularisation, integration and policies targeting illegal migration, human trafficking, smuggling, etc. Belgium is a federal state (see below) where the competencies related to migration policy in general are divided among different departments of the federal state and among the federal state and the Communities and the Regions. The decision-making powers are no longer exclusively the federal government and federal parliament. The country is run by various bodies, which fulfil their assigned responsibilities autonomously. Apart from the government bodies, different (national and international) non governmental organisations are active in the field of advocacy, lobbying, protection of the rights of migrant communities, etc. A third group of organisations in the debate are international governmental organisations such as IOM, which collaborate with the government in the execution of the migration policy.

2.2. Governmental departments

Belgium has neither a single government body responsible for all migration related issues, like a ministry of migration, nor an efficient institutionalised consultation on migration. Entry policy is a competence of the ministry of the interior, social integration and housing or sheltering of asylum seekers is a responsibility of the ministry of Social Integration, labour policy is a competence of the federal ministry of labour, the implementation of the labour policy is a responsibility of the governments of regional level, integration is a competence on the level of the Communities.

At the federal level, the *Inter-ministerial Conference for Immigrants' Policy* aims at organising the dialogue between the various departments (federal, regional, and communitarian) in charge of migration and integration in order to ensure the coherence of the policies decided at the various levels of the federal state. The Prime Minister chairs it and the secretariat is the Centre for Equal Opportunities and Opposition to Racism. The present government has called the Conference only once to deal with integration issues. This interesting tool has been underused despite its enormous potential.

2.2.1. Federal competence

Ministry of the Interior:

The Ministry of the Interior hosts different asylum authorities: the Aliens Office (AO), the Commissioner General for Refugees and Stateless people (CGRS) and Permanent Commission of Appeal for Refugees (PCA).

○ *Aliens office*

The Aliens Office is a department of the Ministry of the Interior. The service employs about 1400 people, in the central administration in Brussels and in the closed asylum centres. The A.O. controls access to the territory, the residence, the settlement and the removal of aliens in general.

The main tasks of the Aliens Office, in relation to migration policy is five-fold:

- Manage migration flows to be able to make a rapid distinction between real and bogus applicants
- Adapt the legislation to the administration of (the) European law
- Modernise the Aliens Office and rationalise the processes

- Ensure a repatriation policy taking into account the inevitable regularity of forced repatriation, whereas voluntary return is promoted
- Boost the struggle against human traffickers in collaboration with other services involved.

The Aliens Office is also the first step in the asylum procedure. The A.O. registers the application of asylum seekers and examines its accessibility.

- *Commissioner General for refugees and stateless people*

The Commissioner General for refugees and stateless people is the next stage of the asylum procedure. The CGRS is an independent authority. The files of the asylum applicants which are accessible are studied more thoroughly and the status of refugee is granted or refused. The Commissioner General can also revoke the status of refugee and delivers documents (Registry Office) to people with the status of refugee.

- *Permanent Commission of Appeal for Refugees*

The Permanent Commission of Appeal for Refugees is an administrative court where failed asylum applicants can lodge an appeal against the decision refusing recognition as a refugee. The Permanent Commission of Appeal consists of two chambers, a Dutch chamber and a French chamber. The appeal leads either to a confirmation of the Commissioner General's decision, or recognition as a refugee.

- *Contact Point*

Recently, another service was created within the ministry of Interior: The Belgian Contact Point of the European Migration Network. The main task of the contact point will be the collection and distribution of data on migration.

Ministry of Social Integration:

- *Fedasil: Federal Agency for the Reception of Asylum seekers: responsible for housing / shelter*

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 (law of 16 February 2001). The agency is responsible for the humane reception of asylum seekers in Belgium. The reception of asylum seekers must be organised efficiently so as to respond in a flexible way to the arrival of newcomers. The agency also stands for the quality of the reception.

The reception network counts 13,000 reception places. The organisation and management of this number of places requires a central co-ordination. The reception policy relies to a large extent on co-operation between government bodies, NGO's and non-public partners. The partners are the Red Cross, OCIV, Cire, The PCSWs and non-public partners.

- *Centre for Voluntary Return and Development*

Migration, and more especially the asylum policy are permanently monitored by different NGO's like OCIV and CIRE (see below). In some of the policy measures the influence of these organisations is direct. In 2002 e.g. the *Centre for Voluntary Return and Development* was established, an organisation where the government participates with NGO's (like OCIV and CIRE) and international Governmental Organisations (IOM). The goal of the centre is twofold. On one hand, the goal is to give material and psychological support to rejected asylum seekers and to foreigners residing illegally in the country. Additionally, the centre will investigate the possibilities for individual returnees, to instigate development-related initiatives to assure that the return goes hand in hand with family and local development of the region of origin.

- *Local Level: Public Centres for Social Welfare (PCSW)*

A number of local administrations (PCSW) also offers a relief facility for asylum seekers. An asylum seeker can be assigned to a PCSW. To guarantee a harmonious spreading of the asylum seekers across municipalities, the *Distribution Plan* was developed. Each municipality must accept a number (fixed by law) of asylum seekers on its territory.

Ministry of Foreign Affairs:

- *Visa section*

Requests for information about access procedures and any visa requirements for aliens 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.

- *Secretary of State for development co-operation*

The government realised that large scale international migration can be considered a problem. New arrivals, as well as the problems sending people back to their countries of origin, lead to the decision to commission the secretary of State for Development Co-operation to elaborate a policy linking migration and development. One of the cornerstones of the concept of sustainable development is *partnership*. The role migrant communities can play in the development policies is studied.

Contact: The cabinet of the secretary of state.

- *Directorate General Development Co-operation*

The secretary of state is responsible for development policy. Directorate General Development Co-operation stands for the implementation of that policy. In early 2002 a new program was established within this administration: the program *Migration and Development*. The goal of this programme is to use the knowledge and expertise of foreigners residing in Belgium, in development initiatives in their country of origin.

Ministry of Labour:

On 27 February 2003 the Royal Decree of 6 February 2003, changing the Royal Decree of 9 June 1999 on the implementation of the Law of 30 April 1999 on the employment of foreign labourers was published in the Belgian Official Gazette. This new regulation will come into force on the first of April 2003. The legislation is a competence of the federal ministry of labour. The federal ministry draws up the framework. The implementation of the legislation is to a large extent the competence of the regions (see below).

