



ICLG

The International Comparative Legal Guide to:

Corporate Immigration 2017

4th Edition

A practical cross-border insight into corporate immigration law

Published by Global Legal Group, with contributions from:

AILA Global Migration Section
Analytics Committee
Arendt & Medernach
Barrios & Fuentes, Abogados
BDO Migration Services
Čipčić-Bragadin and Associates
CMG LEGAL
CS Global Partners
Debarliev, Dameski & Kelesoska,
Attorneys at Law
Enrique Arellano Rincón Abogados, S.C.
Gjika & Associates Attorneys at Law
Gomberg Dalfen S.E.N.C.
Gulapa Law
Günbay Attorney Partnership
Immigration Law Associates
Kingsley Napley LLP

Law firm Šafar & Partners, Ltd
Lenz & Staehelin
Lewis Silkin
Lund Elmer Sandager Law Firm LLP
Magrath Global
Mayer Brown, LLP
michels.pmks Rechtsanwälte
Partnerschaft mbB
Mynta Law
Nakai Immigration Services LPC
NAVARRO CASTEX Abogados
Oberhammer Rechtsanwälte GmbH
PricewaterhouseCoopers Middle East LLP
Skrine
Studio Legale Associato Simonetti
Persico Scivoletto



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION





global legal group

Contributing Editor

Nicolas Rollason,
Kingsley Napley LLP

Sales Director

Florjan Osmani

Account Director

Oliver Smith

Sales Support Manager

Paul Mochalski

Sub Editor

Hollie Parker

Senior Editors

Suzie Levy, Rachel Williams

Chief Operating Officer

Dror Levy

Group Consulting Editor

Alan Falach

Publisher

Rory Smith

Published by

Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Ashford Colour Press Ltd.
August 2017

Copyright © 2017

Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-911367-68-0

ISSN 2054-7579

Strategic Partners



General Chapters:

1	The Return of the Native: “Locals First” as the New Global Immigration Policy Trend – Nicolas Rollason & Benjamin Sookia, Kingsley Napley LLP	1
2	A Global C-Suite Through Second Citizenship – Micha-Rose Emmett & Beatrice Gatti Bennett, CS Global Partners	5
3	How Common or Exceptional is a Nationality-Based Entry Ban as an Instrument for Immigration Control? – Marcel A.G. Reurs, AILA Global Migration Section Analytics Committee	9

Country Question and Answer Chapters:

4	Albania	Gjika & Associates Attorneys at Law: Evis Jani & Njazueta Braholli	12
5	Argentina	NAVARRO CASTEX Abogados: Sofia Inchauspe & Florencia Cavazza	20
6	Australia	BDO Migration Services: Maria Jockel	27
7	Austria	Oberhammer Rechtsanwälte GmbH: Ewald Oberhammer & Petra Pardatscher	35
8	Belgium	Immigration Law Associates: Tanel Feldman	45
9	Canada	Gomberg Dalfen S.E.N.C.: Avi Gomberg & Isabelle Owston	52
10	Croatia	Čipčić-Bragadin and Associates: Silvije Čipčić-Bragadin & Tomislav Bartolić	59
11	Denmark	Lund Elmer Sandager Law Firm LLP: Michael Møller Nielsen & Julie Flindt Rasmussen	66
12	France	CMG LEGAL: Valerie Maricot & Stephane Coulaux	73
13	Germany	michels.pmks Rechtsanwälte Partnerschaft mbB: Dr. Gunther Mävers	80
14	Hong Kong	Lewis Silkin: Antonia Grant	90
15	Italy	Studio Legale Associato Simonetti Persico Scivoletto: Corrado Scivoletto	97
16	Japan	Nakai Immigration Services LPC: Masahito Nakai	105
17	Luxembourg	Arendt & Medernach: Philippe Schmit & Françoise Faltz	112
18	Macedonia	Debarliev, Dameski & Kelesoska, Attorneys at Law: Dragan Dameski & Ema Dimitrieska	119
19	Malaysia	Skrine: Selvamalar Alagaratnam & Sara Lau Der Yin	127
20	Mexico	Enrique Arellano Rincón Abogados, S.C.: Enrique J. Arellano	133
21	Netherlands	Mynta Law: Arend van Rosmalen LL.M.	140
22	Peru	Barrios & Fuentes, Abogados: Ariel Orrego-Villacorta Icochea & María Gracia De La Piedra	149
23	Philippines	Gulapa Law: Aris L. Gulapa & Phillip Don G. Recentes	157
24	Singapore	Magrath Global: Ruth Wilkins	164
25	Slovenia	Law firm Šafar & Partners, Ltd: Martin Šafar & Polona Boršnak	171
26	Switzerland	Lenz & Staehelin: Rayan Houdrouge & Dr. Matthias Oertle	177
27	Turkey	Günbay Attorney Partnership: Başar Kural & Ahu Pamukkale Günbay	184
28	United Arab Emirates	PricewaterhouseCoopers Middle East LLP: Anirban Chatterji	191
29	United Kingdom	Kingsley Napley LLP: Nicolas Rollason & Kim Vowden	198
30	USA	Mayer Brown, LLP: Paul W. Virtue & Elizabeth Espín Stern	211

