

# »» Newsletter: **Single Permit and thorough substantive changes for foreign workers**

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Dear reader,

In times of globalisation and scarcity on the Belgian labour market, the international mobility of workers is also increasing. More than ever, employers rely on workers who are not citizens of an EEA Member State or Switzerland (here, “foreign workers” or “third-country nationals”). This may concern a temporary secondment to Belgium by a foreign employer, but also a permanent position with a Belgian employer.

Such foreign workers, however, are not allowed to work in Belgium just like that: the employer must in principle obtain prior authorisation, and the worker must have a Belgian residence permit. Infringements of these obligations are heavily sanctioned.

At the start of the new year, there is a lot of news to report on this topic. The rules on the employment of foreign workers have been fundamentally amended, both with regard to the procedure and the substantive conditions (for the time being, mainly in Flanders).

The rules have certainly not become simpler, but with this newsletter we provide you with a practical overview of the new rules. This gives you an idea of the possibilities your company has to call on foreign workers, so that you can continue to look across borders in 2019.

We hope you enjoy the read.



## 1 In short

### 1.1 Exemptions

When considering the employment of a foreign worker, the first question is always whether he needs to be authorised to work in Belgium. Many foreign workers are indeed exempt from this obligation, and are thus allowed to work here without the employer having to apply for a Single Permit.

A big chunk of the exemptions are linked to the specific residence status of the person at hand. In other words, this concerns persons who reside in Belgium for a reason other than work, but who want to start working afterwards. The new rules in force since 2019 make a number of important changes to these exemptions. This category now also includes foreign employees who were previously able to obtain a work permit C, but which has since been discontinued.

In addition, a number of categories of workers are automatically exempt, usually because of the short duration of their employment or the specific nature of their employment. Of course, they must be legally resident in Belgium, but a Single Permit is thus not necessary for them. These exemptions have changed as well, in that the rules now vary from one Region to another.

We describe the main changes in **chapter 2**.

### 1.2 Single permit: 1 procedure and 1 permit to work and stay in Belgium

Until 2019, Belgium distinguished between the authorisation to work (the “*work permit*”) and the right of residence (the “*residence permit*”) for foreign workers.

A foreign employee who was not exempt had to have 2 separate documents, which had to be obtained through separate procedures. However, this was not in accordance with EU law, which imposes on the Member States an

obligation to issue a combined work and residence permit through a single procedure.

Due to our complex state structure this proved quite difficult, but in the end Belgium has managed to introduce the “Single Permit” from 2019 onwards. This means that as an employer, you can obtain a combined work and residence permit for a foreign worker through a single application with the competent Region. The worker receives a single document allowing him to work and reside in Belgium, within the limits of the permit. This new procedure applies throughout Belgium.

The separate work permit and residence permit largely cease to exist, although they do remain applicable in the case of a short employment of max. 90 days.

Sounds good? In theory yes, but the single procedure has certainly not become easier. Moreover, it risks taking much longer than the sum of the previously applicable “double” procedures.

More than ever, good planning and preparation are therefore key to avoiding issues...

In **chapter 3** of this newsletter we discuss this in more detail.

### 1.3 Substantive conditions: for whom can a Single Permit be obtained?

In addition to the new procedure, as of 2019 there are also a number of changes to the substantive conditions for a third-country national to work in Belgium.

It is crucial in this respect to note that the rules will differ between the Regions from 2019 onwards. In other words, for an employment in the Flemish Region, different rules apply than for an employment in the Brussels-Capital or the Walloon Region. This is the result of the latest state reform which transferred the regulatory competence for this matter to the Regions.

In the Flemish Region in particular, the rules have been changed considerably. For



example, the Flemish labour market is opened up more for medium-skilled shortage professions: Belgian employers will relatively easily be able to obtain a work authorisation for positions that are mentioned on the all-new dynamic list of shortage professions. In addition, it is now possible to obtain a work authorisation for highly skilled profiles for a maximum of 3 years, thus avoiding the annual renewal procedure. It also introduces many new categories of workers eligible for a Single Permit, and modifies or abolishes a number of exemptions.

