

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



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**Obstacles to the right of free  
movement and residence for EU  
citizens and their families:  
Country report for Belgium**

Study for the LIBE and PETI Committees









**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND  
CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS  
PETITIONS**

# **Obstacles to the right of free movement and residence for EU citizens and their families Country report for Belgium**

## **STUDY**

### **Abstract**

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE and PETI Committees, analyses the current status of transposition of selected provisions of Directive 2004/38/EC in Germany and identifies the main persisting barriers to free movement for EU citizens and their family members in German national law and practice. The study also examines discriminatory restrictions to free movement, measures to counter abuse of rights and refusals of entry and residence rights, in addition to expulsions.



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## LIST OF ABBREVIATIONS

- CIRE** Coordination et Initiatives pour Réfugiés et Étrangers (Coordination and initiatives for refugees and non-nationals)
- CJEU** Court of Justice of the European Union
- ECOSOC** United Nations Committee on Economic, Social and Cultural Rights
- ECRI** European Commission against Racism and Intolerance
- EHIC** European Health Insurance Card
- Fedasil** Agence Fédérale pour l'accueil des demandeurs d'asile/ Federaal Agentschap voor de Opvang van Asielzoekers (Belgian Asylum Service)
- Myria** Federaal Migratiecentrum / Centre Fédéral Migration (Federal Migration Centre)
- Unia** Interfederaal Gelijkekansencentrum/Centre Interfédérale pour l'Égalité des Chances (Belgian Inter-federal Centre for Equal Opportunities)



## EXECUTIVE SUMMARY

The transposition of Directive 2004/38/EC has taken Belgium a long time. In 2008, despite having transposed the majority of the Directive, a number of the provisions were transposed incorrectly or incompletely. After the initial 2008 Commission Report, several pieces of legislation were adopted, and further infringement proceedings initiated, before Belgian legislation was aligned with the Directive. To date, the transposition of the Directive into Belgian legislation, while **largely in line** with the Directive, remains **incomplete**. Of the provisions analysed for this report, although most of the transposition issues previously identified in the 2008 Commission Report and the European Parliament study have been addressed, a small number of issues remain with respect to Articles 7(3), 14, 17(1)(c), 20(1) and 27(3).

Some legislative amendments have replaced provisions that were more favourable than the Directive. For example, since 2013, access to social assistance, social integration benefits and emergency healthcare has been **limited**; initially to all EU citizens and their family members, then, following a Constitutional Court judgement, to those who do not have the status of worker or self-employed. Similarly, the previous right to permanent residence after three years of uninterrupted residence has been increased to five years.

**EU citizens** face a number of practical barriers in exercising their right to free movement and residence in Belgium, principally with respect to residence rights and access to social security and healthcare. Many of the barriers manifest themselves as **administrative burdens** and bureaucracy (e.g. delays, excessive documentation and cumbersome administrative formalities). In recent years, there is a trend towards **strict interpretation** of certain key concepts, such as status, 'lack of sufficient resources', 'lack of real prospect of obtaining employment', and 'unreasonable burden' on the social security system, leading to the denial of residence rights. In practice, a number of instances of **incorrect application** of the Directive have been reported in relation to access to social rights and healthcare, as well as a **lack of cooperation** between Belgian national authorities and those of other Member States.

**Family members of EU citizens** also face a number of practical barriers in exercising their free movement rights, usually in relation to the entry of third country national family members. **More than a third of visas** for family reunification with a Belgian or EU citizen are **denied**, usually as a result of a strict interpretation of the requirement of **sufficient resources**. Other barriers for family members include: long delays in visa processing, additional documentation required, unjustified reasons for denying visas, failure to use the accelerated procedure for visa applications, conflicting information and cumbersome administrative formalities.

The legislation provides **strong legal protection** to prevent discrimination against EU citizens and their family members, with the equal treatment of non-nationals guaranteed by the Belgian Constitution. Similarly, same-sex partnership and marriage are recognised in Belgium, with no distinction made between different sex and same-sex spouses and partners of EU citizens for the purposes of entry and residence rights. Despite these protections, however, **instances of discrimination** based on nationality, ethnic or racial origin and civil status in the exercise of free movement rights have been identified.

Discrimination based on **nationality** generally concerns unjustified administrative fees and excessive formalities, access to justice, goods and services, employment and housing.



There is a so-called **foreigner's contribution** to cover the administrative costs connected to the processing of residence applications, which has been roundly criticised, including by the Council of State, on the basis that such contributions could be considered discriminatory as they create a distinction on the basis of residence status. Cases of discrimination based on **civil status and sexual orientation** concern unjustified formalities and refusal to recognise registered partnerships. Issues of discrimination in exercising free movement rights on the basis of **ethnic or racial origin** relate mostly to **Roma**, who are more likely to face systematic refusal to register residence and stigmatisation at all levels of society, together with infrastructure problems (e.g. lack of caravan sites for Roma to reside in Belgium).

Belgium has adopted measures to prevent and combat **marriage and legal cohabitation of convenience**. Penalties can be administrative and legal and include refusal of visas, annulment of the marriage with the withdrawal of related residence permits, imprisonment and/or a fine, and the intensification of controls. Third country nationals, including family members of EU citizens, are particular targets for these measures. Other methods used to prevent **fraud** for entry and residence purposes, such as **false declarations of parenthood, adoptions of convenience, bogus self-employment and falsified European identity documents**. Measures exist to combat false declarations of parenthood and bogus self-employment but not adoptions of convenience.

The residence rights of EU citizens and their family members can be terminated in cases where there is a change in status and if they no longer have '**sufficient resources**' and become an '**unreasonable burden**' on the social system. While the termination of residence does not lead to physical expulsion, EU citizens and family members are ordered to leave, are no longer registered and are no longer entitled to social benefits, which could be considered **de facto expulsion**.

The number of terminations of residence rights for EU citizens and their family members has increased in recent years, reaching 2,042 in 2014. The majority of decisions were based on the individual presenting an **unreasonable burden** on the social security system. Many concerns have been raised concerning the **lack of due consideration for the personal circumstances** of the EU citizen and family members whose residence rights are being terminated. In addition, critics argue that the systematic data transfers from social security databases to the Immigration Office violate Directive 2004/38/EC. Refusal of entry and residence can also be based on concerns for public order, national security or public health.

**Prohibition of re-entry** can be implemented for up to 10 years in expulsion decisions, e.g. in cases of marriage and legal cohabitation of convenience, fraud, or on grounds of public order or national security. **Physical expulsions** of EU citizens and their family members are rare, and usually result from fraud or serious public order offences. Once EU citizens and their family members have permanent right of residence, expulsion is only possible on serious grounds of public order or national security.

Overall, while the legal transposition of the Directive is largely correct and complete, implementation of the Directive is problematic. There are increasing restrictions and obstacles for EU citizens and their family members (in particular third country nationals), where non-nationals are seen as an economic burden. As a result, the possibility under the Directive to terminate residence rights on the grounds that an individual places an undue burden on the social security system has been open to exploitation.



# 1. OVERVIEW OF THE TRANSPOSITION OF DIRECTIVE 2004/38/EC AND RECENT DEVELOPMENTS

## KEY FINDINGS

- In 2008, Belgium had transposed most of the Directive, although a number of the provisions were transposed incorrectly or incompletely, while others were transposed more favourably than the Directive.
- In 2016, while **largely in line** with the Directive, transposition remains incomplete, despite numerous amendments to the legislation and further **infringement** proceedings initiated by the European Commission in 2013.
- The remaining issues are relatively small and concern parts of Articles 6, 7(3), 14, 17(1)(c), 20(1) and 27(3).
- In a number of cases, new restrictions to free movement have emerged, with previously more favourable provisions having been amended to bring them strictly into line with the Directive. Since 2013, **access to social integration benefits** and to **social assistance has been limited**. In addition, the previous **right to permanent residence** after three years of uninterrupted residence has been increased to five years.

## 1.1. Transposition context

### 1.1.1. Transposition overview as assessed by the European Parliament and the Commission in 2008

The 2008 Commission Report and European Parliament study found that Belgium had transposed most of the provisions of the Directive, although a number of the provisions were transposed incorrectly or incompletely. These included some gaps in transposition and some ambiguous elements, as well as a number of provisions transposed more favourably than the Directive. Overall, Belgium's performance was comparable to most other Member States, with Belgium being one of the 19 Member States against which the Commission launched infringement proceedings<sup>1</sup>.

The problematic elements identified in the 2008 Commission Report and the European Parliament's Comparative Study related predominantly to the entry and residence rights of EU citizens and their family members, as well as permanent residence rights<sup>2</sup>.

The Commission Report highlighted the following transposition issues:

- Article 3(2) defining the **beneficiaries** to the right to free movement and residence was not transposed correctly as only certain durable relationships were covered by the transposition<sup>3</sup>.

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<sup>1</sup> [Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States](#), p. 3 and p. 12.

<sup>2</sup> European Citizen Action Service, [Comparative Study on the application of Directive 2004/38/EC of 29 April 2004 on the Rights of Citizens and their family members to move and reside freely within the territory of the Member States](#), European Parliament (2009).



- Article 5(4) on the **right of entry** for EU citizens and their family members arriving at the border without the necessary travel documents was not fully transposed in that it did not provide any option to produce the necessary documents within a reasonable period of time<sup>4</sup>.
- Article 7(3) on the **retention of the status of worker** was not correctly transposed, with the law providing only for the retention of the right of residence but not the status of worker, which is a wider concept<sup>5</sup>.
- Article 14 on the **retention of the right of residence** was not correctly transposed as the transposition did not exclude expulsion as an automatic consequence of recourse to the social assistance system<sup>6</sup>.
- Article 16 on the **right to permanent residence** after five years suffered from various transposition issues as it required EU citizens to comply with the transposing measures rather than the Directive itself<sup>7</sup>.
- Article 17 on the right of certain categories of persons to **permanent residence before completion of a continuous period of five years** of residence was incorrectly transposed as Belgium did not take account of periods of residence acquired by EU citizens before their countries acceded to the EU<sup>8</sup>.

The study commissioned by the European Parliament also highlighted the following transposition issues:

- In transposing Article 6 on the **right to residence for less than three months**, Belgium imposed a fine of EUR 200 on EU citizens and their family members who failed to report their presence in Belgium. The study called this disproportionate as there is no similar fine for Belgian citizens who fail to register information<sup>9</sup>.
- Article 8(2) on the requirement to issue a **registration certificate** immediately after registration was not correctly transposed in that the Belgian legislation merely stated that a 'Union citizen can ask for a registration certificate'<sup>10</sup>. The following provision, however, required the municipality to provide this certificate immediately<sup>11</sup>.
- In transposing Article 13 on the retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership, Belgium included a list of the Member States which have **recognised partnerships**. However, the list had not been updated to include the Member States that had since introduced legislation to recognise legal partnerships. The list, therefore, refers only to seven Member States (Denmark, Germany, Finland, Iceland, Norway, United Kingdom and Sweden)<sup>12</sup>.
- Article 20(1) required Member States to issue residence cards to third country national family members entitled to permanent residence, which had to be automatically

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<sup>3</sup> Ibid., p. 4.

<sup>4</sup> Ibid., p. 5.

<sup>5</sup> Ibid., p. 6.

<sup>6</sup> Ibid., p. 7.

<sup>7</sup> Ibid., p. 7.

<sup>8</sup> Ibid., p. 7.

<sup>9</sup> European Citizen Action Service, [Comparative Study on the application of Directive 2004/38/EC of 29 April 2004 on the Rights of Citizens and their family members to move and reside freely within the territory of the Member States](#), European Parliament (2009), pp. 53-54.

<sup>10</sup> Ibid., p.54.

<sup>11</sup> Article 51 of the [Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>12</sup> European Citizen Action Service, [Comparative Study on the application of Directive 2004/38/EC of 29 April 2004 on the Rights of Citizens and their family members to move and reside freely within the territory of the Member States](#), European Parliament (2009), p.55.



renewed every 10 years. In Belgium, the permanent residence card was only valid for five years and there was no provision for automatic renewal<sup>13</sup>.

### 1.1.2. What has changed since

A number of pieces of legislation have been enacted since 2008 to align Belgian legislation with the EU Directive. Despite amendments made in 2011 and 2012, the Commission launched **infringement proceedings against Belgium** in February 2013, noting that Belgium did not facilitate the issuing of visas and residence cards, nor had it transposed all of the safeguards against the expulsion of EU citizens applying for social assistance, as no provision was made for an assessment of the personal circumstances of the individual in each case. The Commission also noted that 'Belgium's rules on protection against expulsions on grounds of public policy or public security offer safeguards to non-EU family members of Union citizens only, but not to Union citizens'<sup>14</sup>. Belgium further amended its legislation in 2013, 2014 and 2015<sup>15</sup>. While the additional amendments addressed most of the conformity issues (See Annex I), some small conformity issues remain.

A description of the changes made to the provisions identified as problematic by the 2008 Commission Report is presented below:

- Article 3(2): Beneficiaries

Following several amendments this provision is now **in line** with the Directive. The 2014 amendment saw the inclusion of dependent family members, or where a serious health issue requires the personal care of the family member<sup>16</sup>.