The change in the legislation did not come out of the blue. First, the different labour departments on the Regional Level (Flanders, Wallonia and Brussels), already mentioned that the legal framework could be improved by adapting it to the problems they were facing while implementing the policy. Secondly, some companies, through the sectors and employers organisations, pleaded to re-open the borders for (high skilled) labour migration. The spirit of this demand can be found back in the new law (e.g. more flexibility for the highly skilled). This issue was discussed at different levels like the Senate (see above) and the National Labour Council. In the National Labour Council, Employers Organisations as well as Trade Unions are represented. The National Labour Council formulated advice (1,400). Interviews with some of the stakeholders (Lamberst & Wets, 2002) revealed that the advice was considered as a workable alternative, for the time being. Generally, a European Guideline was expected, imposing general deregulation and thus the need for the Belgian government (and social partners) to re-elaborate legislation on the employment of foreign workers in the country.

Centre for Equal Opportunities and Opposition to Racism:

The Centre for Equal Opportunities and Opposition to Racism is an Autonomous Public Service, established by an Act of Parliament on 15 February 1993, born of the political will of Parliament and the Government in response to proposals by the Royal Commission for Immigrant Policy and the emergence of extremist movements in Belgium.

Its principal Tasks are:

- Fighting Racism and Discrimination
- Spotlight on Integration Policy
- Foreigners' Rights and Recent Immigration
- Fighting Poverty
- Fighting Human Trafficking
- Training + Documentation + Information Campaigns

A Decree of the Council of Ministers of 17 March 2000 based on Article 13 of the Treaty of Amsterdam gives the Centre wider-ranging tasks and powers to fight discrimination on the grounds of gender, sexual preference, birth, civil status, ill health, age, disability, etc.

The Centre implements specific initiatives of a preventive, repressive and educational nature.

The Centre offers advice and recommendations to the authorities:

- proposed amendments to the law: 1981 Anti-Racism Act, criminal proceedings against press offences, etc.
- concerning, for instance, intercultural mediation in hospitals after research
- protection of the rights of foreigners and active support for parties requesting regularisation
- proposals concerning naturalisation and the right to vote
- follow-up of non-discrimination policy in education
- guidance in the process of recruiting members of minority groups to the police, etc.

A recent evolution is the creation of a Migration Monitoring Unit in the Centre. The Minister of the Interior had already decided upon the establishment of this service years ago, at the beginning of this legislature. After a long political discussion the government decided to entrust the Centre with this Monitoring function. This service should become active in due time.

2.2.2. Regional competence / competence of the communities

Brussels:

- *Labour Market Policy. Labour cards, work permits, etc.*
Competent authority in the Brussels region (19 municipalities)

- *Health Care:* The Brussels region and the Vlaamse Gemeenschaps Commissie (VGC : the Flemish Community Commission) invest in intercultural mediation in the Brussels region. The non-profit organisation *De Foyer* organises training and employment projects. Foyer vzw - Onthaalcentrum voor Migranten (Dutch)

- *Health Care:* Intercultural mediation and a interpreter service is developed in the health sector in the Brussels Region. There is a need for this in hospitals, nurseries and social services which take care of the ill and refugees who experience difficulties with the French language, as well as in the sector of mental assistance (geestelijke gezondheidszorg).

Flanders:

Policy in Flanders: Ministry of the Flemish Community (Region). Different departments. Take part in the legislative activities concerning migration. In the middle of the nineties, the Flemish Government realized that migration and ipso facto, the presence of newcomers, is a fact. In July 1996 the strategic plan for the Flemish minority Policy was adopted. In this plan, the importance of a reception policy for newcomers was recognised.

The institutional framework of the implementation of the minority policy is defined by the decree (law) of 28 of April 1998 concerning Flemish policy towards ethnic-cultural minorities (the Belgian Official Gazette 19.06.98). The decree defines that there are three partners in the execution of the minority policy: the government and the involved policy sectors, the so-called "categorical" sector and the target groups.

"Citizen-ation" -policy ("Inburgeringsbeleid") Policy for newcomers aiming to become a citizen.

The Flemish government decided to "Citizen-ate" foreigners. This policy will be founded on three pillars: (1) learning of the language, (2) become acquainted with democratic values, including cultural components and (3) integration into the labour market. The methodology used is route-counselling, whereby long-term foreign residents can also make use of these services. The Flemish Community ensures the quality of the policy; the local authorities (municipalities) are responsible for the implementation of this policy.

Labour Market Policy. Labour cards, work permits, etc.

The implementation of employment policy, including the issue of work permits and labour cards. In the Flemish region, the migration section (cel migratie) is a part of the migration division and labour market policy of the Administration Employment (Werkgelegenheid). The migration section is divided into one central and three regional services:

Centraal Bestuur Cel Migratie - Provincie Vlaams Brabant
Provincies Oost- en West-Vlaanderen
Provincies Antwerpen en Limburg

Wallonia / French speaking community / German speaking community:

- *Labour Market Policy. Labour cards, work permits, etc.*

Ministère de la Région wallonne, Direction générale de l'économie et de l'emploi
Ministerium der Deutschsprachigen Gemeinschaft, Abteilung Ausbildung

2.3. Non governmental organisations

2.3.1. Mixed initiatives

Regional Centres for Integration (Brussels and Wallonia)
Bruxelles: Centre Bruxellois d'Action Interculturelle, CBAI

Following the transfer of competences 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 NGO's. The Decree on the integration of foreigners and citizens with foreign origins instituted 7 regional centres for the integration whose mission is to develop at the local level the regional integration policies. These centres are legally non-profit organisations.

- CERAIC Centre Régional d'Action Interculturelle du Centre (La Louvière)
- CRIC Centre Régional d'Intégration de Charleroi
- CRIPEL: Centre Régional pour l'Intégration des Personnes Etrangères ou d'origine étrangère de Liège
- CIMB: Centre Interculturel de Mons et du Borinage
- CAI: Centre d'Action Interculturelle de la province de Namur
- CRVI: Centre Régional de Verviers pour l'Intégration des personnes étrangères et d'origine étrangère
- CRIBW (Brabant Wallon)

These 7 centres are part of a federation called FECRI (Fédération des Centres Régionaux d'Intégration). Its aim is to promote the coherence between the actions of the 7 centres.