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Belgium



Tanel Feldman

Immigration Law Associates

1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

“Belgium is a federal state, comprising the communities and the regions” (Belgian Constitution).

The decision-making powers are divided between the federal state, three communities and three regions.

Since 1 July 2014, the sixth State Reform has been in force and, as a consequence, a number of federal competences have been transferred to the Regions and the Communities.

The primary sources of immigration law are as follows:

- Aliens Act (Law of 15 December 1980) on entry, stay, settlement and removal of foreign nationals.
- Royal Decree of 8 October 1981 implementing the Law of 15 December 1980.
- Foreign Workers (Employment) Act of 30 April 1999.
- Royal Decree of 9 June 1999 implementing the Foreign Workers (Employment) Act of 30 April 1999, amended by several Regional Government Decrees.
- Act of 5 March 2002 implementing Directive 96/71/EC and enforcing Directive 2014/67/EU of the European Parliament and of the Council, concerning the posting of workers in the framework of the provision of services.
- Programme Act of 27 December 2006, Royal Decrees of 28 March 2007, 31 August 2007 and 19 March 2013 establishing a mandatory declaration for foreign employees and self-employed workers posted in Belgium.
- Act of 6 June 2010 (Social Criminal Code).
- The Act of 24 July 1987 amended by the Acts of 13 February 1998, 12 August 2000 and the Programme Act of 27 December 2012, lays down the rules for the hiring out of workers.
- Aliens Self-Employment Act of 19 February 1965, Royal Decree of August 1985 and Royal Decree of 3 February 2003 as amended by Regional Government Decrees.
- The Act of 28 June 1984 (Belgian Nationality Code) amended by the Act of 4 December 2012 with a view to making the acquisition of nationality neutral from an immigration point of view.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The Federal Public Service Home Affairs, notably the Belgian

Immigration Office, is responsible for matters relating to the entry, stay, settlement and removal of foreign nationals.

Diplomatic Missions (Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation) are receiving visa applications and issuing visas in liaison with the Belgian Immigration Office.

Local administrations (Municipalities) on behalf of the Federal Public Service Home Affairs, General Direction Institutions and Population and scrutinised by the Immigration Office are proceeding for the control of residence and for issuing, renewing, extending, replacing and the cancelling of the foreigner’s permits. The local administrations are also responsible for updating the National Register of natural persons.

Legislative power relating to work permits for employed workers and professional cards for self-employed workers is regionalised. The federal government maintains a regulating power on rights derived from residency such as, but not limited to, work permits for asylum seekers and students and professional card exemptions. The Regions are authorised for the application, control and enforcement of the work permits and professional cards:

- Ministry of Brussels-Capital Region (Employment and Mixed Economy Policy Directorate).
- Flemish Ministry Work and Social Economy (Departments of Economic Migration).
- Ministry of the Walloon Region – Directorate-General for the Economy, Employment and Research (Department of Employment and Vocational Training).
- Ministry of the German-Speaking Community (part of the Walloon Region which has delegated the power to issue work permits and professional cards).

The competent institutions for social security matters are:

- National Social Security Office (NSSO).
- National Institute for the Social Security of the Self-employed.

As from 1 July 2017, the inspection service of the NSSO and the Social Inspection will join to become one single inspection service under the banner of the NSSO.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

Belgium is a member of the European Union (EU), the European Economic Area (EEA) and the Schengen Agreement.