The notion of registered partner was also amended, being expanded to partners under the following conditions: in a durable relationship, living together, not being in a durable relationship with someone else, and being over 21 years old. A relationship can be deemed durable where the two parties have lived together for at least one year, or have met for three times amounting to 45 days in the past two years, or have a child together<sup>17</sup>. Same-sex marriage and registered partnerships are recognised in Belgium and benefit from the same rights as different sex marriage and registered partnerships.

The amended provision now states that when assessing whether or not an individual has **sufficient resources** for the residence application, his/her personal circumstances will be taken into account. This addresses the gap left by the omission of the last sentence of Article 3(2) from Belgian law in 2008. Similar wording also applies to the right of the third country national family member to accompany or join the EU citizen (thus covering the

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<sup>13</sup> Ibid., p.56.

<sup>14</sup> European Commission, [February infringements package: main decisions](#), 21 February 2013.

<sup>15</sup> [Royal Decree of 13 February 2015 amending Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners](#); [Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); [Programme Act of 28 June 2013](#); [Royal Decree of 15 August 2012 amending Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners](#); [Act of 8 July 2011 amending Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners regarding family reunification requirements](#); [Royal Decree of 21 September 2011 modifying several Royal Decrees](#); [Circular of 28 March 2012 on EU citizens and their family members: changes to access to social assistance](#); [Circular of 13 December 2013 implementing provisions of the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners regarding family reunification conditions following a decision of the Constitutional Court](#).

<sup>16</sup> [Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>17</sup> [Act 8 July 2011 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners regarding family reunification requirements](#).



case of denial of entry). The transposition of Article 3(2) is now, therefore, in line with the Directive.

- Article 5(4): Right to entry

In 2008, the transposed provision on the right to entry did not allow for an EU citizen and their family members to obtain the necessary documents within a reasonable period of time and reasonable means, nor did it allow them to prove their right to free movement and residence by other means before refusing entry. Amendments made in 2014 have brought the provision **into line** with the Directive by offering the same safeguards in very similar wording to the Directive itself<sup>18</sup>.

- Article 7(3): Right of residence for more than three months

Article 7(3) guarantees the retention of the status of worker or self-employed in certain circumstances (e.g. temporary illness or accident). Belgian legislation, however, used the term retention of **the 'residence right' rather than 'worker status'**, thereby limiting its scope. The legislation still uses the wording 'residence right', therefore this issue remains<sup>19</sup>.

- Article 14: Retention of the right of residence

Belgian legislation has been **partly brought into line** with the Directive, as a decision to remove the right of residence because an individual has become an unreasonable burden on the social assistance system must now take into account the personal circumstances of the individual and his/her family members, together with considerations such as the length of stay in Belgium, and the temporary nature of the assistance sought, among others<sup>20</sup>. This effectively guarantees that the decision is not the automatic result of recourse to social assistance. However, the legislation does not explicitly provide that the **verifications of residence conditions** should not be carried out systematically. It is essential that the legislation explicitly provides such a guarantee in line with the criticism levelled at the Immigration Office in this respect and the fact that the Immigration Office is automatically informed when a EU citizen is unemployed (see Section 5.1.1). Additionally, Belgian legislation requires jobseekers to provide evidence that they are continuing to seek employment and that they have a genuine chance of being employed without specifying from which point in time they must start providing evidence. Such a requirement is not fully reflected in the Directive and CJEU case-law since it effectively proof of continuity of employment and evidence of prospects of being employed even before six months. Indeed, in the *Antonissen* case, the CJEU held that a Member State may 'provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged'<sup>21</sup>.

- Article 16: Right to permanent residence – general rules

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<sup>18</sup> Article 41 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#) amended by Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners.

<sup>19</sup> Article 42bis of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>20</sup> Article 42bis of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#) as amended by [Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>21</sup> CJEU Case C-292/89 *The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen* [1991] ECR I-00745.



In 2008, Belgian legislation was more favourable in its transposition in that it granted the right to permanent residence after **three years** of uninterrupted residence. A 2013 amendment has increased this requirement to five years of uninterrupted residence in order to obtain the right to permanent residence<sup>22</sup>.

The legislation has also been amended to require the EU citizen and his/her family members to comply with the requirements of the Directive during the period of residence, replacing the previous requirement to comply with the more limited 'national transposing measures'<sup>23</sup>.

- Article 17: Exemptions for persons no longer working in the host Member State and their family members

As described for Article 16 above, the Belgian legislator changed the more favourable three year residence requirement to five years, in line with the Directive<sup>24</sup>. In addition, as in 2008, the Belgian legislation has **not transposed Article 17(1)(c)** on the right to permanent residence of workers or self-employed persons who, after three years of continuous employment and residence in the host Member State, work in an employed or self-employed capacity in another Member State while retaining their place of residence in the host Member State.

The study commissioned by the **European Parliament** also raised the following transposition issues:

- Article 6 on the right to residence for less than three months

The legislation has not been amended and a fine of EUR 200 may still be imposed on EU citizens and their family members who have not reported their presence in Belgium<sup>25</sup>. The study commissioned by the European Parliament considered the fine to be disproportionate as there is no similar fine for Belgian citizens who fail to register information<sup>26</sup>.

The Directive allows for sanctions for failure to register as long as they are proportionate and non-discriminatory. Nevertheless, Belgian citizens have an obligation to register their main residence at the municipality. The failure to do so can be sanctioned by a fine of EUR26 to EUR500<sup>27</sup>. In light of this, the fine imposed on EU citizens and family members could be considered as proportionate and therefore **in line** with the Directive. The fine has not been applied in practice so far<sup>28</sup>.

- Article 8 (2) on the requirement to issue a registration certificate

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<sup>22</sup> [Programme Act of 28 June 2013](#).

<sup>23</sup> Article 42quinques of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#) as amended by [Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>24</sup> Article 42sexies of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#) as amended by [Programme Act of 28 June 2013](#).

<sup>25</sup> Article 41bis of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>26</sup> European Citizen Action Service, [Comparative Study on the application of Directive 2004/38/EC of 29 April 2004 on the Rights of Citizens and their family members to move and reside freely within the territory of the Member States](#), European Parliament (2009), pp. 53-54.

<sup>27</sup> Article 7 of the [Act on population registries, identity cards, foreigner cards and residence cards](#) and Act 7 of the [Royal Decree on population registries and the foreigners' registry](#).

<sup>28</sup> State Secretary for Asylum and Migration Policy, 'General Policy Note on Asylum and Migration' (2015), pp. 14-15.



As described above, the provision seems to have been correctly transposed, with municipalities required to provide a registration certificate<sup>29</sup>.

- Article 13 on the retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership

The list of seven Member States which have recognised partnerships remains unchanged in the legislation<sup>30</sup>. It was, however, amended in 2011, stating that 'the municipality can recognise the right to residence of a spouse or partner in a partnership equivalent to marriage'<sup>31</sup>. Accordingly, the municipality can be considered responsible for determining whether or not a partnership is equivalent to marriage and the list set out in the Royal Decree can be considered non-exhaustive.

- Article 20(1) on the issuing of residence cards to third country national family members entitled to permanent residence

No change has been identified in the legislation, which does not guarantee automatic renewal of the residence card every 10 years<sup>32</sup>. The permanent residence card is valid for five years, as is the identity card issued to a Belgian national.

## 1.2. Current transposition status

### 1.1.1. Overall assessment of the current transposition status in Belgium

It took a long time for Belgium to bring its legislation into line with the Directive, including the adoption, over the years, of several pieces of legislation amending different parts of the implementing provisions, as well as further infringement proceedings. Despite these efforts, the transposition of the Directive into Belgian legislation, while **largely in line** with the Directive, remains **incomplete**. Many of the transposition issues previously identified by the Commission and the European Parliament have been addressed. However, a small number of issues remain with respect to Articles 7(3), 14, 17(1)(c) and 20(1). In addition to these remaining issues, the transposition of Article 27 remains incomplete.

Article 27 concerns the restriction of the freedom of movement and residence of Union citizens and their family members, on grounds of public policy, public security or public health. While Article 27(1), (2) and (4) were correctly transposed into Belgian legislation, the transposition of Article 27(3) remains problematic.

The issues in the transposition of Article 27(3) remain the same as in 2008, i.e. there is no provision that the information on criminal records cannot be requested after three months of residence or entry in the country. In addition, whereas under the Directive, the 'host Member State may, should it consider it essential, request [...] information concerning any previous police record the person concerned may have', the notion of 'essential' is not adequately reflected in the Belgian transposing provision, which instead uses the weaker term 'as necessary'.

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<sup>29</sup> Article 51 of the [Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>30</sup> Article 4 of the [Royal Decree of 7 May 2008 implementing Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>31</sup> Article 14 of the [Royal Decree of 21 September 2011 amending the Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>32</sup> Article 42quinquies of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).



The 2008 Commission Report raised the failure of Belgian legislation to include, in its transposition of Article 27(4), the obligation for Belgium to allow the return of persons with Belgian passports and identity cards expelled from other Member States on grounds of public health, safety and order to the country. The legislation has since been amended to include some categories of non-nationals allowed to re-enter Belgium under these circumstances<sup>33</sup>. Although the legislation does not specifically address the case of Belgian nationals expelled from other Member States, the Consular Code allows Belgian nationals who can prove their nationality automatic re-entry to the country, even without passports or identity cards<sup>34</sup>.

#### 1.1.2. Additional conditions in law for family members (especially third country national family members) to exercise their free movement and residence rights

The Belgian legislation does not require family members of EU citizens to have resided in another Member State in order to exercise their free movement rights in accordance with the *Metock* decision. No additional conditions have been identified in the legislation for family members to exercise their free movement rights.

#### 1.1.3. The notion of sufficient resources and unreasonable burden

The municipality is competent for determining the right to residence of EU citizens and their family members. The municipality will assess whether or not an EU citizen and his/her family members have **sufficient resources** for the residence application, taking into account personal circumstances such as the number of dependent family members. According to the legislation (and the Directive), sufficient resources must at least equal the revenue level under which they can benefit from social assistance<sup>35</sup>. The Immigration Office takes into consideration all relevant elements, such as the nature (temporary or not) of the difficulties encountered, duration of the stay in Belgium, age, health, family situation (right to family life, rights of the child), level of integration in Belgium, ties with the country of origin and the amount of social assistance received<sup>36</sup>. In evaluating whether or not an EU citizen has sufficient resources, Belgian authorities do not take social benefits – such as unemployment benefits, occupational integration allowances, social assistance and family allowances – into account<sup>37</sup>.

The Alien Litigation Council has also **annulled decisions** of the Immigration Office to revoke the right of residence of EU citizens because they receive unemployment benefits after losing their employee status. In these cases, the Council did not consider such benefits to be part of the social benefit system<sup>38</sup>. There appears to be confusion and **mixed**

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<sup>33</sup> [Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners.](#)

<sup>34</sup> Article 50 of the [Consular Code](#).

<sup>35</sup> Article 40(4) of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>36</sup> Articles 42bis and 42quater par. 1 third indent of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#). State Secretary for Asylum and Migration, 'Withdrawal of residence right of EU citizens in Belgium: evolution from 2008 to 2013' (2014); Myria, '2015 Migration in numbers and in rights' (2016), p. 129.

<sup>37</sup> Article 10 par. 5 and 40ter al. 2, 2° of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>38</sup> See, for example, *X v. Belgium* (2014), Alien Litigation Council Application No. 129.028. Information obtained from the Flemish Integration and Civic Integration Agency, May 2016.



**case law** from the Alien Litigation Council with respect to the inclusion of the guaranteed income for the elderly and assistance for people with disabilities – which are part of the supplementary social assistance systems – in such assessments<sup>39</sup>. According to the Federal Migration Centre (*Federaal Migratiecentrum/ Centre fédéral Migration – Myria*), the Immigration Office takes into account federal assistance to persons with disabilities in evaluating their 'sufficient resources', provided these amount to at least 120% of the living wage, or if the person can prove he/she can manage on less without being a burden to the social assistance system<sup>40</sup>. According to Myria, failure to consider **all assistance received by people with disabilities violates** the UN Convention on the Rights of Persons with Disabilities<sup>41</sup>. Similarly, the **exclusion of the guaranteed income for the elderly** when considering the subsistence level could be considered discrimination on the basis of age<sup>42</sup>. Pension benefits, on the other hand, are taken into account<sup>43</sup>.

The notion of **unreasonable burden** is not fully defined in Belgian legislation. It merely provides some guidance on the circumstances taken into account in assessing whether or not a person has become an unreasonable burden on the social assistance system, i.e. the temporary nature of the difficulties, the length of residence in the country, the personal circumstances and the amount of social assistance provided<sup>44</sup>. Those circumstances reflect those mentioned in the Directive's Preamble.

In two cases, an EU citizen's residence application file will be transferred to the Immigration Office: 1) when an EU citizen is a jobseeker; 2) where an EU citizen has sufficient resources as a result of rental or other revenues, or from the intervention of another person (partner, spouse, parent, child, etc.)<sup>45</sup>.

