

Newsletter:

▶▶ Amendment to the regulations on labour migration in the Walloon Region



Dear reader,

On the Belgian labour market, companies have been facing a shortage of employees for several years. This labour market shortage combined with increasing globalisation are at the root of an increased recruitment of employees from outside the European Union.

However, employees who are not nationals from an EEA Member State or Switzerland (“third-country nationals”) cannot automatically be employed on the Belgian territory. For a third-country national who wishes to be employed on Belgian territory, an authorisation to work – in the form of either a work permit (stay of less than 90 days) or a single permit (stay of more than 90 days) – will have to be applied for by the employer (or a proxy holder) with the competent Region, unless the person can legitimately claim an exemption.

The Walloon Region has recently made some changes to its migration policy, which will affect future applications for work permits, as well as for single permits.

We hope you enjoy the read!

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1 In a nutshell

Since 1 July 2014, the competence on economic migration (“authorisation to work”) has been regionalised. Since then, each Region (and the German-speaking Community) can adopt its own regulations in this matter. The Walloon Region introduced such regulations in 2019.

This methodology can be summarised as follows:

- **Step 1:** If an employer wishes to employ a third-country national, it must first be verified whether this individual requires an authorisation to work, as some foreign employees are automatically (by law) allowed to work in Belgium. For this, a distinction must be made between residence-related exemptions (at the federal level) and work-related exemptions (at the regional level).
- **Step 2:** If the employee does not benefit from an exemption, the employer (or its proxy holder) must apply for a work permit (for stays of less than 90 days) or a single permit (for stays of more than 90 days) with the competent Region.

The Walloon Region has three different types of profile: highly skilled and special profiles, including the European categories, bottleneck professions and other profiles that are subject to a labour market test.

The Walloon Region has adopted a completely new decree, which entered into force on 1 September 2024¹. This decree includes changes related to the work-related exemptions (see point 2.1), general changes (see point 2.2), changes to the various types of profile (see points 2.3-2.5), as well as changes to the single permit of indefinite duration (see point 2.6).

2 Substantive changes

2.1 Work-related exemptions

Third-country nationals falling under the scope of a work-related exemption are automatically (by law) allowed to work. These exemptions are related to the nature of the work and/or activities to be performed. For these third-country nationals, the employer therefore no longer needs to apply for any additional authorisation to work. However, they must always have legal residence in Belgium.

These work-related exemptions fall under the following categories in the Walloon Region:

- 1) Seconded employees not subject to a prior Limosa declaration

Posted workers who are not subject to a Limosa declaration are exempt from obtaining an authorisation to work.

The new regulation no longer refers to a maximum duration of 3 consecutive months, but to a rolling 90-day period within a 180-day period (to align with Schengen circulation rights or a permitted short stay within the Schengen zone²).

- 2) Holder of a valid European Blue Card issued by another EU Member State

¹ Decree of 6 June 2024 of the Walloon government regarding the authorisation to work for foreign employees, *Belgian State Gazette*, 12 August 2024.

² From 31 March 2024, Bulgaria and Romania also (partially) joined the Schengen area. From this date, there are no more checks at internal air and sea borders. However, there are still checks at land borders.

Holders of a valid European Blue Card issued by another EU Member State are allowed to be employed in Belgium for a maximum of 90 days within a rolling period of 180 days. This is the so-called “short-term mobility”.

3) A child authorised to work

A new category includes children authorised to work under Articles 7.2 to 7.14 of the Labour Law. This specifically concerns exceptions to the prohibition on child labour. They may be employed in Belgium for a maximum period of 90 days within a rolling period of 180 days.

4) Seconded employees subject to a prior Limosa declaration

Certain seconded employees subject to a prior Limosa declaration are automatically (by law) allowed to work if all conditions are met.

The new regulations no longer refer to a maximum duration of 3 consecutive months, but to a rolling 90-day period within a 180-day period.

The new regulations add several categories to the work-related exemptions:

- third-country nationals who attend or participate in a conference or fair as a guide or representative of a hotel, travel agency or tour operator, or who guide a tourist circuit that started in the territory of a third country;
- third-country nationals providing translation or interpretation services as an employee of a legal entity established in a third country.

In addition, the category of commercial representatives is significantly broadened. Previously, the work-related exemption applied only to commercial representatives who visited their customers in Belgium on behalf of foreign-based companies without a branch in Belgium. This definition has been broadened to include third-country nationals who do not have a main residence in Belgium and who carry out one of the following temporary commercial activities that must be related to the employer’s business interests:

- attending:
 - conferences and seminars;
 - internal and external business meetings;
 - fairs and exhibitions;
- negotiating business agreements;
- undertaking sales or marketing activities;
- conducting internal audits or customer audits;
- exploring business opportunities;
- giving or attending training sessions.