The basic rights of free movement derived from EU citizenship are from Article 21 TFEU and Directive 2004/38/EC (Citizens Rights Directive (CRD)). These rights apply for workers, but also for economically inactive EU citizens. However, the latter, to enforce residence rights from the CRD after three months and up to five years, must have sufficient means of subsistence not to become an unreasonable burden on the welfare system of the Member State.

Article 45 TFEU lays down the principle of free movement of workers, providing for additional rights for citizens who are economically active. These rights are developed in Regulation 492/2011 (Workers' Regulation).

Rights of entry and residence, including for economically active citizens, are subject to derogations on grounds of public policy, public security and public health.

Family members who are not nationals of a Member State, beneficiaries of Directive 2004/38/EC or enforcing settled case law of the European Court of Justice, are granted the same rights of free movement for employment purposes **if they accompany or join an EU national**.

In regard to the intra-EU mobility of other third-country nationals economically active:

- In the Walloon Region, holders of a long-term residency permit issued by another Member State (in the sense of Directive 2003/109/EC), will be exempt from obtaining a work permit after working in Belgium whilst holding a work permit type B, during an uninterrupted period of 12 months. In the same context, for jobs where there is a shortage of candidates, the authorisation of employment (i.e. for the first period of 12 months) will be issued within five working days. In the Flanders Region and in Brussels, the work permit exemption applies after working for an uninterrupted period of 12 months whilst holding a work permit type B, **only** if the latter was issued for a job where there was a shortage of candidates. The authorisation of employment will be issued within five working days.
- Holders of an EU Blue Card issued by another Member State may move to Belgium after 18 months of legal residence, but must apply for another EU Blue Card while still residing in the first Member State or within one month of arrival in Belgium. The only real advantage is determined by the EU Blue Card holders' right to accumulate periods of residence in different Member States to meet the criteria of eligibility for long-term residency in Belgium (providing that the last two years immediately preceding the application for the long-term resident status are covered by an EU Blue Card issued in Belgium).
- Third-country nationals **employed by an undertaking located in another Member State** and posted to Belgium in the framework of Directive 96/71/EC, are work-permit-exempt. In regard to the conditions of entry and stay, a third-country national posted from another Member State within the Schengen territory does not need an entry visa for Belgium. Where the duration of stay exceeds three months, local registration is mandatory. Such category also covers researchers posted to Belgium.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

Yes they can, provided that they hold a passport issued by one of the countries referred to in Article 1(2) Council Regulation (EC) 539/2001 of 15 March 2001.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

Twenty consecutive calendar days and a maximum of 60 days per calendar year, for genuine business activity. It must be distinguished between the short stay visa validity and the right to stay for business purposes.

2.3 What activities are business visitors able to undertake?

Business visitors may attend conferences, specialised seminars and business meetings.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

No, business visitors may not undertake work or provide services.

2.5 Can business visitors receive short-term training?

No, business visitors cannot receive short-term training. The Royal Decree of 9 June 1999 provides for different training categories; however, not under the business visitor status.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

As laid down by Article 18 of the Social Criminal Code, social inspectors are empowered to monitor compliance with the provisions of such code and other related acts and decrees. The foreign national's conditions of employment are covered by the Social Criminal Code and related acts and decrees.

3.2 What are the rules on the prevention of illegal working?

The national law provides for the conditions of employment of foreign nationals, as well as states the sanctions for breaching these provisions.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

If an employer employs or allows to work a third-country national without obtaining an authorisation of employment and/or who is not holding a work permit, such employer will be liable to an administrative fine of EUR 400–4,000 or a criminal fine of EUR 800–8,000. Failure to comply with the validity and/or limitations imposed by the authorisation of employment, or employing or allowing to work a third-country national after the withdrawal of the authorisation of employment or the work permit results in the same category of fines.

Employing or allowing to work a third-country national who is unlawfully staying in Belgium, or merely facilitating the entry into Belgium of a third-country national for the purpose of employment, unless the latter holds a valid work permit (or is eligible for an exemption), unless the law explicitly provides that the employer may obtain an authorisation of employment post-dating the third-country national's entry into Belgium, results in a liability to an administrative fine of EUR 2,400–24,000 or a criminal fine of EUR 4,800–48,000 and/or imprisonment (six months to three years). Other criminal sanctions (prohibition of exploitation, professional prohibition, closure of establishment) may also be applicable.