The Alien Litigation Council has stated that benefiting from social assistance should not result in the automatic termination of a residence permit. In addition, the Immigration Office is given considerable discretion in determining whether or not a person is an unreasonable burden<sup>46</sup>. Nevertheless, receiving social assistance can lead to the loss of residence rights. Since 2012, the Immigration Office has had access to the social assistance database (held by the public centres for social assistance) and may check if a person benefits from social assistance. The Immigration Office's practice is to check the EU citizen's situation on a case-by-case basis with **no automatic withdrawal** of residence rights<sup>47</sup>.

However, **critics** claim that Belgium applies a strict interpretation of the Directive, leading to the expulsion of a high number of EU citizens and family members based on the fact that they have become an unreasonable burden on the social security system (see more under

<sup>39</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 110; Crosspoint Migration-Integration, '[Guaranteed income for the elderly not accepted as means of subsistence, assistance due to disability is?](#)' (2014).

<sup>40</sup> Article 10 par. 5 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); Myria, *ibid*, p. 110; Crosspoint Migration-Integration, *ibid*.

<sup>41</sup> Myria, *ibid*, p. 110; Myria '[Year report Migration 2013](#)' (2014), pp. 114-116; Gaspard, G., 'The condition of resources and family re-unification. Analysis of the conformity of Belgian law with regard to the principles of proportionality and equality', [2013:178] *Rev.dr.étr.* 779, 779-783.

<sup>42</sup> Myria, *ibid*, p. 110.

<sup>43</sup> Advokatfirmaet Simonsen Vogt Wigg AS, 'Legal study on Norway's obligations under the EU Citizenship Directive 2004/38/EC' (2016), p. 289.

<sup>44</sup> Article 42bis of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>45</sup> CIRE, '[The right to residence of European citizens in Belgium](#)' (2014), p.7.

<sup>46</sup> CIRE, *ibid.*, p.8; Alien Litigation Council [decision of 30 September 2013 No 111.076](#).

<sup>47</sup> CIRE, *ibid.*, p.9; [Circular of 10 July 2013 on the Program Act of 28 June 2013](#).



Section 5)<sup>48</sup>.

#### 1.1.4. New restrictions on free movement in line with the Directive

Since 2013, EU citizens without worker or self-employed status, together with their family members, cannot **access social integration benefits** in the first three months of residence of more than three months<sup>49</sup>. Similarly, since 2012, access to **social assistance excludes** the first three months of residence<sup>50</sup>. In addition, an EU citizen and his/her family members, who arrived in Belgium as a jobseeker, does not have access to social assistance for the entire period of residence as a jobseeker but may access social integration benefits after three months<sup>51</sup>. While these changes are in line with the Directive, they constitute a step back from the previous situation.

As described above, the Belgian legislation amended the more favourable transposition granting the right to permanent residence after three years of uninterrupted residence in favour of the five years of uninterrupted residence under the Directive<sup>52</sup>.

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<sup>48</sup> CIRE, 'Annual Report 2014 ', (2015), p.16; Eliana Capretti, Gemma Rosey, Ana Maria Sarmiento, '[Even Barroso could soon be expelled from Brussels?](#)' (7 March 2014); RTBF, '[Belgium: an Italian accordionist threatened with expulsion](#)', 24 January 2014.

<sup>49</sup> Article 21 of the [Programme Act of 28 June 2013](#) amending the Act of 26 May 2002 on the right to social integration and [Circular of 10 July 2013 on the Program Act of 28 June 2013](#); [Act of 19 January 2012 amending the legislation regarding asylum seekers](#); [Constitutional Court decision of 30 June 2014](#), No 95/2014.

<sup>50</sup> [Circular of 28 March 2012 on EU citizens and their family members: changes to the conditions of access to social assistance](#); ADDE, '[The consequences of the 2013 budget on the residence and assistance rights of foreigners](#)'.

<sup>51</sup> [Programme Act of 28 June 2013](#).

<sup>52</sup> [Programme Act of 28 June 2013](#).



## 2. DIRECTIVE'S IMPLEMENTATION: DESCRIPTION OF THE MAIN PERSISTING BARRIERS

### KEY FINDINGS

- EU citizens face a number of practical barriers in exercising their right to free movement and residence in Belgium. Most issues relate to residence rights and access to social security and healthcare.
- The barriers mostly relate to **delays, excessive documentation and cumbersome administrative formalities**, but also to the **denial of residence rights** based on a strict interpretation of their status, 'lack of sufficient resources' and 'lack of real prospect of obtaining employment', and 'unreasonable burden' on the social security system.
- In addition, access to social assistance, social integration benefits and emergency health care has been **limited**; initially to all EU citizens and their family members, then, as a result of a Constitutional Court judgement, to EU citizens and their family members who do not have the status of worker or self-employed. In practice, a number of instances of **incorrect application** of the Directive have been reported in relation to **access to social rights and healthcare**, as well as a **lack of cooperation** between Belgian national authorities and those of other Member States.
- Most obstacles reported regarding family members of EU citizens relate to **entry of third country national** family members.
- About 39% of visas requested for family reunion with a Belgian or EU citizen were denied in 2014. The main reason for the **visa refusals** is a strict interpretation of the requirement of **sufficient resources**.
- Other barriers for family members include: long **delays** in the delivering of visas, onerous **additional documentation** requirements, **unjustified reasons for denying** visas, failure to use the accelerated procedure for visa applications, **confusing information** and **cumbersome administrative formalities**.

### 2.1. Main barriers for EU citizens

#### 2.1.1. Entry

No barriers have been identified for the entry of EU citizens to Belgium. Rather, entry barriers concern family members, in particular third country national family members (see Section 2.2.1).

#### 2.1.2. Residence

In several of its reports, the Your Europe Advice service describes a number of residence-related incidents, such as the **denial** of national registration numbers and the request to



provide many **additional documents** not required by the Directive for EU citizens living in Belgium<sup>53</sup>, **excessive delays** in issuing residence cards to EU citizens<sup>54</sup>, charging large administrative **fees** to EU citizens for the issuance of their residence cards<sup>55</sup>, **cumbersome, time-consuming and slow administrative formalities**<sup>56</sup>.

The European Parliament has also received some petitions from EU citizens experiencing difficulties registering in Belgium<sup>57</sup>. One case concerned the refusal to issue substitute registration papers to a British mother and her daughter, both registered in Belgium, who had lost their papers, unless they could prove that they had at least EUR 10,000 in their bank account<sup>58</sup>. In 2013, an EU citizen was obliged to show proof of de-registration in the country of origin in order to register in Belgium<sup>59</sup>.

EU citizens and their family members are sometimes required to make an **appointment** with the appropriate local authority in order to register their residence and to apply for a residence card<sup>60</sup>. The Integration and Civil Integration Agency of the Flemish Government (*Agentschap Integratie en Inburgering*) confirms that this procedure generated problems for EU citizens in 2015, because of a **six-month backlog** of appointments, meaning that EU citizens in Belgium for longer than three months did not have proof of registration<sup>61</sup>. Since 2007, EU citizens who do not register their residence within three months can incur a EUR 200 **fine**<sup>62</sup>. Although this has not yet been applied in practice, the State Secretary for Asylum and Migration Policy announced in November 2015 that it will be applied in order to discourage EU citizens from not registering with the local authorities<sup>63</sup>.

In addition, in 2013, Your Europe Advice reported that the Immigration Office was performing regular/routine **verifications of residence** of EU citizens and third country national family members of EU citizens<sup>64</sup>.

A number of EU citizens face **refusal of their residence application** as a result of their employment **status** (jobseeker, temporary worker, researcher) or **lack of sufficient resources** (see Section 1.1.3). For example, the local administration refused the residence application of an EU citizen who had spent a considerable amount of time in the United States for research while officially working for a Belgian university and who had never having been away from Belgium for longer than one year, because he was due to return shortly to the United States to continue his research<sup>65</sup>. Several cases have been reported where EU jobseekers who have previously worked face problems with their right of residence, such as temporary workers<sup>66</sup>. An incident has been reported where an EU citizen

<sup>53</sup> Your Europe Advice, Quarterly Feedback Report No. 10 (2014), p. 26; Your Europe Advice, Quarterly Feedback Report No. 9 (2014), p. 26; Your Europe Advice, Quarterly Feedback Report No. 6 (2013), p. 31; Your Europe Advice, Quarterly Feedback Report No. 3 (2013), p. 22.

<sup>54</sup> Your Europe Advice, Quarterly Feedback Report No. 11 (2015), p. 27; Your Europe Advice, Quarterly Feedback Report No. 3 (2015), p. 24; Your Europe Advice, Quarterly Feedback Report No. 9 (2014), p. 25; Your Europe Advice, Quarterly Feedback Report No. 8 (2014), p. 24.

<sup>55</sup> Your Europe Advice, Quarterly Feedback Report No. 13 (2015), p. 25.

<sup>56</sup> Your Europe Advice, Quarterly Feedback Report No. 3 (2013), p. 22.

<sup>57</sup> Petitions No. 0021-14 and No. 0151-13 to the European Parliament.

<sup>58</sup> Your Europe Advice, Quarterly Feedback Report No. 10 (2014), p. 28.

<sup>59</sup> Your Europe Advice, Quarterly Feedback Report No. 3 (2013), p. 22.

<sup>60</sup> Your Europe Advice, Quarterly Feedback Report No. 4 (2013), p. 25.

<sup>61</sup> Information obtained from the Flemish Integration and Civil Integration Agency, May 2016.

<sup>62</sup> Article 42 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>63</sup> State Secretary for Asylum and Migration Policy, 'General Policy Note on Asylum and Migration' (2015), pp. 14-15.

<sup>64</sup> Your Europe Advice, Quarterly Feedback Report No. 3 (2013), p. 22.

<sup>65</sup> Your Europe Advice, Quarterly Feedback Report No. 10 (2014), p. 28.

<sup>66</sup> Your Europe Advice, Quarterly Feedback Report No. 3 (2015), p. 22.



was refused registration of residence for **failing to speak Flemish** to the local authority<sup>67</sup>. (See Section 5.1 for more detail.)

Several cases have been reported where EU citizens either looking for or already in employment faced problems with their right of residence. For example, an EU citizen in temporary employment was not allowed to stay unless a three-month contract could be presented; an EU citizen was told he could not stay in Belgium if he did not find permanent full-time employment in a Dutch-speaking company within three months; and an artist who had successive short-term contracts and periods of unemployment in between was served with an order to leave the territory<sup>68</sup>.

In particular, workers employed under the so-called Article 60 status (a fixed-term work contract where the worker's remuneration is partly financed by social assistance) were usually refused a residence permit<sup>69</sup>. Since 2014 workers with this status have been considered to be covered by Directive 2004/38/EC<sup>70</sup>. This change resulted from a CJEU decision in which the court found that persons employed under a social assistance scheme should be regarded as workers<sup>71</sup>. (See Section 5.1 for more details.)

Belgium is sometimes criticised by the United Nations Committee on Economic, Social and Cultural Rights (ECOSOC) for infringements of the **social rights** of non-nationals with disabilities<sup>72</sup>. As described in Section 1.1.3, not all of the assistance received by people with disabilities is taken into consideration when evaluating their sufficient resources, which they deem a violation of the rights of persons with disabilities<sup>73</sup>.

A number of cases have been reported where the Immigration Office **failed to take into account the existence of a child** when deciding on the right of residence of EU citizens<sup>74</sup>. (See Section 5.1 for more detail.)

Lastly, as described in Section 5, Belgium has been criticised for frequently withdrawing residence rights from and issuing expulsion orders to EU citizens, mostly on grounds of lack of sufficient resources, lack of real chance of obtaining employment and because they are deemed to have become an unreasonable burden on the social security system<sup>75</sup>.

### 2.1.3. Access to social security and healthcare

As a result of a stricter approach to immigration, access to social assistance for EU citizens who do not have the status of worker or self-employed begins only after the first three

<sup>67</sup> Your Europe Advice, Quarterly Feedback Report No. 10 (2014), p. 25.

<sup>68</sup> Your Europe Advice, Quarterly Feedback No. 3 (2015), p. 22.

<sup>69</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 129.

<sup>70</sup> State Secretary for Asylum and Migration Policy, '[General Policy Note on Asylum and Migration](#)' (2014), p. 28.

<sup>71</sup> Judgement of the Court of 31 May 1989, Bettray v Staatssecretaris van Justitie, Case 344/87, European Court reports 1989 Page 01621.

<sup>72</sup> ECOSOC Committee, '[Concluding observations concerning the fourth periodic report of Belgium](#)', E/C.12/BEL/CO/4 (2013), par. 10; Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 205.

<sup>73</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 110; Crosspoint Migration-Integration, '[Guaranteed income for the elderly not accepted as means of subsistence, assistance due to disability is?](#)' (2014).

<sup>74</sup> See for example, Petition No. 1759-14 to the European Parliament and *X v Belgium* [2015], Alien Litigation Council No. 144652. *X v Belgium* [2015], Alien Litigation Council No. 146740. *X v Belgium* [2015], Alien Litigation Council No. 148537.