This change aligns the Walloon regulations with some free trade agreements and gives these exemptions a general scope of application.

Finally, some changes are also made to existing categories:

- the category applicable to journalists is tightened, specifying that it must concern “*a journalist residing abroad who is exclusively affiliated with a media company established abroad that regularly and directly contributes to the gathering, writing, producing, or disseminating of information for the benefit of the public*”;

- the exemption from undergoing training is extended to employees who provide training (as is already the case in the Flemish Region). The term “*training*” is defined in the new regulations as “*instruction organised by an internal or external training provider to the company, aimed at acquiring or improving the knowledge and skills necessary to perform a profession*”;
- in the “*Vander Elst*” exemption, the condition that “*the provision of services is not considered to be the provision of labour forces*” has been removed (in line with European jurisprudence and as is already the case in the Flemish Region).

5) Additional exemptions

The new regulations also state that the following categories of persons are automatically (by law) allowed to work:

- a person coming to Belgium to undertake a paid internship of no more than 12 months, approved by the competent authority as part of a development cooperation or cooperation agreement, or by the minister;
- a researcher, assistant professor, or international lecturer employed under a guest agreement or as part of a government-supported collaboration between the university and a company;
- a post-doctoral researcher receiving a grant for scientific research or a scholarship for academic research.

2.2 General changes

2.2.1 Employment contract

The third-country national and the employer must have entered into an employment contract for the third-country national to be employed in Belgium. The new regulations stipulate that this employment contract³ must include provisions in which the employer commits itself to:

- cover any travel expenses to Belgium;
- provide the third-country national with medical and pharmaceutical assistance and, if necessary, hospital admission until he/she is entitled to benefits under the sickness and disability insurance. This condition does not apply to posted workers.

These provisions are not mandatory if the employment involves one of the specific categories of workers (highly skilled workers, European Blue Card holders, etc.), and apply only in cases involving bottleneck profession or the other category.

2.2.2 Translation

The new regulations include a requirement that a French translation must be provided of all documents that are not in French.

³ The model employment contract that had to be used previously has been abolished.

2.2.3 Work Permit B

Under the old regulations, a work permit B was issued for a maximum period of 90 consecutive calendar days. The new regulations stipulate a period of up to 90 days within a rolling 180-day period (as is also the case in the Flemish Region).

2.2.4 Deadlines for application

Under the old regulations, the application deadlines for a single permit and a work permit were 120 days, and for seasonal work, 90 days.

The new regulations further shorten these application deadlines for certain categories:

- 30 days for holders of a European Blue Card in another Member State;
- 60 days for a work permit B and for seasonal work by a seasonal worker who has been admitted to the Belgian territory at least once in the last 5 years as a seasonal worker;
- 90 days for the so-called European categories.

2.2.5 Multiple employers

The authorisation to work for a limited duration under a single permit is, in principle, restricted to the employment of the employee with a single employer. However, this is not the case if it concerns:

- 1) a supplementary activity performed by an employee who has obtained an authorisation to work as highly skilled personnel, managerial personnel, or a person employed under an international treaty the duration of which is shorter than their primary employment;
- 2) An employee who holds a European Blue Card and:
 - a. works as an international lecturer;
 - b. has held a European Blue Card for at least 12 months, provided that the employment meets the conditions for the European Blue Card.

2.2.6 Employer information obligation

The old regulations stipulated that the employer needed to notify the Walloon Region in the event of suspension, termination of the employment contract, or the end of employment in Belgium.

The new regulations state that the employer must notify the Walloon Region in the event of:

- a change of employer;
- a change in an essential element of the employment contract that could impact the authorisation to work;
- the termination of the employment contract;
- the end of employment in Belgium.

The regulations provide a period of 15 working days, after the notification of a change of employer or a change in an essential element of the employment contract, for the Walloon Region to inform the employer whether a new application is necessary.

It is further clarified that a new application must be submitted in the event of a change of employer or a modification to an essential element of the employment contract, but not in the event of:

- a change of employer that:
 - results from a transfer of undertaking as defined by Collective Bargaining Agreement 32bis;
 - concerns a holder of a European Blue Card who has already been employed for at least 12 months and meets the conditions for the European Blue Card with the new employer;
- despite the modification to an essential element of the contract, the conditions of the authorisation are still met.

2.2.7 Grounds for refusal and withdrawal

In the context of the new regulations, the Walloon Region has introduced some mandatory and discretionary grounds for refusal and withdrawal (as is already the case in the Flemish Region).

