Belgium

Executive Summary

Nationals from the European Economic Area or "EEA" (the European Union Member States, plus Iceland, Norway and Liechtenstein) do not require a work permit to be employed in Belgium. EEA nationals are, however, required to obtain a residence permit if the stay in Belgium is longer than three months. Since May 1, 2009, nationals of the new EU Member States (Poland, Hungary, Czech Republic, Slovakia, Estonia, Latvia, Lithuania and Slovenia) no longer need a work permit for Belgium. Citizens of Malta and Cyprus were already exempt. The transition measures, however, remain in effect for citizens of Bulgaria and Romania, who still require a work permit (whether or not through the specific process for "bottle-neck professions"), at least until December 31, 2011.

Non-EEA nationals as a rule must obtain a work permit and a residence permit in order to work and reside in Belgium. The majority of the type B work permits issued to non-EEA nationals relate to highly qualified employees and executives who need not comply with the labor market criterion.

Upon receipt of the work permit, the employee will in most cases (depending on the nationality) need to obtain a work visa (*i.e.*, authorization to stay in Belgium for more than three months) at the Belgian consulate or embassy abroad with jurisdiction for the latest place of legal residence. The visa and the work permit must be obtained prior to the start of the employment.

Within three days after arrival in Belgium, the foreign employee must register with the local commune with jurisdiction for the intended place of residence in order to obtain a residence permit, which is valid for the same duration as the work permit. The work permit is valid only when combined with a residence permit. Working in Belgium

while in possession of a work permit, but without a valid residence permit, is considered a serious offence, subject to penalties of up to € 75,000.

Key Government Agencies

Consular posts abroad are part of the Federal Public Service ("FPS") Foreign Affairs, Foreign Trade and development cooperation agency is responsible for visa applications outside Belgium.

The FPS Foreign Affairs, Department of Federal Immigration is the competent authority for issuing Belgian residence permits. As a rule, upon obtaining a Belgian work permit and work visa, a residence permit will be valid for the duration of the work permit.

As of May 1, 2009, any work permit applications – in all 3 regions – must be submitted directly to the regional immigration ministries, which are the competent government offices for issuing Belgian work permits. The federal state of Belgium indeed consists of three regions: the Brussels Capital region, the Flemish region in the North, and the Walloon region in the South.

Current Trends

As part of the efforts to attract foreign highly qualified workers, the European Union has accepted the idea of an EU work permit, the so-called "Blue Card" that allows employment of non-Europeans in any country within the EU. The "Blue Card" scheme is inspired by the U.S. "Green Card" program and aims to attract top talent to the EU to combat the aging population and declining birth rate.

The EU Member States must implement the so-called Blue Card Directive[1] into national law before June, 19 2011. The Blue Card allows highly-qualified non-EEA nationals to work and reside on the territory of the Member State issuing the Blue Card. After an initial 18 months' period in such Member State, the employee may move to another Member State in order to perform highly-qualified work.

In line with this European trend, Belgium - which has for many years facilitated the access of non-European highly qualified employees into its labor market - introduced work permit exemptions for researchers, executives working at European Headquarters in Belgium, and short-term employee training assignments. Further, the Belgian government adopted the "Limosa" project, which aims to create one electronic platform for easy application of various permits.

The EU Directive EG/810/2009 regarding the European Visa Code entered into effect on April 5, 2010. This European Visa Code constitutes a major step towards a common visa policy and to reinforce the cooperation within the Schengen area. The Visa Code sets out harmonized procedures and conditions for issuing short stay visas and airport transit visas. Legislation in relation to the issuance of visas for long stay (beyond 90 days) remains of national competence. However, pursuant to the Visa Code, third country nationals who hold a long stay (type D) visa can now freely travel within the Schengen area for up to 90 days over a six month period.

[1] EU Directive 2009/50/EG of 25 May 2009 regarding the conditions for the access and residence of third country nationals for highly-qualified employment

Business Travel

Schengen Visa

The short stay or Schengen visa is valid for the territory of all the Schengen States and permits short trips for up to 90 days over a six month period.