<sup>75</sup> INCA CGIL, '[Sorry, this access route is closed. Your rights and responsibilities when you work in another Member State](#)', 2015; Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 127.



months of residence<sup>76</sup>. The Belgian legislator had originally provided for a limitation of access to social assistance for all EU citizens, irrespective of their status. The **Constitutional court partially annulled** this attempt, finding that limiting the access to social assistance for EU citizens with the status of worker, and their family members, constituted a difference in treatment<sup>77</sup>. According to the Court, these categories of EU citizens must have access to social assistance in the first three months of residence, as well as maintenance assistance, until they can access their permanent residence rights. The Court also **annulled** the previous **denial of access to emergency medical care** for EU citizens<sup>78</sup>.

Under Belgian legislation, EU citizens cannot **access social integration benefits** in the first three months of residence of more than three months<sup>79</sup>. In light of the Constitutional Court decision outlined above, the Ministry of Social Integration took the precautionary decision to **allow EU citizens with worker or self-employed status** to access integration benefits<sup>80</sup>. The legislation has yet to be amended to reflect this practice.

These changes effectively end the more favourable approach to access to social assistance and benefits. They are also accompanied by a strict interpretation of the Directive and, in some cases, incorrect application of the Directive.

Some reports highlight cases where EU citizens had difficulties accessing benefits, sometimes due to the **lack of correct application** of the Directive or **lack of cooperation** between the national authorities of Member States. For example, an EU citizen residing in France and working in Belgium, could not obtain unemployment benefits from either country as neither would recognise his right to the benefits<sup>81</sup>. Another example of unreasonable obstacles for EU citizens' in accessing their social security rights, is the case of an Italian citizen unemployed in Belgium. The competent Belgium authorities (CAPAC) refused to request the U1 form from the Italian authorities, claiming that it is the responsibility of the citizen to obtain the form, while the Italian authorities would only provide it directly to the Belgian authorities at their request. As a result, the citizen could not access unemployment benefits.<sup>82</sup>

Decisions on residence rights have, in several cases, been reported to affect the rights of EU citizens in accessing social security benefits. For example, the registration of an EU citizen at a Belgian local authority was cancelled without prior notice after a temporary absence, which had consequences for maternity benefits<sup>83</sup>.

A number of practical issues have also been reported in access to **healthcare**. According to Your Europe Advice, an Italian pensioner residing in Belgium had health problems during a trip to Italy, which required care and prevented her return to Belgium. Both the Belgian and Italian social security authorities refused to reimburse the health expenses, as they were unable to agree on the citizen's residence<sup>84</sup>. Another case concerned an Italian citizen who had emergency surgery and follow-up chemotherapy treatment while visiting family in

<sup>76</sup> [Circular of 28 March 2012 on EU citizens and their family members: changes to the conditions of access to social assistance](#); ADDE, 'The consequences of the 2013 budget on the residence and assistance rights of foreigners'; [Act of 19 January 2012 amending the legislation regarding asylum seekers](#).

<sup>77</sup> [Constitutional Court decision of 30 June 2014](#), No 95/2014, para B.42.

<sup>78</sup> Ibid., para B.55.

<sup>79</sup> Article 21 of the [Programme Act of 28 June 2013](#) amending the Act of 26 May 2002 on the right to social integration and [Circular of 10 July 2013 on the Programme Act of 28 June 2013](#).

<sup>80</sup> [Circular of 5 August 2014](#) on the interpretation of Article 3(3) 2nd indent of the Act of 26 May 2002 on the right to social integration and Article 57quinquies of the Law of July 8 1976 on public social action centres.

<sup>81</sup> Your Europe Advice, Quarterly Feedback Report No. 8 (2014), p.31.

<sup>82</sup> Ibid., p.32.

<sup>83</sup> Your Europe Advice, Quarterly Feedback Report No. 9 (2014), p. 26.

<sup>84</sup> Your Europe Advice, Quarterly Feedback Report No. 10 (2014), p. 31-32.



Belgium and who had to bear all the costs herself, despite holding a European Health Insurance Card (EHIC)<sup>85</sup>. The Belgian social security authority also asked her to provide an S2 form, which the Italian authorities refused to issue<sup>86</sup>. In 2013, a Belgian public hospital refused to accept the EHIC of a Spanish citizen who needed unforeseen medical treatment whilst in Belgium, or to treat him until he had first paid for the treatment<sup>87</sup>. In 2015, Belgian authorities refused to pay healthcare benefits to a Polish woman who worked in Belgium and who was entitled to receive such benefits<sup>88</sup>.

#### 2.1.4. Others

EU citizens faced a number of practical barriers in exercising their free movement rights according to various sources, including the quarterly reports of the Your Europe Advice service. It is not clear, however, how widespread some of these issues are.

The Federal Migration Centre (Myria) reports that non-nationals, including EU citizens, with temporary residence status encounter increasing **difficulties in opening a bank account** and that banks are tending to block existing bank accounts when the residence status of the account holder changes<sup>89</sup>. Without access to basic bank services, non-nationals are unable to meet essential needs for a dignified life, such as opening a deposit account and receiving a wage and child support<sup>90</sup>. Myria states that refusing to open a bank account for anyone who can identify themselves with a passport constitutes discrimination on the basis of nationality<sup>91</sup>.

Your Europe Advice reports that non-Belgian students face obstacles in the **education system** in Belgium<sup>92</sup>. A nursing school in Belgium refused to register a French student unless she provided a certificate proving that her Belgian diploma would be recognised in France<sup>93</sup>. A Dutch national living in Belgium and attending a state music school had to pay double the price charged to Belgian students<sup>94</sup>.

In addition, barriers have been reported in the **recognition of diplomas** from outside Belgium, such as excessive documentation being required<sup>95</sup>. For example, an Italian citizen was asked to provide many documents, including the descriptions and marks of all 60 exams taken, in order to have her Italian diploma in archaeology recognised. The NARIC centre in Belgium argued that the citizen had to present the requested documents, under Flemish law<sup>96</sup>.

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<sup>85</sup> Ibid, p. 32.

<sup>86</sup> Idem.

<sup>87</sup> Your Europe Advice, Quarterly Feedback Report No. 6 (2013), p. 46.

<sup>88</sup> Your Europe Advice, Quarterly Feedback Report No. 12 (2015), p. 29.

<sup>89</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 202.

<sup>90</sup> Ibid, p. 203.

<sup>91</sup> Idem.

<sup>92</sup> Your Europe Advice, Quarterly Feedback Report No. 9 (2014), p. 11; Your Europe Advice, Quarterly Feedback Report No. 7 (2014), p. 20.

<sup>93</sup> Your Europe Advice, Quarterly Feedback Report No. 9 (2014), p. 39.

<sup>94</sup> Your Europe Advice, Quarterly Feedback Report No. 8 (2014), p. 53.

<sup>95</sup> Your Europe Advice, Quarterly Feedback Report No. 8 (2014), p. 11; Your Europe Advice, Quarterly Feedback Report No. 7 (2014), p. 20.

<sup>96</sup> Your Europe Advice, Quarterly Feedback Report No. 8 (2014), p. 38.



The requirement to complete six years of study at an authorised Belgian education institution in order to be eligible for **activation measures** to assist young unemployed persons to gain employment could be considered contrary to the free movement of workers<sup>97</sup>.

A person who is resident and register as such in Belgian municipality is required to **register his/her vehicle** in Belgium. Some exceptions exist to this rules, such as students who are allowed not to register the vehicle they bring from abroad for the period that they are registered in a higher education institution. Several issues have nevertheless been reported<sup>98</sup>. For example, two cases were reported of Belgian citizens with residence in both Belgium and France, who were fined for driving French-registered cars not registered in Belgium. Foreign students have been repeatedly fined in Belgium for not registering their cars there<sup>99</sup>. Similarly, there were issues with the non-registration of short-term licence plates<sup>100</sup>. In 2014, a German citizen was told to register his car in Belgium, where he had a second home<sup>101</sup>. In 2012, Belgian insurers refused to insure a French student studying in Belgium whose car was registered in France because he did not have a Belgian number plate<sup>102</sup>.

Residence documents also appear to generate a number of problems<sup>103</sup>. According to Myria, non-nationals, including EU citizens, have problems accessing **goods and services**, for example when trying to enrol in a video club or take advantage of a commercial promotion, because they cannot present a Belgian identity card<sup>104</sup>.

## 2.2. Main barriers for family members of EU citizens

### 2.2.1. Entry

In 2013, the European Commission launched **infringement proceedings** against Belgium. One of the grounds of the procedure concerned the fact that Belgium did not facilitate the entry and residence rights of third country national family members of Union citizens. In particular, it did not facilitate the issuing of their visas and residence cards<sup>105</sup>.

Belgium adopted new legislation in 2014 to bring its legislation into line with the Directive. The requirement to grant **third country national family members every facility to obtain visas**, including that they be issued free of charge and granted under an accelerated procedure, **has now been transposed**. According to the legislation, visas for third country national family members are delivered free of charge and a decision is made within 15 days from the moment the family member provides evidence that (s)he falls under Directive 2004/38/EC<sup>106</sup>. The time limit for issuing visas may be extended in exceptional circumstances, provided they are duly justified.

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<sup>97</sup> Groenendijk, K., Guild, E., Cholewinski, R. Oosterom-Staples, H., Minderhoud, P., Mantu, S. and Fridriksdottir, B., European Report on the Free Movement of Workers in Europe in 2013 (2014), p. 114.

<sup>98</sup> Your Europe Advice, Quarterly Feedback Report No. 9 (2014), p. 46.

<sup>99</sup> Your Europe Advice, Quarterly Feedback Report No. 3 (2013), p. 36.

<sup>100</sup> Your Europe Advice, Quarterly Feedback Report No. 9 (2014), p. 61.

<sup>101</sup> Your Europe Advice, Quarterly Feedback Report No. 8 (2014), p. 45.

<sup>102</sup> Your Europe Advice, Quarterly Feedback Report No. 2 (2012), p. 32.

<sup>103</sup> Myria, '2015 Migration in numbers and in rights' (2016), p. 136.

<sup>104</sup> Unia, '2013 Annual report Discrimination/Diversity' (2014), p. 38.

<sup>105</sup> European Commission, [February infringements package: main decisions](#), 21 February 2013.

<sup>106</sup> Article 45 of the [Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners](#). See also: Immigration Office, 'Family members of a EU citizen – Directive 2004/38/EC', 2014.



Data shows that, in 2014, 39% of visa applications for **family reunification** with a Belgian or EU citizen were **denied** (while 26% of visa applications for family reunification with a third country national in Belgium were denied)<sup>107</sup>. Most of these decisions refusing visas concerned African nationals<sup>108</sup>.

According to CIRE, most visa refusals are based on a **strict interpretation** of the notion of 'genuine chance of being employed' and mostly of the requirement of **sufficient resources**, where not all revenue is taken into consideration<sup>109</sup>. For example, in 2015, Belgian authorities refused an entry visa for the wife of an EU citizen because she earned less than the minimum salary required, without considering her right as an employed worker and without checking whether she had sufficient resources to provide for herself and her family members<sup>110</sup>. Similarly, a petition made to the European Parliament concerned a case of a visa which was denied to the petitioner's Ukrainian partner to visit a United Kingdom (UK) citizen in Belgium despite evidence of sufficient financial resources having been provided. The petitioner believed this decision was taken on the basis of his partner's income<sup>111</sup>.

Another petition concerned the fact that the visa of a UK citizen's Indian mother-in-law was rejected by the Belgian authorities due to a failure to demonstrate her ties to the UK and either evidence of being in employment or receiving a pension. The visa was refused despite the fact that the mother-in-law could be considered a direct dependent relative as she lived with the petitioner's family in the UK<sup>112</sup>.

A number of barriers have been reported concerning the entry of family members of EU citizens. They include unusually long **delays** in the delivering of visas in Belgium<sup>113</sup>, the requirement to provide **numerous documents and information** in addition to a valid passport and evidence of a family link to obtain a visa, **unjustified reasons** for denying visas (e.g. lack of proof of accommodation, that the intention to leave the Schengen area was not proven or the fact that a previous Schengen visa was used to travel to other Member States)<sup>114</sup>, as well as citizens not permitted to submit a visa application in Belgium<sup>115</sup>.

For example, there was a case in 2014 where the actual travel booking details were required in order for a couple to prove that they were travelling together<sup>116</sup>. In another case, a non-EU family member was required to demonstrate sufficient resources for the duration of a trip in addition to the letter of support from her husband in which it was stated that he would fund the trip<sup>117</sup>. In addition, **documents are often withheld** during the application process<sup>118</sup>. There are recurrent issues with Belgian embassies failing to allow non-EU family members of EU citizens to use the **accelerated procedure** for visa applications when they fulfil the

<sup>107</sup> Myria, '2015 Migration in numbers and in rights' (2016), p. 47-48.

<sup>108</sup> Myria, *ibid*, p. 47 and 49.

<sup>109</sup> CIRE, '2014 Annual Report 2014', July 2015, p.16.

<sup>110</sup> Your Europe Advice, Quarterly Feedback No. 12 (2015), p. 17.