Besides, following an initiative of the Walloon Minister of Social Integration, a new organisation was created in 2002 called *Carrefour Interculturel Wallon* under the legal form of a non-profit organisation. The *Carrefour Interculturel Wallon* has four objectives: a) The promotion of dialogue between the various local and regional stakeholders, public and private in order to ensure a better transversality of the public policies in the field of integration; b) The valorisation of intercultural initiatives at the sub-regional, regional and international level; c) The construction of policy evaluation tools; d) A wide diffusion of information about integration. It is far too early to say anything about the results of this new organisation.

2.3.2. National Non Governmental Organisations

Many NGO's are active in helping asylum seekers, refugees, undocumented migrants, etc. Some of them are listed below:

- *Steunpunt Mensen Zonder Papieren vzw* (Dutch)

Medical network for undocumented migrants in the Brussels-Capital Region.

- *OCIV-CIRE*

OCIV ("Overlegcentrum voor de Integratie van Vluchtelingen") 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 certain member organisations (Caritas International Aid, Social Service of the Socialist Solidarity, ...), OCIV and CIRE offer a relief capacity of several hundred beds in private houses, spread over the whole country. The main goals of OCIV are to guard the asylum procedure; promote relief and (re)integration of asylum seekers, refugees and people who are not recognised as a refugee. OCIV works through individual support as well as through advocacy and lobbying to change regional, federal and European legislation.

CIRE is a federation of NGO's which promotes the rights of refugees and foreigners in Belgium. The main services of CIRE are raising awareness, housing, employment, interpreting, assisting voluntary return and assisting initiatives of returnees in the countries of origin.

- *Vlaams Minderhedencentrum (VMC) Flemish Minorities Centre*

The main tasks of the centre are the reception of newcomers, offering aid and assistance to illegal residents. The centre also supports the integration sector to integrate migrants, asylum seekers in the admission phase, recognised refugees people in the process of family reunion, labour migrants and undocumented migrants to integrate into Flemish society.

- *Centre National de Coopération au Développement (CNCD)*
- *Ligue des droits de l'homme/ liga voor de mensenrechten*
The general goal of the *Human Rights League* is to fight against injustice and struggle against any arbitrary attack on the rights of an individual or society.
- *Mrax: Mouvement contre le racisme et la xénophobie*
One of the activities of MRAX is helping immigrants

2.3.3. International Non Governmental Organisations

- *Red Cross (Rode Kruis Vlaanderen) / Croix Rouge de Belgique, Communauté Francophone.*
The goals of the Red Cross activities is fourfold. First, the reception of asylum seekers. The Red Cross gives shelter and information on the asylum procedure. The second goal is integration. The asylum seekers are made familiar with Belgian society, language classes are organised and the asylum seekers are assisted in their efforts to find a job. The third and the fourth goal are psychological and medical assistance respectively.

2.4. Others

2.4.1. International Governmental organisations

IOM: Just as in many other countries, IOM is active in Belgium. IOM mainly assists returnees and transmigrants to reach their destination.

2.4.2. Social Partners

Employers' organisations:

Recently, the employers' organisations also participated in the migration debate. Shortage on the labour market inspired some federations and umbrella organisations to re-open the debate on Labour Migration. Given the current situation of the economy, and the expected prospects, their voices are less and less listened to, although some sectors struggle with structural shortages of manpower.

Trade unions:

As soon as the employers' organisations proclaimed their ideas on the re-opening of the Belgian labour market to foreign workers, there was a reaction from the trade unions. Both parties met each other in the National Labour Council, where a compromise was formulated (recommended 1,400).

2.5. Process of stakeholder involvement

On different levels, we can witness an involvement of different stakeholders, in the development of legislation as well as in the implementation of this legislation. Examples can be found in different areas such as labour migration, the regularisation campaign and return policy.

The desire of employers' organisations to reopen the labour market e.g. has forced many organisations like trade unions and political parties, to reflect on the issue of labour migration and to formulate a position.

Another example of stakeholder involvement is the *Centre for Voluntary Return and development* (See chapter 2 point 2.1.2). In this centre, governmental bodies (different departments), non-governmental organisations and an international Governmental Organisation collaborate.

Furthermore, ongoing research being carried out by CEDEM-ULG, GERME-ULB and KUL, and financed by the Federal Scientific Authorities of Belgium (SSTC-DWTC) should be mentioned since it deals in part with the issue of the involvement of the various stakeholders in immigration policy. Following a framework of inquiry suggested by UNESCO-MOST, the aim of the research is to evaluate the impact of research on migration on public policies in the area. Three main questions need to be raised:

- To what extent has policy design in the field of migration rested on the results of scientific research? In other words, have policy-makers been inspired by research in the area of migration to elaborate public policies and how (policy-making)?
- What has been the role of researchers in the implementation of policies in the field of migration (policy-implementation)?
- How to improve the reciprocal knowledge utilization between academia, policy-makers and stakeholders? In other words, how to improve the interactions between these three worlds in order to improve the quality of research, the quality of public policies and more generally to stimulate social change towards more well-being?

The results of the study will be known in early 2004.

Chapter 3: European legislative proposals

3.1. The division of labour in Belgium

Belgium is a federal state. Competences are divided among the federal state and the Communities and the Regions². The decision-making powers are no longer exclusively the federal government and federal parliament. The country is run by various bodies which discharge their allotted duties autonomously.

The federal state remains responsible for managing everything that affects the interest of all Belgians, independently of any linguistic, cultural or territorial considerations: for instance, foreign affairs, national defence, justice, finance, social security and a major share of public health and domestic affairs. Migration policy (visa policy, asylum policy, etc.) is also to a large extent a federal responsibility. It is also the federal state that assumes all the responsibilities that Belgium and its federated entities have vis-à-vis the European Union. The adaptation of Belgian legislation to European standards belongs to federal competence.

The Communities are competent to deal with matters relating to the people composing them, such as language, culture and education. The Communities are responsible for e.g. integration policy.

The Regions are competent to deal with territorial matters such as town planning, the environment and employment. The distribution of labour cards and permits is a Regional competence.