The new European Visa Code enhances the harmonization of procedures for short stay visa and transit visa within the Schengen area and facilitates the application procedure. Apart from a uniform application form, the Visa Code inter alia introduces a maximum deadline of 15 days (extendable to 30 days and maximum 60 days in exceptional circumstances) within which the consular posts must decide on the visa application.

Work permit exemption

Foreign employees coming to Belgium on short-term business trips are exempted from obtaining a work permit, subject to certain conditions. No work permit is required if the employee's activities are restricted to attending so-called business "meetings in a closed circle" and/or attending scientific seminars, provided the stay in Belgium does not exceed five days per month. The concept of "meetings in a closed circle" is interpreted restrictively and refers to a wide range of meetings, including discussions on strategy, contract negotiations with a customer, evaluation interviews, training course, etc. It is forbidden to perform any productive work activity in Belgium under this status.

Foreign sales representatives having their principal residence abroad who travel to Belgium to meet with customers in Belgium on behalf of foreign companies, which do not have a branch or legal entity in Belgium, also do not require a work permit, provided their stay in Belgium does not exceed three subsequent months.

Self-employed individuals coming to Belgium for business purposes (*i.e.*, in order to visit professional partners, develop professional contacts, attend trade fairs, negotiate and/or conclude contracts or attend board of directors' meetings) do not require a professional card provided their stay does not exceed three subsequent months.

Visa Waiver

Of course, citizens of EU/EEA countries do not need a visa when traveling to Belgium.

In addition, citizens of certain privileged countries do not need a visa when traveling to Belgium for short-term business purposes. They will be allowed to enter Belgium on the basis of their nationality and upon presentation of their international passport. The length of stay is up to 90 days only.

Although no visa is required, if subject to a border control, the individual will need to be able to prove the purpose of the trip and demonstrate sufficient means of subsistence (this is, of course, not applicable to EU citizens). On entering Belgium, one may be asked for one or more of the following documents: proof of hotel reservation, departure ticket or proof of adequate means of subsistence such as cash or credit cards accepted in Belgium or an original copy of a pledge of financial support. The business traveler must also report to the local commune of residence after arrival.

Training

Employee Training Assignments Not Exceeding 3 Months

Recent legislative changes facilitate training assignments. Foreign employees who come to Belgium to follow a training not exceeding three subsequent calendar months at the Belgian seat of the multi-national group to which their employer belongs, in the framework of a

training agreement between the respective companies of the multi-national group, are exempted from the work permit requirement. The company organizing the training is, however, required to inform the local immigration authorities about the employee's stay in Belgium at the latest at the start of the training.

This specific work permit exemption is limited to three categories of employees:

- Employees who are employed with an associated company located within the EEA, irrespective of their citizenship;

- Employees who are employed with an associated company located outside the EEA and who are citizens of an OESO member state; and

- Employees who are citizens of countries with which Belgium has entered into a bilateral employment agreement (*e.g.*, Switzerland, Croatia, Bosnia-Herzegovina, Serbia and Montenegro, Macedonia, Morocco, Tunis, and Turkey).

The authorized scope of training is restrictive and may not result in any significant productive work. The exemption does not apply if the training is exclusively or primarily "on-the-job."

Other Employee Training Assignments

Employees employed in a foreign company belonging to an international group that has a seat in Belgium and who cannot call upon the work permit exemption are eligible to obtain a type B work permit allowing them to follow training at the Belgian seat, regardless of their regular place of employment abroad and irrespective of nationality. Such training may not include any productive work or be an "on-the-job" type of training. The duration of such training is not limited.

Specific Work Permit For Trainees/Interns

There is also a specific work permit designed for the trainee or intern who, immediately after receiving a diploma or degree, wishes to undergo practical training with an employer as a continuation of the education.

In addition to the general requirements to obtain a work permit, the application for a specific trainee work permit requires the following:

- the trainee must be between 18 and 30 years old;
- the training needs to be full-time;
- the training may not exceed 12 months;
- a training agreement needs to be signed and translated in the mother tongue of the employee-trainee (or a language which the trainee understands) and needs to indicate the number of hours of training and the salary which cannot be lower than the legal minimum of the applicable business sector; and
- a training program needs to be presented together with a legalized copy of the diploma or degree.