<sup>111</sup> Petition No 1925/2014 to the European Parliament.

<sup>112</sup> Petition No 0934/2014 to the European Parliament.

<sup>113</sup> Your Europe Advice, Quarterly Feedback No. 9 (2014), p. 17-19. Your Europe Advice, Quarterly Feedback No. 8 (2014), p. 17. Your Europe Advice, Quarterly Feedback No. 5 (2013), p. 20.

<sup>114</sup> Your Europe Advice, Quarterly Feedback No. 9 (2014), p. 19. Your Europe Advice, Quarterly Feedback No. 3 (2015), p. 17. Your Europe Advice, Quarterly Feedback No. 5 (2013), p. 21. Your Europe Advice, Quarterly Feedback No. 3 (2013), p. 16.

<sup>115</sup> Your Europe Advice, Quarterly Feedback No. 3 (2015), p. 15.

<sup>116</sup> Your Europe Advice, Quarterly Feedback No. 9 (2014), p. 18.

<sup>117</sup> Your Europe Advice, Quarterly Feedback No. 9 (2014), p. 18.

<sup>118</sup> Your Europe Advice, Quarterly Feedback No. 8 (2014), p. 17.



criteria<sup>119</sup>. One complaint received by Your Europe Advice concerned the fact that the visa application was not free of charge<sup>120</sup>. Some reports point to **confusing information** received from embassies and consulates regarding the visa requirements, in particular on the type of entry visas needed for their non-EU family members.

Regarding delays, since 2011, visas for the family reunification of third country national family members must be processed within six months. However, as Myria notes, the six-month timeframe starts from the moment the application is complete. In reality, between the first step in the application process and the moment the application is complete with all the requisite documentation can take several months depending on the administrative and judicial procedures needed to obtain the documentation. This can lead to very **long process** overall for those families<sup>121</sup>.

Some obstacles have been identified in relation to marriage certificates required for visa applications. For example, a non-EU family member needed to present a **legally accredited marriage certificate or authentication** by another Member State in order to register as a family member of an EU citizen, despite there being no such obligation under national law<sup>122</sup>. The visa of a family member was refused because the marriage was not celebrated in the EU<sup>123</sup>.

Lastly, some cases have been reported of non-EU family members who have residence cards issued in another Member State and who are still compelled to apply for a national visa<sup>124</sup>. This is contrary to Article 5(2) of the Directive.

It is interesting to note that the so-called '**Belgium-route**' has been used by Dutch nationals whose partner's visa/residence application had been denied in the Netherlands. The Dutch nationals relocated to Belgium in order for their partner to apply for a visa/residence with the Belgian authorities, which would be an abuse of the right to free movement and residence and therefore contrary to Article 35 of the Directive<sup>125</sup>.

Overall many obstacles exist for the entry of family members of EU citizens, which impact on EU families' rights. Myria points out that the non-application of EU law to EU and non-EU family member constitutes a violation of the right to family life<sup>126</sup>.

### 2.2.1. Residence

Issues relating to the residence rights of family members are broadly similar to the trends identified in relation to entry outlined above, including excessive delays in processing residence documentation. **Excessive delays** have been reported despite the fact that the third country national family members fulfilled the conditions of residence<sup>127</sup>.

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<sup>119</sup> Your Europe Advice, Quarterly Feedback No. 7 (2014), p. 27. Your Europe Advice, Quarterly Feedback No. 5 (2013), p. 20. Your Europe Advice, Quarterly Feedback No. 3 (2013), p. 15.

<sup>120</sup> Your Europe Advice, Quarterly Feedback No. 11 (2015), p. 17.

<sup>121</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 101.

<sup>122</sup> Your Europe Advice, Quarterly Feedback No. 9 (2014), p. 18.

<sup>123</sup> Your Europe Advice, Quarterly Feedback No. 3 (2013), p. 16.

<sup>124</sup> Your Europe Advice, Quarterly Feedback No. 10 (2014), p. 16-17.

<sup>125</sup> Your Europe Advice, Quarterly Feedback No. 14 (2015), p. 25.

<sup>126</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 107-108.

<sup>127</sup> Your Europe Advice, Quarterly Feedback No. 5 (2013), p. 29. Your Europe Advice, Quarterly Feedback No. 4 (2013), p. 24.



Other barriers reported are the same as for EU citizens, which are **additional documentation** requests, **cumbersome administrative formalities** and time-consuming and slow processes<sup>128</sup>. Additionally, Your Europe Advice reported in 2013 that verifications seemed to be regularly/routinely performed by the aliens' service in Belgium<sup>129</sup>. In one case, an EU citizen and his non-EU wife reported that they had to pay two fees whereas Belgian couples only have to pay one<sup>130</sup>.

#### 2.2.2. Access to social security and healthcare

No issues have been identified concerning access to social security and healthcare for third country national family members in Belgium.

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<sup>128</sup> Your Europe Advice, Quarterly Feedback No. 4 (2013), p. 25.

<sup>129</sup> Ibid.

<sup>130</sup> Your Europe Advice, Quarterly Feedback No. 10 (2014), p. 26.



### 3. DISCRIMINATORY RESTRICTIONS TO FREE MOVEMENT

#### KEY FINDINGS

- While equal treatment between Belgians and non-nationals is guaranteed in the Constitution, instances of discrimination based on nationality in the exercise of free movement rights have been identified, such as unjustified administrative **fees**, administrative **formalities**, **access to justice**, goods and services, **employment** and **housing**.
- Same-sex partnership and marriage are recognised in Belgium, which does not distinguish between different-sex and same-sex spouses and partners of EU citizens for the purposes of entry and residence rights. A few issues have been identified, where unjustified formalities were required for the registration of a child of a single gay person.
- Issues of discrimination in exercising free movement rights on the basis of ethnic or racial origin is reported with regard to **Roma**. These issues relate to **refusal to register residence**, **stigmatisation** and **infrastructure problems**, e.g. **lack of caravan sites** for Roma to reside in Belgium.

#### 3.1. Discrimination based on nationality

The Constitution guarantees **equal treatment** between Belgians and non-nationals: 'All foreigners on Belgian soil benefit from the protection provided to persons and property, except for those exceptions provided for by the law'<sup>131</sup>. The Constitutional Court is competent to verify that legislation does not infringe the principle of equal treatment of non-nationals. The Court has noted on several occasions that 'a difference of treatment that disadvantages a foreigner can be established by a legislative norm. This provision is not intended to allow the legislator, when establishing such a difference, to disregard the fundamental principles of the Constitution. Therefore, in no way does Article 191 of the Constitution allow the legislator, when it establishes a difference in treatment to the detriment of foreigners, not to ensure that such a difference is not discriminatory, regardless of the nature of the principles involved'<sup>132</sup>.

A number of discriminatory barriers based on nationality have been identified, with respect to access to administrative formalities, fees, access to justice, goods and services, employment and housing. While some forms of discrimination have been addressed recently, examples are included here in order to illustrate the barriers faced by EU citizens, as well as the tendency to curb access of non-nationals to a number of services, and unjustified additional formalities. As noted by CIRE, over recent years restrictions and obstacles have increased in the socio-economic crisis context where non-nationals are seen as an economic burden and are targeted by measures<sup>133</sup>.

<sup>131</sup> Article 191 of the [Belgian Constitution](#).

<sup>132</sup> [Constitutional Court decision No 17/2009](#), 12 February 2009, para B.12.3 and [Constitutional Court decision No 61/94](#), 14 July 1994, para B.2.

<sup>133</sup> CIRE, '[2014 Annual Report 2014](#)', July 2015, p.11.



In 2013, the Federal Ombudsperson decided that the **absence of an organised and systematic call to EU citizens to renew their Belgian identity card** before its expiry date constituted unequal treatment of this group compared to Belgian citizens, for whom such a system is in place, though no such system is required by law<sup>134</sup>. The General Department for Institutions and Population (*Algemene Directie Instellingen en Bevolking/ Direction Générale Institutions et Population*) and the Immigration Service agreed to introduce a similar system for EU citizens, which would require an adaptation of their computer science system<sup>135</sup>. This should **now** be **implemented**, starting from September 2015<sup>136</sup>.

In 2013, the City of Antwerp announced that it was **raising its administrative fee** (from EUR 17 to EUR 250) for any non-nationals – and thus also EU citizens – wishing to register his/her residence for the first time in Antwerp (registration on the National Register, the Foreigners' Register or the Waiting Register for non-nationals without a national identification number usually because their residence application or asylum application is being processed)<sup>137</sup>. The decision was criticised by experts because it discriminated on the basis of nationality and limited free movement of persons within the EU<sup>138</sup>. The governor of Antwerp eventually **suspended** the decision on 29 March 2013, after which the plan was dropped entirely<sup>139</sup>. In late 2014, the federal government introduced a so-called **foreigners' contribution** (*vreemdelingenretributie/ redevance pour étrangers*) into legislation in order to cover the administrative costs connected to the processing of residence applications<sup>140</sup>. The non-reimbursable amount varies depending on the type of application and the category of person applying (amounts are EUR 60, 160 (requests for family reunification) and 250), with lower amounts and exceptions allowed for some categories, such as EU citizens exercising their free movement right and their EU and third country national family members<sup>141</sup>. In an opinion on the fee, the Council of State (*Raad van State/ Conseil d'Etat*) pointed to possible violations of the non-discrimination principle because of the differences established on the basis of residence status, and the **proportionality principle** because the contribution is added to a local registration fee<sup>142</sup>. Myria also raises possible discrimination on the basis of nationality, as the contribution only applies to persons who are not of Belgian nationality<sup>143</sup>. Additionally, Myria points out that non-nationals already have to pay a range of other **additional costs**, such as consular taxes, bank transfer fees, residence card fees, municipal

<sup>134</sup> Federal Ombudsperson, '[2013 Annual Report from the federal Ombudsperson](#)' (2013), pp. 85-87.

<sup>135</sup> Federal Ombudsperson, *ibid*, p. 87.

<sup>136</sup> [www.ombudsman.be](http://www.ombudsman.be), '[Identity card soon expired: European will also receive a convocation](#)' (2015).

<sup>137</sup> Three groups are exempt: foreign students who register through a cooperation agreement with the Antwerp University & Higher Education Association (Associatie Universiteit & Hogescholen Antwerpen), asylum seekers applying for recognition as refugees, and third country nationals who have the status of long-term resident in another Member State; Antwerp College of Mayor and Aldermen, '[Tax determination – Fee rules for registration of new arrivals of foreign origin](#)' (2013).

<sup>138</sup> See, for example, De Jonckheere, M. and Rossignol, K., 'The foreigners' fee – illegal or not' [2013:2] *Lokale en Regionale Belastingen* 3, 3-20; Verschueren, H., 'The Antwerp fee regulation for 'newcomers of foreign origin': a legal analysis from migration law' [2013:2] *T. Vreemd.* 118, 118-141; De Baere, G. And Nowak, J., 'Antwerp fee regulation violates the rules concerning EU citizenship' (*Antwerpse retributiereglement strijdig met regels over Unieburgerschap*) [2013] *Juristenkrant* 10, 10-11; League for Human Rights (Liga voor Mensenrechten), '[No 'foreigner's tax' in Antwerp](#)' (*Geen 'vreemdelingentaks in Antwerpen*) (2013).

<sup>139</sup> Governor of the Province of Antwerp, Decision to suspend the decision of the College of Mayor and Aldermen Antwerp from 25 February 2013 concerning a fee for the registration of new arrivals of foreign origin, 29 March 2013.

<sup>140</sup> Article 1(1) of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); Articles 195 and 196 of the Programme law of 19 December 2014, Official Journal 29 December 2014; Federal government agreement of 9 October 2014, point 7.2. p. 156; Myria, '[2015 Migration in numbers and in rights](#)' (2016), pp. 208-209.

<sup>141</sup> Royal Decree of 16 February 2015 'Amending Royal Decree of 8 October 1981 concerning access to the territory, the residence, the settlement and removal of foreigners', Official Gazette 20 February 2015.

<sup>142</sup> Council of State, Advice 57.000/4 of 4 February 2015, Official Journal 20 February 2015; Myria, '[2015 Migration in numbers and in rights](#)', pp. 209-210.

<sup>143</sup> Myria, *ibid*, p. 211.



taxes and so on<sup>144</sup>. The foreigners' fee is currently being challenged before the Constitutional Court<sup>145</sup>.

In 2013, the Federal Ombudsperson stated that the systematic refusal by the Belgian Asylum Service (Fedasil) to provide material assistance (housing) to European families with minor children who reside in Belgium illegally and who are excluded from any form of social protection due to their administrative situation constitutes discrimination on the basis of the nationality of the children and a punishment on the basis of the legal situation of their parents<sup>146</sup>. Fedasil had received 26 such requests in 2013.