In the Walloon Region and the Brussels-Capital Region, the substantial changes are for the time being limited to the abolition of a number of previously existing exemptions which from now on will thus require a Single Permit.

In **chapter 4** of this newsletter you will find out all about the content changes.

#### 1.4 Entry into force and transitional measures

The changes discussed in this newsletter entered into force on 24 December 2018 (unless where we state otherwise).

The new rules must therefore be applied to every new employment of foreign workers (including secondments) that occur as of 2019. Please note that work permits that were previously issued do not lose their validity. They therefore remain valid until their expiry date. But as from the next renewal, the new rules must of course be applied and, as the case may be, a Single Permit will have to be requested. Applications submitted before the entry into force of the new rules are also still processed according to the “old rules”.

## 2 Exemptions

### 2.1 Exemptions linked to residence

Many foreigners residing in Belgium came here for reasons other than work. Examples include recognised refugees, foreign family members of EU citizens or third-country nationals (“family reunification”), students. A large portion of these persons is allowed to work in Belgium without having to obtain prior permission to work, and therefore do not fall under the Single Permit scheme.

Concretely, a “combined permit” is issued to persons originally residing in Belgium for reasons other than work. This combined permit is actually nothing more than a residence permit stating whether they are allowed to work in Belgium and, if so, within what limits. This new system not only replaces the former exemptions from the work permit linked to residence, but also replaces the now-discontinued work permit C, which had to be applied for by the person concerned himself.

This concerns, among others:

- nationals of the EEA Member States and Switzerland;
- third-country nationals who hold:
  - an electronic B card
  - an electronic C card
  - an electronic D card
  - an electronic F card
  - an electronic F+ card
- students enrolled in a Belgian educational establishment, exclusively for work during school holidays, or outside school holidays up to 20hours/week and to the extent it is compatible with their studies (previously a work permit C was required to this end);
- students who undertake compulsory traineeships in Belgium as part of their studies in the EEA or Switzerland;
- third-country nationals during the procedure of family reunification with an



- EU citizen, provided they have an Annex 19ter (previously a certificate of registration was also required);
- third-country nationals who obtained an A-card in the framework of family reunification with a third country national (not for family members of students). This category previously had to obtain a work permit B;
- third country nationals during the procedure of family reunification with a third country national (not for family members of students), who obtained a certificate of registration;
- refugees recognised in Belgium;
- etc.

The above categories of foreign workers are responsible for obtaining the combined title, which must be requested either at the Belgian embassy or consulate abroad or at the municipality in Belgium.

## 2.2 Exemptions linked to employment

A number of categories of workers are also exempt from a work authorisation because of the specific nature or short duration of their employment in Belgium.

It must be noted that some of these exemptions have been abolished since the entry into force of the new rules. For these workers, a Single Permit will thus have to be applied for if the employment lasts longer than 90 days. For an employment of maximum 90 days, a work permit (Flemish Region) will be required, or the worker will remain exempt (Walloon Region, Brussels-Capital Region & German-speaking Community). These include among others:

- persons working in Belgium under exchange programmes approved by the competent authority (e.g., Leonardo, Phare and Erasmus);
- foreign journalists residing in Belgium;
- researchers at an approved research establishment under a hosting agreement;

- senior or highly skilled personnel employed in the headquarters of multinational groups (under certain conditions, such as a minimum gross annual salary);
- ...

However, many exemptions remain in place. These concern in particular:

- the Vander Elst exemption for an intra-EU service delivery (= a service provided by a third-country national legally employed by an EU employer to a customer of the employer established in Belgium). An additional condition was added, only in the Flemish Region, namely that the service may not consist in the provision of personnel (e.g., temporary work or an allowed intra-group lease of personnel).
- Private business meetings, provided that the meetings take up a maximum of 20 consecutive calendar days per meeting and with a maximum of 60 days per calendar year;
- attending a training course at the Belgian headquarters of a group of companies to which the foreign employer also belongs for a maximum period of 3 months, within the framework of a training agreement. In the Flemish Region, this may now also encompass productive work (this is not the case in the Brussels-Capital and Walloon Regions, where in addition specific nationality conditions apply to the worker and/or employer);
- ...