3.2. Legal admission in Belgium

The decision taken in 1974 not to recruit any new migrant workers did not put an end to migration flows towards Belgium. Even though the immigrant defined as a person who is entitled to live and work permanently in Belgium and eventually to become a citizen is not typical of the Belgian migration experience, there are legal gates for admission to the country, first temporarily and later, permanently. Leaving tourists aside, 5 main patterns of legal migration characterize the post-1974 era.

1. **The mobility of EU citizens** is the first source of legal admission. Under EU law, EU citizens' mobility within the member-states is facilitated and even promoted. In public discourse, the issue of the free movement of EU citizens and the issues of immigration are increasingly separated, the latter being reserved for non-EU migrants. In any case, the number of French and Dutch citizens who have decided to work and live in Belgium has constantly increased over the last ten years.
2. **Family reunion** is a second significant pattern of migration (see below point 4)
3. Belgium grants yearly temporary residence permits to **foreign students (see below)**.
4. Fourthly, **asylum applications** are another important channel of legal admission in Belgium.
5. Finally, **specific categories of foreign workers** each year receive the right to come and work in the country (see below).

² Belgium is made up of three Communities (the Flemish Community, the French Community and the German-speaking Community), and three Regions (the Flemish Region, the Brussels-Capital Region and the Walloon Region).

3.3. Admission for economic purposes

In order to be able to work in Belgium, foreign workers must have a valid work permit. This condition does not apply to nationals of one of the member states of the European Economic Area (i.e. EU member states plus Iceland, Norway and Liechtenstein) and for certain categories of workers.

These specific clauses for foreign workers also concern Belgian employers. In order to put to work a foreign worker (unless the latter already has a work permit A), employers will have to apply for an employment authorisation and a work permit B. Such an employment authorisation will enable the worker to apply for a visa.

3.3.1. Visa

All non-EU member state nationals, save the nationals of Iceland, Monaco, Norway, Liechtenstein and Switzerland, intending to exceed a 3 months stay in Belgium will need a visa. They are required to make a prior and express application for a visa and will be issued a particular type of visa: the Schengen Type D Visa. This application will have to be submitted to the Belgian diplomatic or consular authorities of the applicant's place of residence.

A foreigner coming to Belgium with the intention of working here will need a travel document (passport) with a validity of at least one year, a recent certificate of good conduct covering the last five years, a medical certificate by a recognised physician and an employment authorisation. This employment authorisation has to be applied for by a Belgium-based employer and has to be issued together with a work permit B. The application must be submitted in due time in order to enable the Aliens' Office to make the investigations which it deems suitable.

3.3.2. Paid employment

Aliens wishing to come to Belgium for employment purposes must submit an application for a Type D visa to the Belgian diplomatic or consular authorities competent for their place of residence. To this effect, the aliens must provide, inter alia, the following documents:

- a work permit
- a recent certificate of good conduct covering the last five years
- a medical certificate

Work permits must be sought by Belgium-based employers, or their representatives, from the sub-regional employment service which covers the employer's place of business (VDAB, FOREM or ORBEM).

Apart from exceptional cases (for example, highly qualified personnel, management executives, researchers, trainees, au pairs, etc), work permits are issued only when there are not enough workers available on the labour market for the sector in question or for the specialisation concerned, and in the case of workers who are nationals of countries linked to Belgium by international agreements or Conventions on the employment of workers.

Further information about work permits may be obtained from:

- Ministry of the Flemish Community, Employment Administration
- Ministry of the Brussels-Capital Region, Economy and Employment Administration
- Ministry of the Walloon Region, Directorate-General for the Economy and Employment

Certain categories of workers (like journalists) do not require work permits. Information about this matter may be obtained in Belgium from the addresses listed in the appendix or from the competent Belgian diplomatic or consular authorities abroad.

Individuals planning to make a significant level of investment in Belgium may be entitled to a preferential system. Further information in this regard is available from the Federal Public Service of Foreign Affairs, the Federal Public Service of the Economy, Small and Medium-Sized Businesses, the Self-Employed and Energy, or the diplomatic or consular authorities of the district where the applicant resides.

3.3.3. Self-employed persons

Aliens (with the exception of nationals of the EEA, Switzerland and certain countries in Central and Eastern Europe: Poland, Romania, Bulgaria, Slovakia, the Czech Republic, Estonia, Latvia and Lithuania) wishing to establish a business in Belgium on a self-employed basis must be in possession of a professional card, authorising the exercise of a self-employed activity, issued by the Federal Public Service of the Economy, Small and Medium-Sized Businesses, the Self-Employed and Energy.

This document must be applied for at the same time as the Type D visa from the diplomatic or consular authorities in the district where the interested party resides. Further information about this matter may be obtained from the Federal Public Service of Foreign Affairs or the diplomatic or consular authorities in the district where the party resides.

For the professional card, contact should be made with:
Federal Public Service of the Economy, Small and Medium-Sized Businesses
Self-Employed and Energy

3.3.4. Persons wishing to become established in Belgium without taking up an economic activity

Aliens wishing to settle in Belgium without taking up an economic activity may seek a Type D visa from the diplomatic or consular authorities in the district where they reside. To substantiate the application, they are required to provide evidence that they have sufficient means of support and a health insurance. When deciding whether to issue a visa, the Aliens' Office will consider applications on a case-by-case basis.

For further information on this matter, interested parties may contact the Federal Public Service of Foreign Affairs or the diplomatic or consular authorities in the district where they reside.

3.3.5. Asylum seekers and refugees

Asylum seekers are allowed to work in Belgium if certain conditions are met. The right to work is only granted when the Aliens Office has declared their application admissible. Then paid work is allowed under the condition that the asylum applicant has obtained a *Temporary Permit of Employment*. This temporary permit can only be obtained by an employer who wants to hire the asylum seeker. Temporary Permits are valid for one year and renewable, provided the asylum seeker is still in the asylum procedure. The permit expires automatically from the moment the asylum application has been turned down and the applicant has to leave the country.

Recognised *refugees* do not need a work permit.