An issue of discrimination in **access to justice** has been raised by Myria, among others. The Alien Litigation Council (*Raad voor Vreemdelingenbetwistingen/ Conseil contentieux des étrangers*), which hears appeals on decisions of the national authorities in relation to entry, residence and expulsion, has limited jurisdiction in residence matters for EU citizens and their family members covered by the legislation, while having full jurisdiction in respect to asylum-seekers and refugees<sup>147</sup>. The Alien Litigation Council has two procedures: (1) annulment procedures for individual decisions on entry, residence and expulsion from the territory, which may concern EU citizens, asylum seekers and refugees, and during which the Alien Litigation Council only considers whether or not the Immigration Office did its job correctly and whether its decisions were correctly motivated, without taking into consideration new information; and (2) proceedings on the merits of the case, which apply only to asylum procedures, and during which the individuals concerned can be heard and can provide additional documents<sup>148</sup>. As the Alien Litigation Council cannot rule on the merits of cases concerning EU citizens, including third country nationals, this could constitute inequality in access to justice and the right to an effective remedy<sup>149</sup>.

Although access to employment and housing are not directly covered by Directive 2004/38, it may impact on the ability of EU citizens to exercise their right to free movement. Both the Belgian Inter-federal Centre for Equal Opportunities (*Interfederaal Gelijkekansencentrum/Centre Interfédérale pour l'Égalité des Chances* (Unia) and Myria report that non-nationals, including EU citizens, are often victims of discrimination in Belgium, especially with regard to **employment and housing**<sup>150</sup>. Myria receives more than 1,000 individual requests each year on these issues, mainly from EU citizens or their family members<sup>151</sup>. A study from the European Commission, on the other hand, states that only a very small number of EU citizens are discriminated against in the **labour market**<sup>152</sup>. According to UNIA, discrimination of non-nationals in the labour market occurs frequently, but such discrimination is often difficult to prove<sup>153</sup>.

<sup>144</sup> Myria, *ibid*, pp. 210-211.

<sup>145</sup> Information obtained from Myria, May 2016.

<sup>146</sup> Federal Ombudsperson, '[2013 Annual report from the federal Ombudsperson](#)', pp. 30-34.

<sup>147</sup> Groenendijk, K., Guild, E., Cholewinski, R. Oosterom-Staples, H., Minderhoud, P., Mantu, S. and Fridriksdottir, B., European Report on the Free Movement of Workers in Europe in 2013 (2014), p. 31.

<sup>148</sup> Article 39/22 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#). Information obtained from Myria, May 2016.

<sup>149</sup> Article 47 of the Charter of Fundamental Rights of the European Union; Groenendijk, K., Guild, E., Cholewinski, R. Oosterom-Staples, H., Minderhoud, P., Mantu, S. and Fridriksdottir, B., European Report on the Free Movement of Workers in Europe in 2013 (2014), p. 31; Information obtained from Myria, May 2016.

<sup>150</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 136; Unia, '[Annual Discrimination/Diversity Report 2013](#)' (2014), p. 38.

<sup>151</sup> Myria, *ibid*, p. 136.

<sup>152</sup> Groenendijk, K., Guild, E., Cholewinski, R. Oosterom-Staples, H., Minderhoud, P., Mantu, S. and Fridriksdottir, B., European Report on the Free Movement of Workers in Europe in 2013 (2014), p. 79.

<sup>153</sup> Information obtained from Unia, May 2016.



On 24 May 2011, the CJEU ruled that **requiring an individual to hold Belgian nationality** in order to be appointed as a **notary** infringed EU legislation because the activities of a notary are not connected with the exercise of official authority<sup>154</sup>. Belgium has since amended the legislation, which now states that candidates must have Belgian nationality or the nationality of an EU Member State in order to be appointed as a notary in Belgium<sup>155</sup>.

In 2012, **Unia** reported that a number of **jobs at governmental level** which did not involve the exercise of public authority, nevertheless unfairly required the candidates to hold Belgian nationality. Unia considered this requirement to constitute discrimination on the basis of nationality<sup>156</sup>.

Discrimination has been extensively reported in the **housing** sector, in particular refusals to accept tenants on the basis of nationality or residence status<sup>157</sup>. According to Unia, the unwillingness of home owners to rent out their homes to - or insistence of a considerable rental deposit from - persons on the basis of their nationality or residence status or to request<sup>158</sup>. Unia explains that this trend is the result of economic and practical considerations rather than of stereotyping and prejudices, because people with short-term residence status may leave Belgium more easily and end the contract unilaterally and prematurely, making it difficult or impossible to recover overdue rent, or because the duration of the rental contract extends beyond the duration of the residence status<sup>159</sup>. Irrespective of motivation, however, it remains an instance of discrimination on the basis of nationality.

According to a 2013 report from Your Europe Advice, **service providers** in Belgium discriminate among customers on the basis of their nationality or place of residence in their general conditions of access to services<sup>160</sup>. In 2015, a French woman residing in Belgium could not buy a phone in a shop or over the phone because her special residence card lacked the chip that Belgian identity cards have, which constitutes discrimination on the basis of nationality<sup>161</sup>. EU citizens have also been charged more for the issuing of their residence cards compared to Belgian citizens<sup>162</sup>. Lastly, in a 2014 report, Your Europe Advice describes an incident where an EU citizen was **refused registration of residence for failing to speak Flemish** to the local authority<sup>163</sup>.

### 3.2. Discrimination based on civil status/sexual orientation

Legal partnership has applied to same-sex couples since its introduction into legislation in Belgium on 1 January 2000<sup>164</sup>. Belgium adopted legislation legalising **same-sex marriages**

<sup>154</sup> Case C-47/08 *European Commission v Belgium* [2011] ECLI:EU:C:2011:334.

<sup>155</sup> The amendment entered into force on 20 February 2012; Law of 14 November 2011 'Amending the law of 25 ventôse year XI on the notary office concerning the requirements to be appointed notary', Official Gazette 10 February 2012.

<sup>156</sup> Unia, '[2012 Annual report Discrimination/Diversity](#)', (2013), p. 159.

<sup>157</sup> Court of First Instance of Liège, *Centre Interfédéral pour l'Égalité des chances et la Lutte contre le racisme et les discriminations v V.G. Marcel et R. Philippe*, 6 May 2014; Unia, '[2014 Annual report: A turning-point for the Centre](#)' (2015), p. 37.

<sup>158</sup> Unia, '2013 Annual Report on Discrimination/Diversity', (2014), p. 113.

<sup>159</sup> *Idem*.

<sup>160</sup> Your Europe Advice, Quarterly Feedback Report No. 3 (2013), p. 41.

<sup>161</sup> Your Europe Advice, Quarterly Feedback Report No. 12 (2015), p. 54.

<sup>162</sup> Your Europe Advice, Quarterly Feedback Report No. 10 (2014), p. 26.

<sup>163</sup> Your Europe Advice, Quarterly Feedback Report No. 10 (2014), p. 25.

<sup>164</sup> Article 1476 of the Civil Code. Law of 23 November 1998 introducing legal co-habitation, Official Journal 12 January 1999; Article 1 of the Royal Decree of 14 December 1999 determining the date of entry into force of the law of 23 November 1998 introducing legal co-habitation, Official Journal 23 December 1999.



in 2003<sup>165</sup>. Belgium does not distinguish between different-sex spouses and same-sex spouses of EU citizens for the purposes of entry and residence rights<sup>166</sup>. Different sex and same-sex spouses are also treated equally for the purposes of family reunification<sup>167</sup>. Belgium also grants entry and residence rights to registered same-sex partners of EU citizens<sup>168</sup>. Registered or legal partnership is considered equivalent to marriage<sup>169</sup>.

For the implementation of Belgian legislation on **family reunification**, Belgian authorities recognise legal partnerships granted in Denmark, Germany, Finland, Iceland, Norway, the UK and Sweden as being equivalent to marriage<sup>170</sup>. The Crosspoint Migration-Integration (*Kruispunt Migratie-Integratie*) explains that when the list of countries was adopted in 2008, registered partnership in these countries fulfilled two criteria: registered partnership was considered equivalent to marriage and there was no possibility for same-sex partners to marry in the country where registered partnership was contracted<sup>171</sup>. Even though today, of the seven countries, only Germany and Finland (until the end of 2016) do not allow same-sex marriage, the list of 2008 has not been adapted<sup>172</sup>. When same-sex partners chose registered partnership in countries where same-sex marriage is allowed, they are considered 'legal partners' (*wettelijke partner/ partenaire légal*) of EU citizens<sup>173</sup>. This means that they must demonstrate that they maintain 'a duly attested durable and stable relationship' in order to qualify for family reunification<sup>174</sup>.

It is not clear if recurrent differences in treatment occur due to the civil status of EU citizens and their family members when exercising their free movement rights. However, a case involved **unjustified formalities** for the registration of a child of a single gay father. The person, a permanent resident of Belgium for many years, encountered difficulties registering his daughter, born through surrogacy in India in June 2003, with one of the Brussels' municipalities. Despite the fact that his daughter was already registered in Italy as an Italian citizen, the municipality required him to provide many documents in addition to the birth certificate and Italian identity card of his child, such as documents proving that he is the father, that he has custody, enrolment in a nursery and proof she attends regularly, and a certificate of general health from her regular doctor. In August 2015, the municipality provided him with a cardboard ID issued to children under 12 years of age and which does not have a national ID number on it. Throughout the process, the information provided by the municipality lacked consistency and transparency<sup>175</sup>. In addition, there have been some reports of **refusal to recognise registered partnerships**. For example,

<sup>165</sup> Law of 13 February 2003 extending marriage to people of the same sex, Official Journal 28 February 2003; See also Article 143 of the Civil Code.

<sup>166</sup> FRA, '[Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU: Comparative legal analysis update 2015](#)' (2015), p. 82.

<sup>167</sup> Ibid, p. 88.

<sup>168</sup> Ibid, p. 84.

<sup>169</sup> Belgian NCP EMN, '[Focus-study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)', (2012), p. 6.

<sup>170</sup> Article 40bis para 2, 1° of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); Article 4 of Royal Decree of 7 May 2008 determining the implementation modalities of the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners, Official Journal 13 May 2008; '[What is an assimilated partner?](#)', available at: [www.kruispuntmi.be](http://www.kruispuntmi.be).

<sup>171</sup> '[Partnerships put on a par with marriage](#)', available at: [www.kruispuntmi.be](http://www.kruispuntmi.be).

<sup>172</sup> Ibid.

<sup>173</sup> '[You are the legal partner of an economically active partner of an economically active Union citizens](#)', available at: [www.kruispuntmi.be](http://www.kruispuntmi.be).

<sup>174</sup> Article 10 para 1 and Article 40bis para 2, 2° of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); Belgian NCP EMN, '[Focus-study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 6.

<sup>175</sup> Information obtained from the individual himself (May 2016) via ILGA Europe.



a non-EU registered partner of a UK citizen was refused a visa because Belgium does not recognise registered partnerships from the UK and because it did not bear apostille<sup>176</sup>.

### 3.3. Discrimination based on ethnic/racial origin

The main instances of discrimination based on ethnic or racial origin of EU citizen exercising their free movement rights have been identified in relation to **Roma**.

The most common issue affecting Roma is racist stereotyping and prejudice, which are particularly problematic for **Roma from Slovakia, Romania and Bulgaria**<sup>177</sup>. Unia reports anti-Roma sentiment among public figures, with examples of those in authority, such as municipal officials, **refusing to register** Roma, school principals **refusing to enrol** a Roma child or police officials displaying prejudice in their dealings with Roma<sup>178</sup>. According to Unia, the Belgian police have a negative attitude to Roma<sup>179</sup>. The number of notifications of anti-Roma behaviour received by Unia has doubled each year since 2011, with more than 30 in 2013, and 22 new files on possible discrimination against Roma opened in 2015 alone<sup>180</sup>. Various stakeholders have stressed that these numbers are lower than the reality, given the under-reporting that stems from mistrust of the government and priority given to different needs among Roma communities<sup>181</sup>.

The role played by the Belgian media in stigmatising the Roma population and travellers has been repeatedly criticised for reinforcing prejudice, **stigmatisation** and discrimination against this group<sup>182</sup>. News articles on this population group are often negative, contain little nuance and present Roma as an unwanted danger to society<sup>183</sup>. The views and opinions of Roma themselves are only rarely presented in **media coverage**<sup>184</sup>.

A recurring issue is the remarks about **Roma** made by various actors in the public sphere, such as where politicians have referred to Roma as thieves, fighters, and lazy beggars<sup>185</sup>. According to Unia, parliamentary immunity (Articles 58 and 120 of the Belgian Constitution) apply to the statements made by politicians while exercising their official duties, while it is not clear if online statements by the politicians that are at odds with the Belgian non-discrimination legislation could be considered as within the scope of 'the exercise of official duties'<sup>186</sup>. In 2013, the European Commission against Racism and Intolerance (ECRI) noted that the Vlaams Belang had continued its anti-Roma propaganda<sup>187</sup>. In 2013, Geert Bourgeois, the Flemish Minister of Local and Provincial Government (*Vlaams Minister van Binnenlands Bestuur*), launched the idea of introducing a **mandatory civic integration**

<sup>176</sup> Your Europe Advice, Quarterly Feedback No. 9 (2014), p. 18.

<sup>177</sup> Before, it focused more on Roma from the former Yugoslavia, who came to Belgium after the splitting apart of their country; Unia, '2013 Annual Report on Discrimination/Diversity' (2014), p. 36.