The new regulations contain the following mandatory grounds for refusal:

- the application contains data, statements, or documents that are incomplete, incorrect, falsified, or illegal;
- the conditions for the single permit or work permit are not fulfilled;
- the employer or host entity does not comply with the legal and regulatory obligations concerning the employment of foreign nationals, including remuneration and other applicable working conditions;
- the employer does not comply with the legal and regulatory obligations related to its business activities;
- the employee does not meet the conditions imposed by law or the regulations for access to the intended profession;
- it is clear that the third-country national does not have the required skills for the position offered;
- the position is contrary to public order or public safety;
- the position violates the standards applicable to the recruitment and employment of foreign workers;
- the income from the employment does not allow the employees to support themselves or their families (this condition does not apply to trainees, au pairs, and volunteers);
- the company or host entity was established or primarily operates to facilitate the access of third-country nationals and does not conduct any economic or social activity;
- the employer, within six months prior to the application, discontinued a full-time position to create the vacant position that they intend to fill through this application;
- the employee is subject to a negative decision regarding his/her right or authorisation to reside, which is not subject to a suspensive appeal and has not been suspended by the court;
- it is necessary for reasons of public order or public safety based on the employee's behaviour;
- the remuneration is less favourable than that of employees performing the same function in the same company;

- during the year preceding the application, the authorisation to work was already refused or withdrawn for the same position in the same category, and the applicant has not presented any new elements.

The new regulations contain the following discretionary grounds for refusal:

- the employer or host entity was criminally or administratively penalised in the year preceding the submission of the application in accordance with the decree of 28 February 2019. This discretionary ground for refusal does not apply to highly skilled employees, holders of a European Blue Card, managerial personnel, or ICT personnel;
- the employer is bankrupt, clearly insolvent, or subject to bankruptcy proceedings.

The new regulations contain the following mandatory grounds for withdrawal:

- a fraudulent practice, an incomplete, incorrect, or falsified declaration, or an illegally executed adjustment regarding the rules on the employment of foreign workers has been identified;
- the employer or host entity does not comply with the legal and regulatory obligations concerning the employment of foreign nationals, including remuneration and other applicable working conditions;
- the position is contrary to public order or public safety, laws and regulations, or international agreements or accords concerning the recruitment and employment of foreign workers;
- the legal entity or host entity was established or primarily functions to facilitate the access of third-country nationals and does not engage in any economic or social activity;
- the employee is subject to a negative decision regarding their right or authorisation to reside, which is not subject to a suspensive appeal and has not been suspended by the court;
- it is necessary for reasons of public order or public safety based on the employee's behaviour;
- the remuneration is less favourable than that of employees performing the same function in the same company, taking into account any information brought to their attention;
- the employer, host entity, or employee does not meet the conditions for work authorisation, including the obligation to submit individual salary accounts.

The new regulations contain the following discretionary grounds for withdrawal:

- the employer or host entity was criminally or administratively penalised in the year preceding the submission of the application in accordance with the decree of 28 February 2019;
- the employer does not comply with the legal and regulatory obligations related to their business activities.

The regulations still stipulate that, in any decision to refuse or withdraw a request, consideration must be given to the circumstances of each individual case, including the interests of the employee and the principle of proportionality.

2.3 Highly skilled and special profiles

2.3.1 Highly skilled personnel

For third-country nationals to qualify as highly skilled personnel, they must reach a certain salary threshold (i.e., a specific percentage of the average gross annual salary in Belgium) and a degree requirement must be fulfilled.

In the Walloon Region for 2024, this threshold is EUR 50,310 gross. The new regulations offer a reduced threshold of 80% (in 2024, equivalent to EUR 40,248 gross) for employees under the age of 30 when applying.

Moreover, the new regulations also stipulate that this salary threshold will be prorated according to the employment percentage.

Additionally, the degree requirement has been adjusted. The new regulations state that the employee must be able to demonstrate qualifications at least at level 6 of the European Qualifications Framework (bachelor's degree (university/college)). However, this requirement is presumed to be fulfilled if the third-country national employee meets one of the following conditions:

- being the holder of a higher education degree (i.e., higher education studies of at least 3 years or which have led to a qualification at level 6 of the European Qualifications Framework);
- is an executive in the field of information and communication technologies or a specialist in information and communication technologies;
- has acquired at least 3 years of relevant professional experience in the 7 years preceding the application for an authorisation to work.

2.3.2 European Blue Card

For a third-country national to obtain a European Blue Card, similar criteria to those for highly skilled personnel must be met. This includes reaching a specific salary threshold (equivalent to EUR 65,053 gross for 2024). The new regulations include a reduced salary threshold of 80% for third-country nationals who, at the time of submitting the application, obtained a higher education degree less than 3 years ago (equivalent to EUR 52,042 gross for 2024).