3.4. Family reunification³

3.4.1. General information

In Belgian legislation, the right to family reunification is based on the Law of 15 December 1980 related to the access to the territory, the stay, the settlement and the removal of foreigners, and on the Royal Decree of 8 October 1981 related to the access to the territory, the stay, the settlement and the removal of foreigners. In international law, it is based in particular on bilateral agreements with the countries of origins of foreign workers: Morocco (17th February 1964), Turkey (16 July 1964), Tunisia (7 August 1969), Algeria (8 January 1970) and Yugoslavia (23 July 1970).

According to Belgian law, the family members of a third-country national (residing lawfully in Belgium) eligible for family reunification are: the spouse of the sponsor and the children of the sponsor or of his/her spouse⁴. Several conditions are requested. Firstly, both the sponsor and the spouse must be at least 18 years old. This condition meets the provision of the Directive (Art.4.5). Secondly, the children must be minor (less than 18 years) and in the custody of at least one of the spouse(s). Thirdly, sponsor, spouse and children must live together⁵.

Special dispensation is allowed for handicapped children who can benefit from family reunification even if s/he is not a minor⁶. It also meets the Directive provision as notified in Article 4.3.

Moreover, the bilateral agreements concluded with Morocco, Tunisia and Algeria allow family reunification for children older than 18 because they refer to the age of majority as it is in the child's national law. For example, in Tunisia, the age of majority is 20 for both boys and girls, whereas in Algeria it is 18 for girls and 21 for boys. Furthermore, the age of the spouse is also considered in a different way in the bilateral agreements (referring to the age of puberty in the spouse's national law)⁷. Thus, a spouse coming from Turkey, Morocco or Tunisia can join his/her sponsor even if s/he is not 18 yet.

Belgian law has two limitations to family reunification⁸. Firstly, a chain of family reunification is prohibited. It means that a spouse who has benefited from family reunification cannot be a new sponsor. This limitation is not implemented in the bilateral agreements and for the foreign students. Secondly, family reunification cannot be spread out. Family members have

³ This section is principally based on the following sources: the amended proposal for a Council Directive on the right to family reunification, 6216/03-LIMITE-MIGR 10; the Council Directive on the right to family reunification, 6912/03-LIMITE-MIGR 16; Belgian legislation, in particular the law of 15 December 1980 related to the access to the territory, the stay, the settlement and the removal of foreigners; the Belgian bilateral agreements with Morocco, Turkey, Tunisia, Algeria and Yugoslavia; NAYER A. (1991), *Introduction aux statuts de l'étranger*. Bruxelles, E. Story-Scientia ; NYS M. (2002), *L'immigration familiale à l'épreuve du droit. Le droit de l'étranger à mener une vie familiale normale*. Bruxelles, Bruylant.

⁴ Law of 15 December 1980, Art. 10.4

⁵ Ibidem Art. 10.4

⁶ Law of 15 December 1980, Art. 10bis.2

⁷ In Turkey, the age of marriage is 15 for girls and 17 for boys. In Morocco, it is 15 for girls and 18 for boys. In Tunisia, it is 17 for girls and 20 for boys. (NYS:293).

⁸ The Law of 28 June 1984 modifies article 10.4 of the Law of 15 December 1980.

to join the sponsor during the current civil year and before the end of the following year. Afterwards, other family members are not allowed to come, except in case of a special permission.

Family reunification of ascendants of third country nationals is not authorised except in the case of the bilateral agreement with Turkey which permits family reunification for ascendants, provided that they are dependent on the sponsor. Even in this case, it is not an automatic right because it requires an authorisation delivered under special circumstances. Moreover, the family reunification of ascendants dependent on a third-country national who is the spouse of a Belgian national is allowed by national law⁹.

The bilateral agreement with Morocco is also more favourable than the Directive in the way that it permits the family reunification of minors (and not specifically minor children) dependent on a Moroccan worker (the sponsor). It means that sisters, brothers or nieces and nephews, for example, are allowed to join the sponsor.

Belgian law authorises only the reunification of married persons. Nevertheless, there is a note which could allow the stay of a non-married partner¹⁰.

Concerning the family members authorised to family reunification, Belgian legislation matches completely the provisions of Article 4 of the Directive and seems even more favourable in certain cases. However, the two limitations (prohibition of a chain of family reunification and of spreading out family reunification) could be contrary to the Directive which apparently neither prevents chain nor spreading out of family reunification.

Regarding resources requirements, Belgian law is considerably more favourable than Article 7.1 of the Directive. Indeed, applications for family reunification are not submitted to any condition of resources like accommodation, sickness insurance or stable resources regarding Belgian law unless the reunification concerns handicapped children¹¹ or the sponsor is a student¹². Then, the sponsor must have suitable accommodation and means of subsistence. In addition, the bilateral agreements with Morocco, Turkey, Tunisia, Algeria and Yugoslavia set a condition of suitable accommodation¹³.

Regarding the waiting periods mentioned in Article 8 of the Directive, Belgian law does not require the sponsor to have stayed legally on the territory for a determined period before having family reunification right. The sponsor must have had a residence permit for more than 3 months. Nevertheless, for foreign workers depending on bilateral agreements, a work period of one month (Turkey) to three months (Morocco, Tunisia, Algeria and Yugoslavia) is requested before applying for family reunification¹⁴. Apart from this, national law is in conformity with the Directive.

⁹ Law of 15 December 1980, Art. 40.6

¹⁰ Note (« Circulaire ») of 30 September 1997 related to the granting of a residence authorisation on the basis of living together in a stable long-term relationship.

¹¹ Law of 15 December 1980, art. 10bis, §2

¹² Law of 15 December 1980, art. 10bis, §1

¹³ Agreement with Morocco, art. 13, agreement with Turkey, art. 11, agreement with Tunisia, art. XIII, agreement with Algeria, art. 14 and agreement with Yugoslavia, art. 14.

¹⁴ Ibidem

Concerning the conditions of residence as described in Article 14 of the Directive, access to education (a) and access to employment (b) are allowed. Actually, the right to education is written in the Belgian Constitution¹⁵. Moreover, access to education is free for every minor independently of his/her nationality and even of the legality of his/her stay¹⁶. The right of access to employment is also recognised. The family members of the sponsor have the right to employment¹⁷ and to self-employed activity¹⁸. However, the provision of Article 14, (c) relating to access to vocational guidance, initial and further training and retraining should be transposed properly in Belgian legislation.