<sup>178</sup> Unia, '2014 Annual report: A turning point for the Centre' (2015), p. 52; Unia, '2013 Annual Report on Discrimination/Diversity' (2014), p. 36 and p. 83.

<sup>179</sup> Unia, '2014 Annual report: A turning point for the Centre' (2015), p. 45.

<sup>180</sup> Unia, '2014 Annual report: A turning point for the Centre' (2015), p. 45; Unia, 'International Roma Day: four Roma speak out' (2016).

<sup>181</sup> Unia, '2013 Annual Report on Discrimination/Diversity' (2014), p. 36. Unia, 'International Roma Day: the Centre makes an effort on awareness-raising' (2013).

<sup>182</sup>.

<sup>183</sup> Idem.

<sup>184</sup> Unia, '2014 Annual report: A turning point for the Centre' (2015), p. 45; Crosspoint Migration-Integration, 'Year book civic integration and integration 2010' (2011), p. 48.

<sup>185</sup> Van den Broucke, S., Noppe, J., Stuyck, K., Buysschaert, P., Doyen, G. and Wets, J., 'Flemish Migration and Integration Monitor 2015' (2015), p. 237; Unia, '2011 Annual Report on Discrimination/Diversity' (2012), pp. 52-53.

<sup>186</sup> Article 59 of the Belgian Constitution; Information obtained from Unia, May 2016.

<sup>187</sup> ECRI, Report on Belgium (fifth monitoring cycle), CRI(2014)1, para 49.



**course for European Roma in Belgium** and of **fining those who refuse** to participate, as a means of addressing the manifold problems with this group<sup>188</sup>. The idea was criticised and labelled as stigmatising by the State Secretary for Asylum and Migration Policy (*Staatssecretaris voor Asiel en Migratie/ Secrétaire d'Etat pour l'Asil et l'Immigration*) and was also characterised as discriminatory by Unia<sup>189190</sup>.

Belgium has been condemned several times by the European Committee of Social Rights for not respecting the **housing rights of Roma** due to the failure of the government to address the lack of sufficient caravan sites for Roma, as well as the expulsion of Roma families from sites where they are staying illegally<sup>191</sup>. The problematic living conditions and housing discrimination faced by Roma in Belgium have been criticised by several stakeholders<sup>192</sup>. The Flemish government acknowledged the shortage of residential and transit sites, leading them to present, in 2012, a large-scale action and support plan<sup>193</sup>. However, in practice, not much has changed and the structural shortage of caravan sites remains<sup>194</sup>. There is no similar plan in place in Wallonia, whose Housing Code does not recognise the right to live in movable housing such as caravans<sup>195</sup>. As a result of the lack of policies on legal caravan sites, numerous incidents have been reported of efforts to move Roma out of sites where they stayed illegally. For example, in 2014, the mayor of Landen hired a DJ to play loud music near an illegal Roma caravan site in order to drive them away from the private industrial land<sup>196</sup>. In 2015, the Walloon social housing company<sup>197</sup> decided to dig trenches in order to prevent caravan dwellers from settling in a specific neighbourhood<sup>198</sup>. These incidents impact Roma children as, in 2014, frequent moving of families from one illegal site to another meant that at least 100 children of caravan dwellers could not attend school. There was, however, no legal alternative allowing them to maintain their caravan homes<sup>199</sup>.

In 2013, the European Commission reported that the **Belgian National Roma Integration Strategy** was inadequate, in that Belgium met only half of the 22 criteria used to assess the strategy<sup>200</sup>. With regard to measures to fight discrimination, Belgium did not meet any of the four criteria: it failed to enforce anti-discrimination legislation at local level, to raise awareness (including in public administrations), to raise awareness among Roma of their rights, and to tackle multiple discrimination against Roma women<sup>201</sup>. In the 2014 evaluation, the European Commission urged Belgium to consider measures to fight and monitor discrimination in the labour market and in the housing market<sup>202</sup>. In several of its country observations, the Committee on the Elimination of Racial Discrimination has expressed concerns about discrimination faced by Roma in access to housing, employment,

<sup>188</sup> Rommers, W. (Het Laatste Nieuws), '[Bourgeois wants mandatory civic integration for Roma](#)' (2013).

<sup>189</sup> Hellemans, K. (Het Laatste Nieuws), '[De Block not in favour of obligatory assimilation course for Roma](#)' (2013).

<sup>190</sup> Knack, 'CGKR: [Obligatory assimilation course for Roma is unwise and discriminatory](#)' (2013).

<sup>191</sup> European Committee of Social Rights, *Internationale Federatie van Liga's voor Mensenrechten/Fédération Internationale des Ligues des Droits de l'Homme (FIDH) v Belgium*, complaint no. 62/2010.

<sup>192</sup> CERD, Concluding observations on the sixteenth to nineteenth periodic reports of Belgium, CERD/C/BEL/CO/16-19 (2014), para 18; Unia, '[2014 Annual report: A turning point for the Centre](#)' (2015), p. 12; Unia, '2012 Annual Report on Discrimination/Diversity' (2013), p. 116.

<sup>193</sup> Flemish Government, '[Strategic plan for caravan dwellers](#)' (2012).

<sup>194</sup> De Standaard, '[Children of caravan dwellers have a full year of obligatory summer holiday](#)' (2014); Unia, '[2014 Annual report: A turning point for the Centre](#)' (2015), p. 52.

<sup>195</sup> Article 1 of the [Walloon Housing Code](#) and Information obtained from Unia, May 2016.

<sup>196</sup> Het Laatste Nieuws, '[Mayor chases Roma away with loud music](#)' (2014).

<sup>197</sup> The Walloon social housing company is a public funded company in charge of managing social housing in Wallonia.

<sup>198</sup> Unia, '[After the wall, now trenches against caravan dwellers](#)' (2015).

<sup>199</sup> De Standaard, '[Children of caravan dwellers have a full year of obligatory summer holiday](#)' (2014); European Commission against Racism and Intolerance.

<sup>200</sup> European Commission, '[The European Union and Roma - Country Factsheet: Belgium](#)' (2013).

<sup>201</sup> Idem.



education and health in Belgium<sup>203</sup>. In 2015, Belgium was the only EU Member State that failed to provide a contribution to the report of the European Commission on the implementation of the EU Framework for National Roma Integration Strategies<sup>204</sup>.

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<sup>202</sup> European Commission, '[Evaluation National Strategy for the Integration of Roma in Belgium](#)' (2014).

<sup>203</sup> UN Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the sixteenth to nineteenth periodic reports of Belgium, CERD/C/BEL/CO/16-19 (2014), para 18; CERD, Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/BEL/CO/15 (2008), para 22.

<sup>204</sup> European Commission, Report on the implementation of the EU Framework for National Roma Integration Strategies 2015, COM(2015) 299 final.



## 4. MEASURES TO COUNTER ABUSE OF RIGHTS

### KEY FINDINGS

- Belgium has adopted legal and administrative measures to prevent and combat marriage and legal cohabitation of convenience, including **refusal of visas, annulment** of marriage with **withdrawal of residence** permits, **conviction** with imprisonment and/or a fine, the establishment of a database and systematic **information-sharing** between the relevant services, and the intensification of **controls**.
- The target group for marriage and legal cohabitation of convenience is **third country nationals**, including family members of EU citizens.
- Several types of fraud for entry and residence purposes have been identified in Belgium: **false declarations of parenthood, adoptions of convenience, bogus self-employment** and people falsely declaring as EU citizens. Measures exist to combat false declarations of parenthood and false self-employment but not adoptions of convenience.

### 4.1. Marriage of convenience

Since 1999, the Civil Code has determined that no **marriage** exists where the circumstances show that the intention of at least one of the spouses was not to establish a sustainable living community but, rather, to obtain a legal advantage attached to the status of a married person<sup>205</sup>. In 2013, a similar provision was introduced for legal **cohabitation of convenience**, although without specifying that the aim of such cohabitation must be the establishment of a sustainable living community<sup>206</sup>.

Over the past decade, legal, administrative and economic issues connected to family reunification and marriage and legal cohabitation of convenience have been the subject of considerable research and political attention<sup>207</sup>. In January 2012, the State Secretary for Asylum and Migration Policy announced a number of measures in the fight against marriage and legal co-habitation of convenience, such as the adoption of administrative and legal provisions to put legal cohabitation of convenience on an equal footing with marriage of convenience, the establishment of a database and systematic information-sharing between the relevant services, and the intensification of controls during the first three years following the granting of a residence permit<sup>208</sup>. These measures were introduced in **2013**<sup>209</sup> and **2014**<sup>210</sup>.

<sup>205</sup> Article 146bis of the [Civil Code](#).

<sup>206</sup> Article 1476bis of the [Civil Code](#). 'What is legal cohabitation of convenience', available at: [www.kruispuntmi.be](http://www.kruispuntmi.be).

<sup>207</sup> Immigration Office, '[Activity Report 2013](#)' (*Activiteitenrapport/Rapport d'activités 2013* (2014), p. 216; Belgian NCP EMN, '[Focus study : Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 4 and p. 12; European Migration Network (EMN), '[Misuse of the Right to Family Reunification](#)' (2012), p. 14; King Baudouin Foundation, '[Family reunification in Belgium: actors in the field are given the word](#)' (2011); Myria, '[Migration Annual report 2009](#)' (2010), p. 118-120; Myria, '[Migration Annual report 2008](#)' (2009), pp. 117-119; Immigration Office, '[Activity Report 2007](#)' (2007), p. 46-49; Myria, '[Migration Annual report 2007](#)' (2008), pp. 24-29.

<sup>208</sup> State Secretary for Asylum and Migration Policy, '[General policy note on Asylum and Migration](#)' (2012), p. 11; EMN, 'Misuse of the Right to Family Reunification' (2012), p. 12; Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 5.



In 2013, the Your Europe Advice Service reported that Belgian authorities regularly seek to verify the evidence provided by applicants that they are not engaged in a marriage of convenience<sup>211</sup>. **Third country nationals** with illegal/precarious residence status are considered **a priori suspects** in cases of alleged marriages of convenience<sup>212</sup>. The controls, therefore, affect mainly those third country national family members married to EU citizens. When an illegal resident in Belgium notifies the civil registrar that he/she wants to marry, the registrar is legally obliged to inform the Immigration Office, which then has 30 days to provide the registrar with the necessary information on marriages in foreign countries, previously refused marriages, legal cohabitation with third persons, etc.<sup>213</sup>. Belgian authorities exchanged information on 10,728 (in 2011) and 9,064 (in 2012) foreseen<sup>214</sup> or contracted<sup>215</sup> marriages of third country nationals, because the applicant was possibly more likely to enter a marriage of convenience due to his/her irregular or precarious residence status<sup>216</sup>. No statistics are available on the number of marriages that are later found to be false or on the number of third country national family members of EU citizens involved<sup>217</sup>.

A Circular of 6 September 2013 describes a number of factors that may – usually in combination – give a serious indication of a marriage or legal cohabitation of convenience, such as lack of a common language between the parties, different accounts of their first meeting, a large age difference, previous failed attempts to contract a marriage of convenience or to register a declaration of legal cohabitation<sup>218</sup>. The civil registrar can take a variety of sources into consideration in making its decision, from the parties themselves, to third parties such as the police<sup>219</sup>. If the suspicion is warranted, the civil registrar can delay issuing a marriage certificate or registering a declaration of legal cohabitation for a maximum of two months – three if extended by the Crown Prosecutor – in order to conduct additional investigations<sup>220</sup>, which may include interviews, home visits and community-based checks, depending on the individual circumstances of each case<sup>221</sup>.

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<sup>209</sup> [Act of 2 June 2013](#) amending the Civil Code, the Act of 31 December 1851 concerning the consulates and consular jurisdiction, the Criminal Code, the Judicial Code and the Act of 15 December 1980 concerning access to the territory, residence, establishment and removal of foreigners, to fight marriage of convenience and legal cohabitation of convenience, Official Journal 23 September 2013.

<sup>210</sup> [Royal Decree of 28 February 2014](#) amending the Royal Decree of 16 July 1992 to determine the information to be entered into the National Register and the Foreigners Register and to prescribe the registration criteria on the Waiting Register for foreigners without an identification number in the National Register and who want to marry or register a declaration of legal cohabitation, Official Journal 24 March 2014.

<sup>211</sup> Your Europe Advice, Quarterly Feedback Report No. 6 (2013), p. 33.

<sup>212</sup> EMN, '[Ad hoc query on requirements of marriage and suspected numbers of marriage of convenience](#)' (2013), p. 5; Immigration Office, '[Activity Report 2012](#)' (2013), pp. 206-214.

<sup>213</sup> Circular of 17 September 2013 on information exchange between the civil registrars and the Immigration Office in the framework of a marriage declaration or a declaration of legal cohabitation of a foreigner with irregular or precarious residence status, Official Journal 23 September 2013.

<sup>214</sup> Planned marriages concern those between foreigners in an irregular or precarious situation and a Belgian national, an EU citizen or a legally resident settled foreigner.

