

Newsletter

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Chain Liability and Business Immigration in the Flemish Region as of 1 January 2026



Dear reader,

In 2026 significant new Flemish regulations concerning the employment of third-country nationals have entered into force.

With effect from 1 January 2026, the stricter rules on chain liability have entered into force. In the context of (sub)contracting, certain activities are not physically carried out by the principal's own employees, but by the (employees of the) subcontractor. By introducing several liability mechanisms, the legislator sought to prevent the risk of employing illegal third-country nationals from being easily and entirely externalised when work is subcontracted. The Flemish Government has further tightened these liability provisions.

In addition, the rules governing labour migration have once again been amended with effect from 1 January 2026, impacting applications for work permits (less than 90 days) and single permits (more than 90 days) for third-country nationals (*i.e.* workers who are not nationals of an EEA Member State or Switzerland).

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TABLE OF CONTENTS

- 1 Joint and several criminal chain liability . 2
- 2 Changes in business immigration 5

1 Joint and several criminal chain liability

1.1 The road to stricter rules

In the context of subcontracting, certain activities are not physically carried out by the principal's own employees, but by the (employees of the) subcontractor. It goes without saying that the subcontractor is fully autonomous in performing the services and may, in this context, opt to employ (exclusively or not) third-country nationals.

By introducing several liability mechanisms, the legislator aimed to prevent parties from being able to easily and entirely externalise the risk of employing illegal third-country nationals alongside the outsourcing of activities.

In 2013, criminal liability was therefore introduced for the first time at federal level for principals and (sub)contractors who cooperate with (sub)contractors committing infringements relating to the "formalities", as well as joint and several liability for the wages owed to the third-country national.

Following several high-profile cases, the Flemish Government has further tightened these provisions on criminal chain liability, which have since been regionalised.

The new regulations initially provided that (intermediate) contractors (in all sectors) would, as from 1 January 2025, be obliged to request additional information and documents from their direct subcontractors concerning the employment of foreign workers and self-employed persons.

However, the entry into force of these provisions was postponed until 1 January 2026, and the scope for requesting additional information and documents was further refined.

1.2 The tightened rules as of 1 January 2026

1.2.1 Scope of liability

The principal or contractor (outside a chain of subcontractors) or the intermediate contractor (within a chain of subcontractors) is jointly and severally criminally liable if their direct contractor or subcontractor employs an illegally staying third-country national as an employee or self-employed person.

However, the principal, contractor and intermediate contractor are not liable if the following conditions are met:

- In all sectors: the principal, contractor and intermediate contractor have a written declaration in which their direct contractor or subcontractor confirms that they do not employ and will not employ illegally staying third-country nationals, nor engage self-employed third-country nationals who are not authorized or permitted to reside for more than three months or to establish themselves in Belgium.
- If their direct contractor or subcontractor belongs to a risk sector (***i.e. activities relating to immovable property, cleaning, the meat sector and parcel delivery***): the principal, contractor and intermediate contractor must also exercise due diligence upon the appointment of their direct contractor or subcontractor in order to prevent the employment

of illegally staying third-country nationals, or self-employed third-country nationals who are not authorized or permitted to reside for more than three months or to establish themselves in Belgium.

The principal, contractor and intermediate contractor nevertheless become jointly and severally criminally liable again if they are aware that their direct contractor or subcontractor employs one or more illegally staying third-country nationals or self-employed third-country nationals who are not authorized or permitted to reside for more than three months or to establish themselves in Belgium. Proof of such knowledge may be established by social law inspectors using any means of evidence.

It is important to note that these regulations do not apply to a principal who is a natural person engaging a contractor exclusively for private purposes.

1.2.2 Written declaration (all sectors)

The principal, contractor and intermediate contractor are not liable if they have a written declaration from their contractor or subcontractor confirming that they do not and will not work with illegally staying third-country nationals.

A similar provision already applied to contractors and intermediate contractors in the context of criminal liability for the “formalities” and joint and several liability for outstanding wages.

However, the scope of the written declaration is now extended and must also include persons performing professional activities as self-employed workers.

1.2.3 Due Diligence in risk sectors

A. information to be requested

If the direct contractor or subcontractor belongs to a risk sector, the principal, contractor and intermediate contractor must exercise due diligence upon appointment.

For the purposes of this chain liability, the following sectors qualify as risk sectors: activities relating to immovable property, cleaning, the meat sector and parcel delivery.

To this end, the principal, contractor and intermediate contractor must have the following categories of information provided by their direct contractor or subcontractor:

- identification and contact details of the direct contractor or subcontractor;
- personal data, residence status data and employment data of the foreign employees and foreign self-employed persons of the direct contractor or subcontractor.

The Flemish Decision of 26 April 2024 clarifies which data must be provided in practice. The required data differ depending on the labour migration context and only need to be requested where the direct contractor or subcontractor is active as a self-employed third-country national or employs third-country nationals (i.e. non-EEA/Swiss nationals):

- intra-Community or intra-EU supply of services (for employees better known under the so-called “Vander Elst” exemption)
- constellations where authorisation to work (in the form of a work permit or single permit for employees or a professional card for self-employed persons) is required:

Intra-Community services	Authorisation to work
Valid passport of all third-country nationals employed by the direct subcontractor or performing self-employed professional activities on behalf of the direct subcontractor and of the direct subcontractor natural person (if applicable).	Valid passport of all third-country nationals employed by the direct subcontractor or performing self-employed professional activities on behalf of the direct subcontractor and of the direct subcontractor natural person (if applicable).
The residence permit or proof of legal residence (>3 months) of the EEA member state or Switzerland where the aforementioned third-country nationals reside.	Proof of legal residence in Belgium.
The L1 form (if applicable).	Admission to work (work permit, single permit or professional card).
The A1 certificate (or at least proof of application for the A1 certificate).	Proof of DIMONA (for employees).