Employment Assignments

As a general rule, a work permit and a residence permit is required for all employment assignments in Belgium and must be obtained prior to the start of the employment.

Work Permit Exemptions

Some employees are, however, exempt from obtaining a work permit. The most relevant categories are:

Citizens From The European Economic Area

EEA nationals coming to work in Belgium are exempt from obtaining a work permit. This also applies to their spouse and children under the age of 21, even if they are not themselves EEA nationals. Such family members are required to obtain a "family reunion visa" to accompany or join the EEA national coming to work in Belgium.

The following 18 countries belong originally to the EEA: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom, Iceland, Norway and Liechtenstein. Although Switzerland does not form part of the EEA, Swiss nationals are also allowed to freely reside and work in Belgium without any prior formalities.

EEA nationals and their family members are free to be employed by a company or to work in a self-employed status without work authorization. If, however, an EEA national plans to stay in Belgium for longer than three months, then the individual must apply for a residence permit for EEA nationals with the local municipality responsible for the place of residence. The local municipality will issue a residence permit which will be valid for five years and may be renewed automatically.

New EU Member States

Since May 1, 2009, nationals of the 8 new EU Member States (the Czech Republic, Estonia, Hungary, Latvia, Lituania, Poland, Slovakia and Slovenia) who seek to enter the Belgian labor market to undertake paid employment no longer require a work permit. Citizens of Cyprus and Malta already enjoyed free access. The Belgian government decided to extend the "stand-still" regime for Bulgarian and Romanian nationals, who still need to obtain a work permit to enter the Belgian labor market at least until December 31, 2011.

Bulgarian and Romanian citizens can, however, benefit from a specific procedure in some cases (*i.e.*, the labor market criterion is not taken into account for such nationals to the extent that their work permit application is related to professions for which the competent regional government has recognized that there is a shortage of available workers on the labor market - the so-called "bottle-neck professions"). The three regional governments in Belgium (*i.e.*, Flanders, Brussels, Walloon region) have issued separate lists of "bottle-neck professions."

The free movement of services applies with immediate effect *vis-à-vis* all new Member States.

Indeed, Belgian law stipulates that the non-exemption of the prior work permit requirement for some citizens of the new Member States do not apply to workers employed by a company located in a EU Member State that perform services on Belgian soil, provided that:

- Such workers are legally employed in their residence Member State; and

- Such work authorization is valid for at least the period of the services to be performed in Belgium.

In practice, this rule means that Bulgarian and Romania citizens do not require any work permit or authorization, if legally employed by an employer located in such Member State and coming to Belgium for that employer to perform services in Belgium.

European Headquarter

Executive employees working under a local employment contract of a European Headquarter in Belgium are exempt from obtaining a work permit. This exemption has recently been introduced to compensate for the fact that the former coordination center status no longer exists.

Indeed, the European Commission ruled that coordination centers should disappear as coordination centers would benefit from unfair tax advantages and therefore would be incompatible with European state aid rules.

The exemption does not apply to foreign employees who are temporarily seconded to a Headquarter in Belgium from abroad and remain employed by their foreign employer. Such executives still need a work permit.

"European Headquarter" is defined as a Belgian company or subsidiary of a foreign company, provided that such company can be qualified as an associated company and performs activities of a preparatory or supporting nature on behalf of the companies of the group to which it belongs, activities in relation to provision of information to clients, and activities which passively contribute to sales transactions and/or activities which imply an active intervention in the sales.

"Executive" is defined as a manager holding a high-level function that requires a certain level of education or equivalent professional experience and whose annual remuneration exceeds € 59,460 for 2009 (indexed annually). However, the recent exemption unintentionally created a new category of employees needing a work permit, as the top two management layers were still required to obtain a work permit. As of May 29, 2009, this legislative inconsistency was corrected so that as of that date an exemption from work permits is available for all managerial personnel, including the tope two lawyers, employed by Belgian-based Headquarters.