Note that in the Flemish Region it is explicitly provided that the exemptions only apply if the Limosa notification has been made, where required. Of course, in the case of a secondment to a company in one of the other Regions, the Limosa notification must also be made where necessary (and severe sanctions apply in the event of a breach), but a breach will not affect the Single Permit exemption as such.



### 3 The Single Permit as a combined work and residence permit

#### 3.1 Scope of application

The Single Permit and the combined application procedure only apply in the context of economic migration of workers who will work in Belgium for more than 90 days.

Employees who will work for a maximum of 90 days in Belgium are not covered by the Single Permit. They are therefore still subject to the old regime of the work permit (or exemption) in combination with a visa (or visa exemption on the basis of their nationality). The same applies for au pairs and frontier workers.

#### 3.2 Who submits the application?

A Single Permit for a fixed term is always applied for by the employer.

The employer may sign the application form himself or call upon a proxyholder to do so. For a foreign employer, the form must in any case be signed by a physical person legally residing in Belgium.

A Single Permit for an indefinite period can only be applied for by the worker himself, in the Region of his residence.

#### 3.3 Where should the application be submitted?

The question of which Region is competent for the application is not only important for a swift handling of the case. Indeed, the substantive rules also differ between the Regions (see **chapter 4**), so the question which Region is competent can be very important in practice.

The new regulations contain a sequence of rules to determine the competent regional authority:

1. The establishment unit where the worker mainly works



2. The registered seat (if criterion 1 is impossible to determine)



3. The location where the worker will carry out the activities (if criterion 1 is impossible to determine and if there is no registered seat in Belgium)

#### 3.4 What does the procedure look like?

The new procedure consists of the following 6 steps:

Step I: submission of the application/renewal



Step II: verification



Step III: examination



Step IV: decision and notification



Step V: control of residence + single permit delivery



Step VI: renewal (no later than two months before expiry of the permit)

Below, we explain these steps in greater detail:

##### – Step 1

All documents relating to both employment and residence must be submitted **simultaneously** to the competent Region. This is a major disadvantage compared with the previously applicable procedure, where the documents required for the residence permit – which often take a long time to obtain – only had to be submitted at the time of the separate residence



permit application. Now, a delay in obtaining one document risks postponing the entire procedure. In particular, this can be the case for foreign criminal records, which often require a legalisation or an apostille and a translation by a sworn translator.

There are also changes with regard to the documents that need to be submitted:

- first of all, for the submission of the application, an **application form** as provided by the competent Region will be required. However, different modalities will apply in the Regions. For example, in Wallonia and Brussels, the worker and the employer will have to sign this document together. In Flanders, this is not the case and the employer can sign the document by himself, but in that same Region the form must from now on also mention the ISCO code of the function. In all Regions, the competent Belgian embassy or consulate must be mentioned on the form if the worker is abroad;
- the worker's **CV** must no longer be submitted;
- In case of a secondment, the employer must submit proof of the **Limosa declaration** when applying for a renewal;
- ...

#### – Step 2

The Region will send an acknowledgment of receipt to the employer and then examine whether the file is complete (and therefore admissible).

When the file is complete (and therefore admissible), the Region will send the file to the Immigration Office (IO) within 15 days.

However, if the file turns out to be incomplete, the additional documents will have to be submitted to the Region within 15 days after the notification of the admissibility decision. If

not, the application will be inadmissible and the procedure ends there.

#### – Step 3

Both public authorities will simultaneously examine whether the conditions for the granting of a Single Permit are met, each for their area of competence.

The IO carries out a security investigation and the Region checks whether the conditions for a work authorisation are met.

#### – Step 4

As soon as the Region declares the file to be admissible, **a period of 4 months (in principle)** starts to run within which the decision must be taken. If no decision is taken within this period, the Single Permit is awarded.