It is therefore essential for principals, contractors and intermediate contractors to be aware of the employment of third-country nationals by their contractor or subcontractor.

B. Scope of due diligence

If it appears that the above-mentioned data (above **point A**) relating to the employment of foreign employees or self-employed persons are missing, the principal, contractor and intermediate contractor must request their direct contractor or subcontractor to rectify this.

If the contractor or subcontractor fails to comply with this request, the social inspection services must be notified immediately. If the principal, contractor or intermediate contractor fails to do so, the duty of care is not fulfilled and joint and several criminal liability will apply.

Except for verifying the validity date, the principal or (intermediate) contractor is not required to conduct a substantive assessment of the submitted documents.

1.2.4 Sanctions

In the event of an infringement, penalties include imprisonment from six months to three years (for legal entities: a fine of EUR 30,000 to EUR 720,000) and/or a criminal fine of EUR 6,000 to EUR 70,000 (to be multiplied by the number of employees concerned, with a maximum of 100). These amounts apply as from 1 February 2026 following a recent legislative amendment (increase of surcharge coefficients).

2 Changes in business immigration

Since 1 July 2014, competence for labour migration (“authorisation to work”) has been regionalised. Each Region (and the German-speaking Community) may adopt its own regulations.

The Flemish Region was the first to introduce such regulations in 2018. These rules were revised for the first time in 2021, with several substantive and technical amendments. In May 2024, the Flemish regulations were amended again.

Less than two years later, the Decision of 25 November 2025 (Belgian Official Gazette, 19 December 2025) amending the Flemish Government Decision of 7 December 2018 implementing the Act of 30 April 1999 on the employment of foreign workers, once again introduces several changes to Flemish labour market policy.

These amendments entered into force on 1 January 2026, with the exception of the payment of the retribution, which will enter into force at a later date.

2.1 Highly skilled employees

An authorisation to work for a highly skilled employee will henceforth only be granted if the position corresponds to the level of higher education.

In addition, the Belgian employment contract must include the following elements:

- personal details of the employer and the employee;
- duration and place of employment;
- remuneration;
- number and name of the joint committee to which the employer belongs;
- the employee’s position and job classification.

The authorities may also request the employer to submit a certificate from a public authority or a diplomatic or consular post of the country where the foreign worker is established, confirming the authenticity of their higher education diplomas.

2.2 Medium-skilled functions (“bottleneck occupations”)

If the third-country national does not fall under a specific category, an authorisation to work for a limited period will in principle only be granted if it is not possible to find a suitable worker on the European labour market within a reasonable period (*i.e.* the labour market test). This condition is automatically presumed to be fulfilled if the position is included on the dynamic list of medium-skilled bottleneck occupations.

As from 1 January 2026, a new bottleneck occupation list applies, adding certain professions (including diamond cutter, asbestos remover, etc.) and removing others (including butcher, truck driver with licences C, C1, CE, C1E, etc.).

Existing authorisations to work for removed occupations may nevertheless be renewed for the same position with the same employer.

2.3 Other category

If the worker does not fall under an exemption, a specific category or a bottleneck occupation, the (prospective) employer must demonstrate that it is impossible to find a suitable candidate within a reasonable time on the EEA labour market who, possibly after vocational training, can satisfactorily and timely perform the function (*i.e.* the labour market test).

From now on, an application under the “other” category will only be admissible if all of the following cumulative conditions are met:

- the position is listed on the VDAB’s broad bottleneck occupation list;
- the position requires qualification level 3 or 4;
- the vacancy has been published on the VDAB and EURES platforms for a continuous minimum period of nine weeks within the four months immediately preceding the application.

As a result, applications for low-skilled positions (qualification level 2) are no longer possible, except for seasonal work (see below). Existing permits for low-skilled positions may, however, be renewed for the same position with the same employer.

It is further presumed that a suitable candidate is available, and that no authorization to work may therefore be granted, if:

- the local tension indicator for the position (*i.e.* the ratio between the number of jobseekers and vacancies) has been equal to or greater than twelve throughout the four months preceding the application;
- the qualifications required in the vacancy are disproportionate to the function;
- the employer fails to cooperate with VDAB mediation.

Moreover, additional documents must be submitted to obtain a work authorisation under this category:

- including evidence of unsuccessful recruitment efforts, including training initiatives undertaken by the employer.

2.4 Seasonal work

For seasonal workers, the function to be performed must now also be listed on the VDAB’s broad bottleneck occupation list. Unlike the “other” category, there is no limitation to qualification levels 3 or 4.

2.5 Flemish retribution

For each application for an authorisation to work in the context of a single permit, a Flemish retribution (in addition to the federal retribution) must henceforth be paid. In the event of non-payment or partial payment, the application will be declared inadmissible after a 15-day remediation period.

The amount (which will be indexed annually) and the entry into force of the Flemish retribution will be determined at a later date.

2.6 Changes to optional grounds for refusal and withdrawal

The Flemish regulations contain several grounds for refusal and withdrawal, which were split in 2021 into mandatory and optional grounds.

The following optional grounds have been amended or added:

- the employer, host entity, directors or authorised representative do not comply with tax, social or company law (the addition of directors also applies to optional withdrawal grounds);
- the employer, host entity, authorised representative or employee has used incorrect, falsified or unlawfully obtained data, statements or unlawful amendments in an application for a work authorisation during the three years preceding the application;
- more than 80% of the workforce of the undertaking or host entity consists of foreign workers holding a work authorisation for a limited period.

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