Although no formal work permit is required, the Belgian Headquarter must inform the immigration authorities, at the latest at the start of the employment, that the executive will commence employment in Belgium, and a certificate from a recognized auditor confirming that

the company qualifies as a "European Headquarter" must be submitted.

Belgian "van der Elst Visa"

No work permit is required for individuals eligible for the so-called "van der Elst visa." A non-EEA employee regularly working for a company in one Member State A does not need to obtain an additional work permit if this employee is transferred to another Member State B.

To qualify, the employee must be working on a temporarily based project (*i.e.*, on a contractual basis) for the supply of services by its employer established in Member State A to a company established in Member State B.

Belgian law exempts such foreign nationals from the requirement to obtain a Belgian work permit provided that they:

- are entitled to residence, or have a valid residence permit, for a period of more than three months in the Member State of the EEA where they have established residence;
- are lawfully employed in the Member State where they have established residence and hold a permit which is at least valid during the period of the services to be carried out in Belgium;
- possess a valid employment contract; and
- possess a passport and a residence permit, of which the duration is at least equivalent to the duration of the services to be carried out in Belgium in order to ensure their return to their home country or residence country.

Students and Interns

Full-time students lawfully residing legally in Belgium do not require a work permit during official school holidays. For work activities performed during the academic year, a work permit type C is required. This work permit is granted for a maximum period of 12 months and is limited to the duration of the student's stay in Belgium. The work permit C allows the student to work a maximum of 20 hours per week during the academic year.

Students who are taking an internship in Belgium within the context of their study program and interns employed by the Belgian government or by a recognized international institution are exempt from obtaining a work permit.

Non-EEA Nationals

In general, work permits are issued only provided there are not enough workers available in the European labor market within a reasonable period of time for the sector in question or for the specific function concerned (*i.e.*, labor market criterion), and in the case of workers who are nationals of countries linked to Belgium by international agreements or conventions on the employment of workers.

For certain categories of non-EEA nationals, work permits may be issued without the labor market criterion having to be met, which considerably simplifies the process for obtaining a work permit.

Most work permits in this category are issued to the following individuals eligible for a type B work permit:

Highly Qualified Employees or Executives

The labor market criterion is not taken into account if the foreign employee is considered either: a highly qualified employee; or an

executive whose annual remuneration amounts to at least respectively € 36,355 or € 60,654 gross for 2010 (indexed annually). The validity of their residence corresponds to the duration of their work permit.

For highly qualified employees:

- If the employee earns at least € 36,355 gross salary per year in 2010, the work permit is valid for up to four years and is renewable once for another four years' period. In a renewal application, the regional labor authority may impose additional conditions with regard to the proportional representation of risk groups in the company and the shortage of highly qualified employees on the Belgian labor market.

- If the employee is not seconded and comes from one of the member states of the EU, the work permit will be valid without limitation.

For executives:

- Executives earn at least € 60,654 gross salary per year in 2010 (indexed annually) and hold a management position within the company. There is no limitation on the duration of the work permit.

The application process to obtain a type B work permit takes about four weeks. The employee will have to provide, amongst other documents, a medical certificate, an employment contract, a recent certificate of good conduct and copies of academic certificates and professional qualifications. A work permit type B is always granted for a one year period and must be renewed each year.

The non-EEA family members of highly qualified employees or executives, if more than 18 years old, are equally eligible for a work permit type B. The validity of their work permit will, however, be

limited to the duration of the work permit of the non-EEA national they are joining. The minimum salary requirements do not apply to this category.

Specialized Technician Work Permit

The specialized technician work permit is specifically aimed at specialized technicians or engineers coming to Belgium for a maximum period of six months in order to install, start up, or repair an installation or software application developed or manufactured abroad. It should be noted that the study and analysis of the factual situation at the location of the Belgian customer, the so-called "requirement capturing stage," prior to the development of the installation or software application, is not included. A foreign employee coming to Belgium to perform such preparatory study and analysis services should obtain a normal work permit.

On the other hand, specialized technicians coming to Belgium for urgent repairs or maintenance work to machines delivered by their foreign employer to a Belgian-based company are exempt from obtaining a prior work permit, provided their stay in Belgium does not exceed five days per month.