The fine is multiplied by the number of workers in respect of which the offence occurred.

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

No, in Belgium, there is not a system for registration of employers who wish to hire foreign nationals.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Before hiring a third-country national, and during their employment, the following obligations apply:

- The obligation to check whether the third-country national holds a valid residence permit or authorisation of stay.
- The obligation to keep available for inspection, at least during the term of the employment, a copy (or details) of the residence permit or any other valid residence document.
- The obligation to notify of the commencement and end of the employment (Dimona or Limosa declarations). It must be noted that in regard to the Limosa declaration (posted workers), the undertaking making the posting and the recipient of services are jointly and severally liable.
- In regard to workers posted to Belgium, there is an obligation to designate a person to liaise with the competent authorities and to send out and receive documents. Such person also has the obligation to provide, where required, during the period of the assignment and within one year after its completion a copy of the letter of assignment, time sheets, a copy of the pay slips and proof of the payment of wages.

4.3 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

Yes. Social inspectors may undertake routine controls considering the principle of proportionality laid down by Article 19 of the Social Criminal Code.

4.4 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Foreign nationals may fill in any skilled occupation considering the “public service proviso” and the restriction related to regulated professions.

4.5 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Lists of shortages are held by the Regions. Third-country nationals who hold a long-term residency permit issued by another Member State are mainly concerned (see the response to the question 1.3).

With regards to highly qualified workers, the minimum wage threshold laid down by the national law for such category (i.e. Article 9.6 Royal Decree of 9 June 1999) does not apply. Their employers are eligible for employment authorisation which derogates from the usual labour market test. Furthermore, such category is not limited to nationals of countries that have entered employment agreements with Belgium.

In regard to other third-country nationals, the authorisation of employment can be issued only where it concerns nationals of countries that have entered employment agreements with Belgium and if the labour market test is satisfied.

4.6 Are there annual quotas for different types of employment-related work permits or visas?

No, Belgium does not apply quotas for work permits and visas.

4.7 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer's workforce?

There are no restrictions provided by the national law.

4.8 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No. Employees are not required to demonstrate language proficiency to be admitted to work in Belgium.

4.9 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Yes, before being admitted to work, the majority of third-country nationals must undergo a medical examination, unless they have been lawfully residing in Belgium for at least two years.

4.10 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Third-country nationals employed in Belgium, and their family members, are subject to the local social security system, and as a consequence are entitled to local public health insurance (which is not free).

Third-country nationals posted to Belgium are required to have health insurance to cover health needs and repatriation in case of emergency. Where the posting country has entered into a bilateral agreement with Belgium in regard to health insurance, or a social security agreement covers health insurance, the third-country nationals and family members are, for the entire period of posting, entitled to health care in Belgium at the expense of the posting country.

4.11 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Third-country nationals can be posted by an undertaking located out of the community to the customer site in Belgium and a work permit is, in principle, required.

Third-country nationals, employed by an undertaking located in another Member State, can be posted to the customer site in Belgium (in the framework of Directive 96/71/EC) and are work-permit-exempt.

Third-country nationals employed in Belgium cannot be hired out to a customer, unless the national law provisions are strictly complied with.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Article 9 Royal Decree of 9 June 1999 provides, *inter alia*, for different categories of highly qualified individuals, who are eligible for a work permit under terms that derogate from the usual labour market test. Further, Article 2 provides for certain work permit exemptions for the same category. Authorisations of employment under Article 9 are not limited to nationals of countries that have entered into employment agreements with Belgium.

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into your jurisdiction?

A third-country national employee can be authorised to work providing that the eligibility criteria are met. Investment only is not a ground to gain right to work in Belgium.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

The national law provides for different categories, such as internships and traineeships, in different contexts (local employment or posting to Belgium). These categories are work-permit-exempt or not, depending on the nature of the activity, the applicant's nationality and the duration of the employment.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform temporary work?