Spouse and children are admitted for stay without limit not later than one year and three months after their arrival¹⁹. Belgian law is more favourable than the provision of the Directive allowing a maximum of 5 years delay to grant an autonomous resident permit. However, regarding §3 of Article 15 relating to the grant of an autonomous residence permit in the event of particularly difficult circumstances such as widowhood, divorce, separation or death, Belgian law seems to miss provisions.

Due to several bilateral agreements, Belgium has adopted already more favorable provisions than those of the Directive. Nevertheless, it is important to remember that those agreements concern foreign workers. The standstill clause as described in Article 3 could be considered realistic for Belgium and should be respected by the Belgian government.

Regarding the deadline clause (Article 19), it is more difficult to evaluate whether or not it is realistic. However, it is difficult to imagine that two years after the transposition of the Directive in national law, Belgium or even any other Member State will easily manage to negotiate again its provisions on family members, resources or waiting periods. While this report was being drafted, the Council finally decided to adopt the Directive. Unfortunately, this first legal instrument adopted in the area of legal immigration seems quite restrictive towards the right to family life.

Belgian nationals, nationals of the countries of the European Economic Area (EEA), Swiss nationals and other aliens legally resident in Belgium may bring into Belgium members of their family who are of foreign nationality. Belgian rules feature separate measures for Belgian nationals and nationals of the European Economic Area (or Swiss nationals) or aliens from third countries who are legally resident in Belgium.

3.4.2. Family members of Belgian nationals or of nationals of the European Economic Area (or Swiss nationals)

The following family members are entitled to family reunification:

- the legitimate spouse
- children under 21 or who are dependent
- persons in the ascending line, if they are dependent

¹⁵ art.24, §3

¹⁶ Law of 29 June 1983 on schooling obligation

¹⁷ Law of 30 April 1999 related to the activity of foreign workers

¹⁸ Royal Decree of 9 June 1999, in particular art. 16

¹⁹ Law of 6 August 1993 changing articles 10, 11, 12 and 14 of the law of 15 December 1980.

When subject to the visa requirement owing to their nationality, these persons must apply for a Type D visa from the diplomatic or consular authorities competent for the district where they reside.

A number of documents must be provided to substantiate the application:

- In the case of a visa application submitted by the spouse: a certified copy of the marriage certificate, duly legalised and accompanied by a translation; potentially a recent certificate of good conduct; evidence that the spouse is a legal resident in Belgium.
- In the case of a visa application submitted by the children: a certified true copy of the birth certificate, duly legalised and accompanied by a translation; a declaration by the person with custody of the child authorising the child to go to Belgium; evidence that the parent is a legal resident in Belgium.
- In the case of a visa application submitted by persons in the ascending line: a certified true copy of the birth certificate of the child they are coming to join, duly legalised and accompanied by a translation; evidence that they are dependent (e.g. bank statements); a recent certificate of good conduct; evidence that the child in question is a legal resident in Belgium.

3.4.3. Aliens who are not nationals of the European Economic Area or of Switzerland but are legally resident in Belgium

The family members entitled to family reunification are:

- the spouse, provided both spouses are over 18;
- dependent children under 18.

When subject to the visa requirement owing to their nationality, these persons must apply for a Type D visa from the diplomatic or consular authorities competent for the district where they reside.

A number of documents must be provided to substantiate the application:

- In the case of a visa application submitted by the spouse: a certified true copy of the birth certificate of the applicant, duly legalised and accompanied by a translation; a certified true copy of the marriage certificate, duly legalised and accompanied by a translation; a recent certificate of good conduct; evidence that the spouse is a legal resident in Belgium.
- In the case of a visa application submitted by the children: a certified true copy of the birth certificate, duly legalised and accompanied by a translation; a declaration by the person with custody of the child authorising the child to go to Belgium; evidence that the parent is a legal resident in Belgium.

3.4.4. Adopted children

Children adopted by a person legally resident in Belgium come under a special system insofar as they are subject, owing to their nationality, to the visa (Type D) requirement. Persons interested in obtaining further information about this matter may contact the Federal Public Service of the Interior (Aliens' Office) in Belgium, or the Belgian diplomatic or consular authorities competent for the district where they reside.

3.4.5. Aliens coming to Belgium to live with a partner in a stable relationship

Foreign nationals who have a stable relationship with a person residing legally in Belgium may settle in Belgium with their partner. This provision applies to both heterosexual and homosexual relationships. Interested parties should apply for a Type D visa from the Belgian diplomatic or consular authorities competent for the district where they reside.

The following documents must be provided to substantiate the visa application:

- a copy of the identity card of the partner living in Belgium, or an attestation of residence;
- documents to prove that neither of the two parties is married;
- the birth certificate of the visa applicant;
- evidence of the stability of the relationship;
- evidence that the partner living in Belgium has sufficient means of support;
- a declaration of financial responsibility for the cohabiting partner signed by the partner living in Belgium (contact the municipal authorities);
- a certificate of good conduct;
- a medical certificate.

3.4.6. Aliens coming to Belgium to contract a marriage

A foreign national who plans to marry a foreign person residing legally in Belgium must apply for a Type C visa (known as the 'visa with a view to marriage') from the Belgian diplomatic or consular authorities competent for the district where s/he resides.

The following documents must be provided to substantiate the visa application:

- a medical certificate (drawn up less than 6 months beforehand);
- a recent certificate of good conduct;
- proof that the interested party has sufficient means of support or a declaration of responsibility (contact the municipal authorities);
- a copy of the banns, to be applied for from the municipal authorities (this must have been drawn up by the competent Registrar less than 6 months and 14 days beforehand).

3.5. Long-term residence right

3.5.1. General rules

According to international law, states enjoy a large measure of discretion in deciding of the rules they establish to allow aliens access to their territory and for aliens wishing to reside on their territory. In principle, access to the territory of a state is not authorised to persons not holding the nationality of that State. Any state can decide freely whether or not aliens are authorised to enter its territory, and if so, and can lay down the details governing this.

In many states - like Belgium - there is an important difference between a stay of less than three months and a stay longer than three months. The rules governing these two types of stays are usually different²⁰.