Long-Term EU Residents

By Royal Decree, dated June 9, 2009, the Belgian government partially implemented the EC Directive 2003/109/EG with respect to long-term residents from non-EEA countries. Non-EEA nationals, who have obtained the status of long-term resident in another Member State, can obtain access to the Belgian labor market subject to certain conditions. The long-term residence status is a very specific status in accordance with the EC Directive for which a specific residence permit is delivered (*i.e.*, the electronic residence card type D).

Professional Card

Non-EEA nationals require a professional card for any self-employed activity in Belgium, including - depending on the factual circumstances - corporate mandates held with a company established in Belgium. The card is applied for at the Belgian consulate or embassy abroad, together with the visa application or in Belgium, in case the foreign citizen resides in Belgium.

The basis for granting a professional card is much more discretionary than the basis for granting a work permit. Demonstrating economic interests will play a major role in obtaining a professional card. The application procedure takes six months on average.

Other Comments

Caution is to be had for the recent "Limosa" registration obligation when employing foreign staff or developing self-employed activities in Belgium.

In order to simplify the administrative formalities related to the employment of foreign nationals in Belgian territory, the Belgian government has recently adopted a number of measures jointly referred to as "Limosa" (Dutch abbreviation for cross-country information system).

In the long run, the "Limosa" project will lead to the creation of one electronic platform which can be accessed in order to apply for various permits. For the time being, the "Limosa" project implies an additional administrative obligation for employers. Indeed, the first step of the "Limosa" project consists of the obligation for employers who employ foreign employees (including trainees) in the Belgian territory and for self-employed individuals who perform their activities on Belgian soil to communicate a number of details in relation to such professional activities to the Belgian government (*i.e.*,

through a mandatory prior electronic notification of employment/self-employed activities).

The mandatory “Limosa” notification applies to all employees, self-employed individuals and apprentices who temporarily or partially work in Belgium and who usually work in another country and/or are hired abroad. There are various exemptions from the mandatory notification, including (subject to certain conditions) short-term business travel, scientific congresses, foreign government personnel, assembly, installation of goods, and the like.

The Limosa declaration can be made online at www.limosa.be. A declaration certificate (so-called “Limosa-1”) is delivered and can be downloaded or printed at once.

The company with operations in Belgium that makes use of the services of the foreign employees or self-employed individuals, directly or indirectly, is held to verify whether the “Limosa” obligation has been complied with prior to the start of the professional activities in Belgium, through delivery of the so-called L-1 declaration. Non-compliance with the Limosa registration can result in criminal sanctions and monetary penalties for both the foreign employer and the Belgian user of the services.

The identity card for foreigners is also worth a brief mention. Upon legally residing in Belgium for an uninterrupted period of 3 to 5 consecutive years, non-EEA nationals can obtain the so-called “identity card for foreigners” or a residence permit for an indefinite term at the local commune of residence. A residence permit for an indefinite term or an identity card for foreigners allows them to work in Belgium without having to obtain a work permit.

A work permit type A is valid for an indefinite term and for employment with any Belgian employer, as opposed to the more frequent type B work permit that has a limited duration and is valid

for employment with one specific employer/location only. The type A work permit can be granted to qualified employees who have worked four years, which can be reduced to three years in some circumstances, under a type B work permit combined with a legal and uninterrupted residence in Belgium during the 10 years immediately preceding the application. Note that not just any previous employment under a type B work permit is taken into account. Previous employment as, for example, a highly-qualified employee, a specialized technician, a seconded employee, *etc*., is excluded. The type A work permit is not usually requested, as most foreign employees receive residency rights for an indefinite term, and thus no longer need a work permit, after five years of uninterrupted stay anyway.

Finally, a type C work permit can be obtained by some individuals who legally reside in Belgium and have obtained a valid residency title (*e.g.*, refugees, students) subject to certain conditions. Such type C work permit is valid across Belgium for an employment with any Belgian employer and its duration is dependant on the duration of the residence title with a maximum of twelve months (renewable).