No, the national law does not provide for the concept of "temporary work permit". A temporary authorisation of employment is issued only in the context of an EU Blue Card application.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Belgium is yet to transpose the ICT Directive (Directive 2014/66/EU). However, the current legislation does not make a distinction between the posting within international groups of companies and the posting to the customer site. In short, the category of third-country nationals posted to Belgium widely covers all posting categories. It must be noted that under the national schema, the intra-EU mobility is not an option.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

All related and/or associated companies established in at least three different countries, qualify as a part of a group of companies. The concepts of related and associated companies are provided by Articles 11 and 12 of the Companies Code.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

Firstly, the employer must fulfil the conditions laid down by the Act of 5 March 2002 implementing Directive 96/71/EC and enforcing Directive 2014/67/EU of the European Parliament and of the Council, concerning the posting of workers in the framework of the provision of services (as amended).

Lastly, the employer must comply with all the other national law provisions concerning the occupation of third-country nationals in Belgium, considering the specific case.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

An application must be lodged with the labour authority having jurisdiction of the region where the employer is located. An authorisation of employment will be issued to the employer and a work permit will be issued to the employee.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

Where the duration of stay exceeds 90 days in any 180-day period, in principle, a D-visa (work visa) is required. The application must be lodged with the Belgian diplomatic mission in the country of registered residence or home country.

Third-country nationals and their dependants that are exempt from obtaining a short stay visa for the Schengen area may switch their short stay to a long stay in Belgium. In short, the D-visa is not mandatory but advisable.

Third-country nationals that require a short stay visa to enter the Schengen area may switch their short stay to long stay in Belgium but their dependants may not.

8.6 How long does the process of obtaining the work permit and initial visa take?

An application for a work permit must be submitted at the latest one month before the commencement of employment in Belgium. That is the approximate processing time by the labour authority.

The work visa (issued to the employee) is processed in general within several days, directly by the Belgian diplomatic mission.

The delay provided by the national law for the issuance of D-visas for family reunification is up to nine months and, in exceptional circumstances, can be longer. The effective delay depends on whether the dependants are accompanying or joining the employee. It must be noted that where the former procedure is strongly advisable, in the latter case, the right to family reunification cannot be enforced before the employee's residence permit is issued.

8.7 How long are visas under the "initial" category valid for, and can they be extended?

Regardless of the D-visa validity (up to one year), it must be converted to a local residence permit and cannot be extended.

8.8 Can employees coming under the intra-company transfer route apply for permanent residence?

In the context of residency rights, posting is deemed to constitute a ground of a temporary nature and cannot determine the right to permanent residence.

8.9 What are the main government fees associated with this type of visa?

The main government fees (where applicable) are the D-visa fee (i.e. EUR 180) and the fee charged by the Immigration Office (i.e. EUR 350, EUR 200 and EUR 60, dependent on the specific immigration case).

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

In the context of corporate immigration, the main category is highly qualified workers.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

Yes. In addition, the work permit can be issued only to nationals of countries that have entered employment agreements with Belgium.

9.3 Are there any exemptions to carrying out a resident labour market test?

Yes, there are, such as but not limited to highly qualified workers, providing that the minimum wage threshold and the duration of occupation imposed are complied with.

9.4 What is the process for obtaining a work permit for a new hire?

See the response to question 8.4 above.

9.5 What is the process for the employee to obtain a visa as a new hire?

See the response to question 8.5 above.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

See the response to question 8.6 above.

9.7 How long are initial visas for new hires granted for and can they be extended?

See the response to question 8.7 above.

9.8 Is labour market testing required when the employee extends their residence?

Yes, where it concerns a work permit submitted to the labour market test, unless the authorisation of employment expressly exempts the employer from such requirement.

9.9 Can employees coming as new hires apply for permanent residence?

Yes, they can after five years of lawful and uninterrupted stay.

9.10 What are the main government fees associated with this type of visa?

See the response to question 8.9 above.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

The right of stay is determined by the right to work and a work permit is valid only if covered by a valid authorisation of stay.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Yes they are, with municipal authorities.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

The spouse or the partner with whom the third-country national

coming to work has contracted a registered partnership equivalent to marriage in Belgium and joins the latter.

Their descendants and those of one of the spouses/partners, under the age of 18 and unmarried may join the third-country national in Belgium. Where it concerns descendants of one of the spouses/partners, the latter must have custody of the children, and where this concerns shared custody, the other parent's consent is required.