Moreover, there is also a degree requirement for higher professional qualifications (linked to a diploma issued by an educational institution recognised as a higher education institution by the state where the institution is located). The new regulations also add that executives or specialists in the field of information and communication technology with at least 3 years of relevant professional experience acquired within 7 years before applying for the European Blue Card are equated with higher professional qualifications.

Under the old regulations, an employment contract of at least 1 year had to be concluded. The new regulations reduce this period to 6 months.

A notable feature of the European Blue Card is that a third-country national employee who holds this European Blue Card does not need to submit a new application in the event of a change of employer, provided that this change occurs after 2 years of employment and the employment meets the above conditions. This 2-year period is now reduced to 1 year of employment.

2.3.3 Persons in responsible positions

In addition to the existing category of managerial staff, two new categories of “*people in responsible positions*” have been established, namely:

- third-country nationals who hold a responsible position in an airline with a branch in a French-speaking area;
- third-country nationals who occupy a responsible position in a tourism bureau in their country of origin.

2.3.4 The specialised technician

An authorisation to work can be obtained for a specialised technician employed by a foreign employer who comes to Belgium to install, start up, or repair equipment manufactured or supplied by their employer abroad, for a period of up to six months. Starting from 1 September 2024, such authorisation to work can also be obtained for a technician providing services in the context of subcontracting based on a warranty in the original contract.

2.3.5 2.3.5 Seasonal work

Under the old regulations, a seasonal worker could obtain an authorisation to work provided that they had a labour contract with a Belgian employer for seasonal activities in the agricultural, horticultural, or hospitality sector. Under the new regulations, it is no longer required for the employer to be Belgian.

In certain cases, the employer may owe the seasonal worker compensation if his/her authorisation to work is revoked prematurely. This compensation covers the salary the seasonal worker should have received and any other obligations that the employer failed to fulfil and would have had to fulfil if the seasonal authorisation to work had not been revoked.

2.3.6 2.3.6 Trainees

The conditions for trainees are largely unchanged, but the new regulations provide that the trainee must be tied to the host company by a traineeship agreement with a maximum duration of 12 months. Previously, the maximum was 6 months.

2.4 Bottleneck professions

In addition to the current bottleneck professions list, it also introduces the possibility for the minister to determine, in case of a labour shortage due to a serious natural, health, military, industrial or social crisis for a certain category of workers, that the labour market test was met for a renewable period of six months.

2.5 Other category

If the employee does not fall under an exemption or one of the specific categories or bottleneck professions, the (future) employer must demonstrate that it is impossible to find a suitable candidate on the labour market of the EEA within a reasonable period who, with or without further professional training, is able to fulfil the position with satisfaction and within a reasonable timeframe.

Previously, this meant under the old regulations that a so-called “labour market test” had to be conducted by Forem. Then, a job vacancy had to be posted in shared management on the Forem website, and after at least 6 weeks, it seemed evident that no candidate other than the third-country national appeared to be suitable, accompanied by a thorough justification.

Under the new regulations, the employer must be able to demonstrate one of the following situations:

- The employer has published a vacancy related to the position through Forem for a period of 5 weeks within the year preceding the submission of the application, and no candidate has applied who can satisfactorily fill the position. It is clarified that this rule does not apply if the vacancy is clearly very restrictive.
- The employer has appealed to Forem for active management of the recruitment need for the position in question, and no suitable candidate has applied for the position.
- After a preliminary selection of candidates by Forem with the employer, Forem determines that it cannot propose any candidate who can satisfactorily fill the position.

Additionally, the labour market test is considered to be met if the employer provides evidence that, for at least 5 weeks in the year preceding the submission of the application, the job vacancy was posted on the EURES website and no candidate suitable to fill the position satisfactorily has applied. It is also clarified that this rule does not apply if the vacancy is clearly very restrictive.

Finally, the new regulations also add that the Walloon Region may, in other cases, determine whether the labour market test has been met based on the evidence provided by the applicant, taking into account the specific nature of the intended job, the unsuccessful recruitment procedures of the employer, and the part of the French-speaking region where the job is performed.

2.6 Single permit of indefinite duration

Under the old regulations, employees with a certain period of continuous work experience (duration depending on the situation) could obtain a combined permit of indefinite duration. The new regulations add that employees who have obtained a European Blue Card in Belgium and have been employed for an uninterrupted period of 12 months with legal residence are also eligible for a combined permit of indefinite duration.

The old regulations already assimilated periods of total incapacity to work as a consequence of an occupational disease, an accident at work or an accident to or from the workplace, maternity protection, paternity leave. The new regulations add parental leave, carer leave, medical assistance leave, and palliative care leave to the list.

However, periods during which the employee remains employed by an employer based abroad (secondment) are not counted.

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