²⁰ The rights for aliens to gain access to, reside in and settle in Belgium can be found in the law of 15 December 1980 and in the Royal Decree of 8 October 1981 on access to the territory, residence, settlement and expulsion of aliens, and by numerous amendments to this law and Royal Decree. The Belgian rules regarding the access and residence of aliens take into account the international commitments entered into by Belgium in the framework of Benelux, Schengen, the European Union and the United Nations.

A long period of residence in Belgium means for the Belgian legislation at least 3 months. The sole Belgian authority competent for matters relating to the access, residence, settlement and expulsion of aliens is the Aliens Office, a department of the Federal Public Service of the Interior.

Nationals of the European Union member states or of Iceland, Liechtenstein, Monaco, Norway and Switzerland may move freely and may stay in Belgium. They only need an identity card or a national passport, and they need to prove that they have sufficient means of support and that they are members of a health scheme. All other aliens who want to stay in Belgium for a period longer than three months require a long-term visa.

There are different gateways to enter Belgium: studies, employment purposes, self-employment, family reunification, cohabitation, adoption and marriage. There are specific procedures for each situation.

All applications for the type of visa needed here should be made to the Belgian diplomatic or consular authorities in (or competent for) the applicant's place of residence. The applications must be submitted in due time to allow the Aliens' Office to conduct an investigation if required.

3.5.2. Aliens coming to Belgium to study

There are possibilities to come to Belgium to *pursue higher education*.

In order to receive authorisation for temporary residence, an individual planning to come to Belgium to study is required to provide the Belgian Embassy or Consulate in his/her country with: a certificate of good conduct, a medical certificate and a lot of other documents such as: application form, enrolment certificates, a proof of having sufficient means of support, etc.

The applicant must be over 21, have a certificate of good conduct and a document certifying that s/he has not been convicted of any criminal act under common law and must have a travel document (e.g. passport) valid for at least one year.

There are also special procedures for *primary and secondary school education*. In that case, the applicant should send an application to the Aliens' Office. Furthermore, there are two conditions to be met. The applicant must, firstly, have family ties with a person who is a legal resident in Belgium. Family ties up to the 3rd degree are accepted, i.e. grandparents, brother, sister, uncle, aunt, cousin. Secondly, the applicant must be unable to pursue the same type of education in his/her own country or in a neighbouring country.

3.5.3. Au pairs

An au pair is a young person (between 18 and 23 years old) boarded temporarily by a host family in exchange of light daily household work. In order to be able to stay as an au pair in Belgium, one needs a valid work permit. This condition does not apply to nationals who are exempt of permit (see above). In order to welcome an au pair in their family, host families have to apply for an employment authorisation and a work permit B. A medical certificate and an employment agreement have to be attached to the application forms. This employment authorisation will enable the au pair to apply for a visa. The visa regulation (see above) also counts for au pairs. If they need a visa, they are required to make a prior and express application for a Schengen type D Visa. A foreigner coming to Belgium as an au pair further needs a travel document (passport) with a validity of at least one year and a recent certificate of good conduct. All applications must be submitted in due time in order to enable the Aliens' Office to make the investigations which it deems suitable. After approval by the competent immigration services (at federal as well as regional level) the work permit is issued to the

host family via the municipal administration of the host family's place of residence, which is thereupon to pass it on to the au pair.

The status of the au pair is regulated by the Law of 30 April, 1999 on the employment of foreign workers (*Moniteur Belge*, 21 May, 1999). And the Royal Decree of 9 June, 1999 implementing the law of 30 April, 1999 on the employment of foreign workers (*Moniteur Belge*, 26 June, 1999).

A number of organisations put host families in contact with au pairs. JINT vzw helps people contact such an organisation. JINT has been created by the Flemish government and it acts as a co-ordinating body for the International Youth Action in Flanders. The addresses of the au pair organisations can be found in the Golden Pages under item n° 7286.

APPENDIX

Contact details of the organisations listed in the report

- *Aliens Office*
Antwerpsesteenweg / Chaussée d'Anvers 59 B
1000 Brussels
Tel: 02/206.13.00
Fax: 02/206.14.55
Internet: <http://www.dofi.fgov.be>
Responsible official: Fr. Roosemont, Director-General

- *Commissioner General for refugees and stateless people*
North Gate I
Koning Albert II-laan / Avenue Albert II 6
1000 BRUSSEL
Tel: 02/205.51.11
Fax: 02/205.51.15
E-mail: info.cgrs@mibz.fgov.be
Responsible official: Pascal Smet, Commissioner General

- *Permanent Commission of Appeal for Refugees*
North Gate II
Koning Albert II-laan / Avenue Albert II 8
1000 Brussels
Tel: 02/205.53.11
Fax: 02/205.53.13

- *Contact Point*
Koningsstraat 66 / Rue Royale 66
1000 Brussels
Tel: 02/500.20.55
Responsible official: Alain Schmitz
- *Federal Public Service Foreign Affairs, Visa section*
Rue des Petits Carmes 15
1000 Brussels
Tel: 02/501.81.11
Fax: 02/501.38.38

- *Directorate General Development Co-operation*
Contact: Mr. Baudouin Gers
DGOS
Brederodestraat 6
1000 Brussels

- *Federal Ministry of Employment and Labour, General Secretariat*
Rue Belliard 51
1040 Bruxelles.
Tel: 02/233 41 11
Fax: 02/233 44 88
E-mail: sg@meta.fgov.be

- *Centre for Equal Opportunities and Opposition to Racism*
Tel: 02/233.06.11
Fax: 02/233.07.04
E-mail: centre@antiracisme.be
Rue de la Loi, 155
1040 Brussels

- *Bevoegde dienst in het Brussels Hoofdstedelijk Gewest (19 gemeenten)*
Het Brussels Hoofdstedelijk Gewest
Bestuur Economie en Werkgelegenheid, dienst Werkbeleid
Kruidentuinlaan 20 (derde verdieping), 1035 Brussel
Tel: 02/204.21.11
Fax: 02/800.38.07
URL: http://www.bruxelles.irisnet.be/nl/1nl_admi/1NL_3ADM/eco/wkbl.htm

- *Foyer vzw - Onthaalcentrum voor Migranten (Dutch)*
Rue des Ateliers/Werkhuizenstraat, 25
1080 Brussels
Tel: 02/411.74.95
Fax: 02/411.04.39