The partner with whom the third-country national coming to work has contracted a partnership recognised by a law, and the descendants of that partner join the third-country national in Belgium before turning 18 years old and if they are not married. The partner must have custody of the children, and where it concerns shared custody, the other parent's consent is required. However, the partners must bring evidence of a durable and stable relationship. Unless the partners have a common child, they must bring proof of legal cohabitation in Belgium or in any other country, during an uninterrupted period of at least one year preceding the demand, either proof that they have known each other for at least two years and during that period have maintained regular contact (by phone, courier, email) and have met three times during the past two years preceding the demand, spending together at least 45 days in aggregate.

The law also provides for two other categories of dependants.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

Yes, considering the criteria abovementioned in question 11.1. In addition, third-country nationals that are partners of EU nationals may qualify as "other family members", and this is provided for in the national legislation in the light of the case law of the European Court of Justice.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Yes, spouses and recognised partners of third-country nationals admitted to work and stay in Belgium have access to the labour market but are not exempt from obtaining a work permit. Regarding a category eligible for work permit on derogation of the labour market test, this is not limited to nationals of countries who have entered employment agreements with Belgium, and concerns highly qualified workers, not bound by the minimum wage threshold laid down for that category.

Spouses and recognised partners of EU nationals have unrestricted access to the labour market if they accompany or join the EU national.

11.4 Do children have access to the labour market?

The general principle is that it is prohibited to employ or allow to work children under the age of 15 or those who are still bound by full-time school attendance.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

The main conditions a third-country national must satisfy are as follows:

- Lawful and uninterrupted stay in Belgium during a period of five years immediately preceding the application.
- Stable, regular and sufficient means of subsistence to meet his own needs and those of his dependants to avoid becoming a burden on the public welfare system.
- Health insurance valid in Belgium.

It should also be noted that certain categories, such as posted workers, are not eligible for permanent residence status.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

The concept of a temporary work visa is not provided for by national law. It is not possible to switch from a short stay visa to a work visa; instead a work visa must be applied for (e.g. whilst holding a short stay visa). It is, however, possible to change residency status in Belgium.

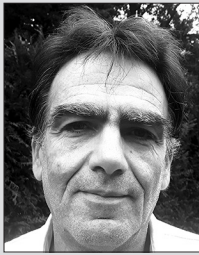
13 Bars to Admission

13.1 What are the main bars to admission for work?

In regard to third-country nationals that are highly qualified workers, beneficiaries of the minimum wage threshold provided for such category (national scheme) is the requirement to hold a post-secondary degree stating completion of a minimum of four years (Bachelor's degree). However, the EU Blue Card scheme requires only three years post-secondary degree, but a higher minimum wage threshold. The minimum wage threshold must be adhered to, and must represent the compensation for the work carried out. In regard to third-country nationals posted, allowances paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging, cannot be considered to be part of such minimum wage threshold.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Criminal convictions can be a bar where justified on grounds of public policy or public security. The grounds are subject to proportionality. The rejection must be based on personal conduct. The personal conduct must be a genuine present and sufficiently serious threat to one of the fundamental rights of society. The grounds cannot be used to serve economic ends.

**Tanel Feldman**

Immigration Law Associates
7 Avenue des Petits Bois
1640 Rhode Saint Genese
Belgium

Tel: +32 486 46 07 31
Email: info@euimmigrationlaw.com
URL: www.corporateimmigration.eu

Co-founder and senior partner of Immigration Law Associates Tanel Feldman is specialised in European immigration matters.

He is a member of the International Bar Association and has significant experience in advising corporations on general immigration matters and, in particular, matters related to the intra-EU mobility of third-country nationals.

Tanel is conducting extensive research on the derived right of residence granted to third-country nationals who are family members of EU nationals.

Tanel is continuously improving his expertise in European Law through continuing courses organised by the Academy of European Law.

Immigration Law Associates

Immigration Law Associates is a firm specialising in corporate immigration, employment and social security law and European-related law. Immigration Law Associates provides legal advice to private clients, for matters related, but not limited to, citizenship law, unmarried partners' rights of residence and derived right of residence for third-country nationals who are dependants of EU nationals.

Immigration Law Associates is directly active in Belgium and Luxembourg.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com