Since the IO and the Region decide independently on their own sphere of competence, different outcomes are possible:





### 3.5 As of when is the worker allowed to work?

The worker may only start working once he is in possession of a temporary residence permit (annex 49) after a positive decision (by the IO and the competent Region) has been taken and notified to him. Simply submitting the application obviously does not suffice.

If the employee is still residing abroad, he will be issued with a visa to be able to travel to Belgium.

The actual Single Permit will only be delivered after a residence control by the police, but the employee may start working in the meantime as soon as the temporary residence permit has been issued (Annex 49).

### 3.6 Extended right of residence at the end of work authorisation

If the worker is no longer admitted to work, his right of residence will automatically expire 90 days after the end of the work authorisation (if necessary, a temporary residence document will be issued). During this period, the worker can thus look for a new employer. In certain cases, however, the IO may terminate the stay before the end of this period.

If, on the other hand, the worker loses his right of residence at a certain point in time, the work authorisation automatically expires.

## 4 Substantive changes

Since 1 July 2014, the legislative competence regarding economic migration has been regionalised. As of that date, every Region has been able to adopt its own regulations in this matter. It was not until 1 January 2019 that one of the Regions, in this case the Flemish Region, made use of this possibility and decided to make major changes to the current system.

We reiterate that in every Region the introduction of the Single Permit has also meant that a number of previously existing exemptions have been abolished, for which a Single Permit will now also be required (**see chapter 2.2**).

### 4.1 Flemish Region

On 7 December 2018, the Flemish Government definitively approved a new decree that radically reforms the employment of foreign workers who are not nationals of a European Economic Area member state or Switzerland.

This decree concretises the implementation of a new model for economic migration to Flanders. This model distinguishes between 3 different types of profile: highly qualified and specific profiles, medium-skilled profiles (only for “shortage professions” mentioned on a dynamic list of these occupations) and the residual profiles which are subject to a labour market test and for which specific economic or social justifications must be demonstrated to obtain a Single Permit.

The most important features of this reform are as follows:

- A validity period of 3 years in certain cases

A work authorisation may be granted for a period of up to 3 years for the majority of highly qualified and specific profiles. These notably



include: highly qualified personnel in the strict sense, leading personnel, etc.

Before the reform, this authorisation (then known as a “work permit”) had to be renewed every year.

- Dynamic list of shortage professions

A dynamic list of shortage professions is drawn up every two years by the Flemish Minister of Work. Employers may now be granted a work authorisation for workers whose occupation is included on this list, provided that they comply with the applicable minimum wages.

Please note that this possibility is only open to Belgian employers (a secondment in a shortage profession is therefore impossible) and the worker must be located abroad during the application procedure (an application from Belgium is therefore excluded).

The list of shortage professions, drawn up in consultation with the VDAB and the social partners, was defined by a ministerial decree of 19 December 2019. This list includes 20 functions in various fields. The following functions are among others included: chef, crane operator, industrial plant technician, maintenance mechanic, butcher, certain truck drivers, etc.

- Adjustments of the salary thresholds and separate threshold for those under 30 years of age

The salary thresholds for highly qualified workers have been slightly increased, for example: EUR 41,868 gross instead of EUR 41,739 gross per year for highly qualified personnel (amount for 2019).

More importantly, however, a lower salary threshold (EUR 33,494 gross - amount for 2019) is introduced for highly skilled workers under 30 years of age and for nurses, but only in case of recruitment by a Belgian employer.

- Possibility to work for several users in case of secondment

In case of a secondment, the worker may work for several users in the Flemish Region, provided that the secondment agreement indicates the data of all users.

- New categories of workers following the transposition of European directives

The decree also introduces a series of new categories of highly qualified or specific profiles following the transposition of European directives. Unlike the other changes, these changes have **not yet entered into force**, but given the importance they will have in the future, we already mention them here. Among these new categories of workers, one can find:

*a) Holders of a European Blue Card:*

Up until now, the use of European Blue Cards has been very limited, as the conditions were stricter than for the category “highly qualified personnel” and the application procedure was (much) longer. From now on, this category will benefit from an accelerated procedure (in practice, max. 3.5 months) compared with that applicable to highly qualified personnel (in practice, max. 4.5 months) and offers the worker the significant advantage that the work authorisation is, after 2 years, valid for each employer. This could in some cases increase the attractiveness of this category.