- *Ministerie van de Vlaamse Gemeenschap, Departement E.W.B.L.*
Centraal Bestuur Cel Migratie - Provincie Vlaams Brabant
Administratie Werkgelegenheid, Afdeling Migratie - Arbeidsmarktbeleid
Markiesstraat 1
1000 BRUSSEL
Tel: 02/553 39 42
Fax: 02/553 44 00 - 02/553 44 22
E-mail: arbeidsmarktbeleid@vlaanderen.be

- *Ministerie van de Vlaamse Gemeenschap, Departement E.W.B.L.*
Provincies Oost- en West-Vlaanderen
Administratie Werkgelegenheid, Afdeling Migratie - Arbeidsmarktbeleid
Nederkouter 28
9000 GENT
Tel: 09/235 01 50
Fax: 09/235 01 60
E-mail: Lionel.Tansens@ewbl.vlaanderen.be

- *Ministerie van de Vlaamse Gemeenschap, Departement E.W.B.L.*
Provincies Antwerpen en Limburg
Administratie Werkgelegenheid, Afdeling Migratie - Arbeidsmarktbeleid
Windmolenstraat 7
3500 HASSELT
Tel: 011/22 64 32
Fax: 011/23 55 36
E-mail: Julien.Lathouwers@ewbl.vlaanderen.be

- *Ministère de la Région wallonne, Direction générale de l'économie et de l'emploi*
Place de la Wallonie, 1
5100 NAMUR
Tel: 081/33.37.00
Fax: 081/33.38.88

E-mail: seimm@mrw.wallonie.be
URL: <http://www.wallonie.be>

- *Ministerium der Deutschsprachigen Gemeinschaft, Abteilung Ausbildung*
Beschäftigung und Europäische Programme
Gospertstrasse, 1-5
4700 EUPEN
Tel: 087/59 64 84
Fax: 087/56 95 60
E-mail: norbert.schommers@dgov.be
URL: www.dglive.be

- *Centre Bruxellois d'Action Interculturelle, CBAI*
Avenue de Stalingrad, 24 - 1000 Bruxelles
Tel: 02/513.96.02
Fax: 02/512.17.96
E-mail : cbai@skynet.be
URL: www.cbai.be

- *CERAIC Centre régional d'action interculturelle du Centre (La Louvière)*
Rue Dieudonné François, 43
7100 Trivières
Tel: 064/23.86.56
Fax: 064/26.52.53

- *CRIC Centre Régional d'Intégration de Charleroi*
Rue Tumélaire, 96
6000 Charleroi
Tel: 071/20.98.60
Fax: 071/20.98.61
E-mail: cric@brutele.be

- *CRIPEL: Centre régional pour l'intégration des personnes étrangères ou d'origine étrangère de Liège*
55 rue de la régence
4000 Liège
Tel: 04/220.01.20
Fax: 04/220.01.19
E-mail: secretariat@cripel.be

- *CIMB: Centre interculturel de Mons et du Borinage*
Grand-Place, 4
7012 Mons
Tel: 065/88.66.66
Fax: 065/88.56.97
E-mail: cimb@skynet.be

- *CAI: Centre d'action interculturelle de la province de Namur*
Rue Dr. Haibe
5002 Saint-Servais
Tel: 081/71.35.13
Fax: 081/73.04.41
E-mail: info@cainamur.be

- *CRVI: Centre régional de Verviers pour l'intégration des personnes étrangères et d'origine étrangère*
44, Rue de Hodimont
4800 Verviers
Tel: 087/35.35.20
Fax: 087/35.55.20
E-mail: crvi@perso.be
- *CRIBW (Brabant Wallon)*
Place Josse Goffin, 1
1480 Tubize
- *Steunpunt Mensen Zonder Papieren vzw (Dutch)*
Boîte postale/Postbus 11
1000 Brussels 24
Tel: 02/512.94.00
- *Ligue des droits de l'homme/ liga voor de mensenrechten*
Jan van Stopenberghestraat 2
9000 Gent
Tel: 09/223.07.38
- *MRAX: Mouvement contre le racisme et la xénophobie*
Rue de la poste 37
1210 Brussels
Contact person: Nicole Mayer
- *Red Cross (Rode Kruis Vlaanderen) / Croix Rouge de Belgique, Communauté Francophone.*
Vleurgatsesteenweg 98
1050 Brussels
Tel: 02/654.45.58
Fax: 02/647.13.71
- *Ministry of the Flemish Community*
Employment Administration
Rue du Marquis 1
1000 Brussels
Tel: 02/507.43.67
- *Ministry of the Brussels-Capital Region*
Economy and Employment Administration
Rue du Progrès 80
1030 Brussels
Tel: 02/204.21.11
- *Ministry of the Walloon Region*
Directorate-General for the Economy and Employment
Place de la Wallonie, 1
5100 Jambes
Tel: 081/33 37 00
Fax: 081/33 38 88

- *Federal Public Service of the Economy, Small and Medium-Sized Businesses*
Self-Employed and Energy
World Trade Center III
Boulevard Simon Bolivar 30
1000 Brussels
Tel: 02/208.51.33, 34, 35 or 02/ 208.51.04
Fax: 02/208.51.47
E-mail: marie-jeanne.meuris@mineco.fgov.be or Yolande.servais@mineco.fgov.be

- *JINT vzw*
Grétrystraat 26, 1000 Brussels
Tel.: 02/209 07 20
Tax: 02/209 07 49
URL: <http://www.jint.be>

King Baudouin Foundation with Centre d'Etudes de l'Ethnicité et des Migrations (CEDEM-ULG) and Hoger Instituut voor de Arbeid (HIVA-KUL)

The King Baudouin foundation has the broad mission of helping to improve living conditions for the population. It supports organisations, partnerships and (networks of) individuals. The Foundation also aims to function as a 'think tank' by organising colloquia and seminars, publishing studies and reports etc. The King Baudouin Foundation was established in 1976 and has a permanent staff of eighty.

www.kbs-frb.be

The CEDEM, created in 1995, is an interfaculty research center of the University of Liege.

www.ulg.ac.be/cedem

The Higher Institute for Labour Studies (HIVA), founded in 1974, is a research institute attached to the Catholic University of Leuven (K.U.Leuven).

www.hiva.be

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