*b) Seasonal workers:*

The obtaining of a Single Permit also becomes possible – under certain conditions – for seasonal workers in the hotel and catering industry and in agriculture and horticulture. For these workers, the work authorisation may not exceed a period of 5 months per 12-month period.

Surprisingly, however, this category is subject to a (mandatory) labour market test, which risks limiting the use of this category in practice.

*c) Workers seconded in the framework of an intra-corporate transfer*

A specific category is introduced for certain intra-corporate secondments from an



undertaking outside the EEA to an undertaking of the same group in the Flemish Region.

The advantage of this category is that the holder of a Single Permit on this basis has a right to short-term mobility in other EU Member States. This means that he may work for a maximum of 90 days in a rolling period of 180 days for other companies in the same group which are established in another Member State (and may reside there).

#### *d) Trainees*

The regime applicable to trainees has been thoroughly reviewed. The work authorisation can only be granted for a period of 6 months, which can be renewed once (previously, it was possible to obtain an authorisation for a period of 12 months from the outset).

The conditions to qualify as a trainee have also been reviewed. For example, the application must be made within two years of graduation or as part of the education. In the past, the trainee had to be less than 30 years of age on the date the work authorisation and work permit were granted.

#### – New obligations for employers

A number of new obligations are being imposed on employers. Thus, the Flemish authorities must as of now be informed in the event of early termination of the occupation, and a new application for a work authorisation must be submitted in the event of a significant change in the employment conditions (e.g., changes in function, workplace, remuneration, etc.).

## 4.2 In Wallonia and Brussels

At this time, no substantial changes (other than those mentioned under 2.2) have been introduced in the Brussels-Capital Region and the Walloon Region.

However, those Regions also intend to modify the rules in terms of content, at least to transpose the European directives on intra-corporate secondments, seasonal work, trainees, etc. as well.

We will of course keep you informed as soon as there is more news about this.

## 5 What should employers pay attention to?

In summary, clearly, the changes to the employment of foreign workers are both comprehensive and far-reaching. By way of conclusion, we therefore highlight some particular points of attention:

- **Good planning is half the job:** the procedure to apply for a Single Permit is unfortunately not simpler than the previous “double” application for a work permit and residence permit. All documents (both employment and residence related) must be submitted at the time of the application, which can put pressure on the timing. And speaking of timing, you should bear in mind that the application procedure can take approximately 4.5 months, which is considerably longer than before. The renewal application must in addition be submitted 2 months before the expiry of the Single Permit, so we recommend starting the renewal process 3 months in advance.
- **In case of exemption: duly follow up the right of residence:** a worker who is exempt from a Single Permit must of course always be legally resident in Belgium. As an employer, you have the explicit obligation to verify the residence permit (“the combined title”) before the start of employment and to keep a copy of it available for the social inspection. If the residence permit expires at any time, you must ask the worker in advance to provide you with his new permit. Strict criminal sanctions can be imposed in the event of infringements of these obligations and/or in case of employment of illegally staying workers.



- **Take care of the Limosa declaration of seconded workers:** failure to comply with the obligations regarding the Limosa declaration can be costly for both the foreign employer and the Belgian end-user, and this does not change with the new rules. Moreover, when renewing a Single Permit of a seconded worker, the Limosa declaration (if applicable) must be enclosed. All the more reason to ensure that the obligations in this respect are met!
- **Employment of less than 90 days ≠ automatic exemption:** workers who are employed in Belgium for a short period of time *can* often be exempt from a work authorisation. However, this is not always the case, so carefully verify if there is indeed an exemption.
- **Remember the “deregistration” and the new application (Flemish Region):** in the Flemish Region, as an employer, you must inform the authorities if the employment of a foreign worker ends earlier than planned. In the event of a significant change in the terms and conditions of employment, it may also be that a new application must be submitted – and of course, you must take this into account.



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