<sup>215</sup> Marriages can be contracted in Belgium or abroad. Investigations into marriages contracted abroad can relate to the registration or transcription of foreign acts of marriage in order to file for a family reunification visa afterwards, or they can concern a Belgian partner. The investigation aims to prevent ratification or recognition of fraudulent marriages by Belgian law.

<sup>216</sup> EMN, '[Ad hoc query on requirements of marriage and suspected numbers of marriage of convenience](#)' (2013), pp. 5-6; Immigration Office, '[2012 Activity Report 2012](#)' (2013), p. 206-207; EMN, '[Misuse of the Right to Family Reunification](#)' (2012), p. 45.

<sup>217</sup> EMN, '[Ad hoc query on requirements of marriage and suspected numbers of marriage of convenience](#)' (2013), p. 6.

<sup>218</sup> Article M, C.2 of the Circular of 6 September 2013 on the Act of 2 June 2013 adapting the Civil Code, the Act of 31 December 1851 concerning the consulates and consular jurisdiction, the Criminal Code, the Judicial Code and the Law of 15 December 1980, to fight marriage of convenience and legal cohabitation of convenience, Official Journal 23 September 2013.

<sup>219</sup> Idem.

<sup>220</sup> Articles 167 and Article 1476quater of the Civil Code.

<sup>221</sup> EMN, '[Misuse of the Right to Family Reunification](#)' (2012), p. 26.



Since 2013 civil registrars have been **obliged to inform** the Investigations Department of the Immigration Office about any decision to refuse a marriage application or to register a legal cohabitation<sup>222</sup>. Parties can appeal this decision in the Family Court<sup>223</sup>. If a marriage of convenience has already been contracted, or if a declaration of legal cohabitation has already been registered between a third country national and a Belgian national, an EU citizen or a settled non-national and there are serious indications of a potential marriage or legal cohabitation of convenience, the Immigration Office will notify the appropriate Prosecution Office<sup>224</sup>. The latter then decides whether or not to take a case before the Court of First Instance in order to have the marriage annulled<sup>225</sup>.

Since 2014 registrars have been required to input relevant information on possible marriages or legal cohabitation of convenience, including decisions on postponements, refusals and annulments, on the National Register or – for those foreigners who do not have a national identification number – the Waiting Register<sup>226</sup>.

Entering, or attempting to enter, into a marriage of convenience can be punished with imprisonment for between one month and three years and a fine of EUR 50-150<sup>227</sup>. The same penalties apply to legal cohabitation of convenience<sup>228</sup>.

Marriage and legal cohabitation annulments work retroactively, i.e. the concerned parties are considered to have never been married or to have legally cohabited<sup>229</sup>. This means that residence permits – including permanent residence as well as the residence right of the children – can be revoked because the right to family reunification does not apply<sup>230</sup>.

The law of 2013 extended the period of control from three to five years, after which the residence rights for family members of EU or Belgian citizens become permanent<sup>231</sup>. Age, health, family and economic situation, duration of stay in Belgium, level of social and economic integration and strength of the ties with the country of origin must all be taken into consideration when deciding whether or not to revoke residence permits<sup>232</sup>.

Despite increased attention for marriages and legal partnerships of convenience, no precise statistics exist on these phenomena in Belgium<sup>233</sup>. In 2013, approximately **7,278 marriages were annulled**, which is considerably less than the year before (9,064 annulments) and the steepest decline in 10 years<sup>234</sup>. According to the State Secretary for Asylum and Migration Policy, this indicates that the measures introduced in 2013 are

<sup>222</sup> Article 1476 and Article 1476quater of the Civil Code.

<sup>223</sup> Article 167 and Article 1476quater of the Civil Code.

<sup>224</sup> Immigration Office, '[Activitiy Report 2013](#)' (2014), p. 220.

<sup>225</sup> Articles 167 and 1476quinquies para 1 of the Civil Code; Immigration Office, '[2013 Activity Report 2013](#)', p. 220.

<sup>226</sup> Articles 167 and 1476quinquies para 1 of the Civil Code. Royal Decree of 28 February 2014.

<sup>227</sup> Article 79bis para 1 and 2 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>228</sup> Article 79ter of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>229</sup> '[Invalidation of a marriage of convenience](#)', available at: [www.kruispuntmi.be](http://www.kruispuntmi.be); '[Invalidation of legal cohabitation of convenience](#)', available at: [www.kruispuntmi.be](http://www.kruispuntmi.be).

<sup>230</sup> Idem.

<sup>231</sup> Article 61/7 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>232</sup> Article 42quater para 1, third indent of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), pp. 4-5.

<sup>233</sup> Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 12.

<sup>234</sup> De Standaard, 'Number of marriages of convenience falls' (2014). Knack, '[Fewer marriages of convenience annulled](#)' (2014).



effective<sup>235</sup>.

The Immigration Office reports that in 2013 the residence permits of **131 people were revoked** after the courts annulled their marriage as a marriage of convenience, compared to 118 in 2012<sup>236</sup>. In 2011, the visa department of the Immigration Office **refused to issue 882 visas** on the grounds of marriage of convenience, with a further 743 visa refusals pending while the Prosecution Office carried out investigations<sup>237</sup>. In 2011, the fraud department of the Immigration Office, which investigates cases involving foreigners with a residence permit of more than three months, **withdrew the residence permits** of 116 non-nationals found to be involved in a marriage of convenience<sup>238</sup>.

In 2010, 1,195/1,193 and in 2011, 990/842<sup>239</sup> residence permits for third country nationals applying **for family reunification with a Belgian or another EU citizen** were revoked/refused due to 'lack of family unity'. These numbers are **considerably higher** than for family reunification between third country nationals in Belgium (165/166 and 145/146<sup>240</sup> in 2010 and 2011 respectively).

Questionnaires and interviews with third country nationals applying for family reunification at an embassy may result in denial of a visa<sup>241</sup>. Suspicion of, or evidence of, marriage of convenience resulted in 665 out of a total 882<sup>242</sup> visas being **refused** in 2011 for **third country nationals applying to join a Belgian national or another EU citizen** in Belgium, which is considerably more than for family reunification between third country nationals in Belgium (217 out of 882 in 2011)<sup>243</sup>.

## 4.2. Fraud for entry or residence purposes

According to the legislation, the immigration authorities 'can refuse the entry or terminate the right to stay of an EU citizen or his family members when he, or they, have used false or misleading information, or false or falsified documents, or when they have resorted to fraud or other illegal means, which have been decisive for the recognition of this right'<sup>244</sup>. A specialised unit on fraud within the Immigration Office focuses on identification of cases of fraud and abuse of rights.

While the number of **false declarations of parenthood** for the purposes of residence or re-unification is assumed to be smaller than the number of marriages and cases of legal cohabitation of convenience<sup>245</sup>, the issue is nevertheless on the rise<sup>246</sup>. There is an ongoing increase in declarations made by non-relative third country nationals residing illegally in

<sup>235</sup> Ibid.

<sup>236</sup> Immigration Office, '[Activity Report 2013](#)' (2014), pp. 108-109.

<sup>237</sup> State Secretary for Asylum and Migration Policy, 'Press release: Enhanced protection for victims of marriage and legal cohabitation of convenience' (2012).

<sup>238</sup> State Secretary for Asylum and Migration Policy, 'Press release: Enhanced protection for victims of marriages and legal cohabitations of convenience' (2012).

<sup>239</sup> EMN, '[Misuse of the Right to Family Reunification](#)' (2012), p. 40; Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 21.

<sup>240</sup> EMN, '[Misuse of the Right to Family Reunification](#)' (2012), p. 40; Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 21.

<sup>241</sup> EMN, '[Misuse of the Right to Family Reunification](#)' (2012), p. 20.

<sup>242</sup> Ibid., p.48; Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 21.

<sup>243</sup> Ibid, p. 21.

<sup>244</sup> Article 42septies of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>245</sup> Ibid, p. 12.

<sup>246</sup> Groenendijk, K., Guild, E., Cholewinski, R. Oosterom-Staples, H., Minderhoud, P., Mantu, S. and Fridriksdottir, B., European Report on the Free Movement of Workers in Europe in 2013 (2014), pp. 56-57.



Belgium in order to obtain a residence permit and, often, Belgian nationality<sup>247</sup>. This occurs for both isolated cases, as well as networks within various African communities in Belgium, such as the Cameroonian and Nigerian communities<sup>248</sup>. It can also concern a false declaration of parenthood made by a Belgian or EU citizen in Belgium involving a third country mother and her third country child<sup>249</sup>.

There is no legislation on the issue of declarations of parenthood of convenience and, despite being discussed at policy level, no specific policy has yet been adopted<sup>250</sup>. There are also no preventative measures similar to those mentioned above for marriage and legal cohabitation of convenience (e.g. delay of registration in case of serious doubt, systematic information exchange)<sup>251</sup>. Civil registrars, notaries, Belgian embassies and consulates are not authorised to refuse to register declarations of parenthood if the formal conditions for recognition are respected<sup>252</sup>. In cases of blatant fraud, some have refused to register despite the **lack of an appropriate legal basis** to do so, which resulted in cases being brought before the Court of First Instance<sup>253</sup>.

Since 2015 municipalities have been required to include determinations of parenthood – by birth certificate, by recognition, by judicial decision or by adoption, in the National Register<sup>254</sup>. Most misuses of the right to family reunification are only identified by such a registration of parenthood<sup>255</sup>. According to the State Secretary for Asylum and Migration Policy, the Immigration Office passes suspicious cases of declaration of fatherhood to the Public Prosecutor's Office<sup>256</sup>. The few cases identified in case law deal with false declarations of parenthood under the general provision of fraud to circumvent the law, which is contrary to public order<sup>257</sup>. In cases where a declaration of fatherhood is annulled, the Immigration Office can revoke the right to residence<sup>258</sup>. Prosecution under forgery-related provisions is possible for persons who use forged documents to make a false declaration of parenthood<sup>259</sup>. The Minister of Justice and the State Secretary for Asylum and Migration Policy are currently working on a government bill to deal with false declarations of parenthood<sup>260</sup>. Given the current lack of a legal framework for false

<sup>247</sup> Idem.

<sup>248</sup> Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 5; EMN, 'Misuse of the Right to Family Reunification' (2012), pp. 49-50.

<sup>249</sup> EMN, 'Misuse of the Right to Family Reunification' (2012), pp. 49-50.

<sup>250</sup> Belgian House of Representatives, '[Question from Mr. Peter Logghe to the State Secretary for Asylum and Migration Policy regarding fraud concerning fatherhood of convenience](#)' (2014); State Secretary for Asylum and Migration Policy, 'General policy note on Asylum and Migration' (2014), pp. 20-21; State Secretary for Asylum and Migration Policy, 'General policy note on Asylum and Migration' (2013), pp. 12-13.

<sup>251</sup> Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 5.

<sup>252</sup> Belgian NCP EMN, '[Annual report on asylum and migration policy in Belgium](#)' (2015), p. 24; EMN, 'Misuse of the Right to Family Reunification' (2012), p. 22.

<sup>253</sup> See, for example, Court of First Instance of Liège, 21 February 2014; Belgian NCP EMN, '[Annual report on asylum and migration policy in Belgium](#)' (2015), p. 24.

<sup>254</sup> Municipalities had one year to implement the new measure, which entered into force on 10 January 2014. Article 15 of the Law of 15 December 2013 on various provisions on administrative simplification, Official Journal 31 December 2013.

<sup>255</sup> Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 5.

<sup>256</sup> Belgian House of Representatives, 'Question from Mr. Peter Logghe to the State Secretary for Asylum and Migration Policy regarding "fraud concerning fatherhood of convenience"', *ibid*.

<sup>257</sup> Article 138bis of the Judicial Code; Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), p. 5.

<sup>258</sup> Belgian House of Representatives, 'Question from Mr. Peter Logghe to the State Secretary for Asylum and Migration Policy regarding "fraud concerning fatherhood of convenience"', *ibid*.

<sup>259</sup> EMN, 'Misuse of the Right to Family Reunification' (2012), p. 33.

<sup>260</sup> Information obtained from the Department of International Adoption FPS Justice, May 2016.



declarations of parenthood, civil registrars, the offices of the Public Prosecutor and the courts do not register such cases and therefore no data are available<sup>261</sup>.

Another type of fraud reported is **adoption of convenience**. However, evidence of this type of fraud is quite limited<sup>262</sup> as no data are available<sup>263</sup>. In such cases, the sponsor of the adoption participates for economic and financial reasons such as claiming family allowances, while the applicant aims to obtain the right of residence<sup>264</sup>. Such adoptions can be refused because they attempt to circumvent the legal provisions on nationality and access to the territory, residence, settlement and removal of foreigners<sup>265</sup>. Since 2003, a certificate of preparation for adoption, together with a ruling from the court concerning suitability to adopt, have been required, which has considerably decreased the misuse of adoption<sup>266</sup>.

Another type of fraud identified is **bogus self-employed persons**. This appears to have been mainly an issue during the transitional period for workers from Romania and Bulgaria (1 May 2004 to 31 December 2013)<sup>267</sup>. Since 2004, and especially from 2008 to 2013, there was a marked increase in self-employed Romanian and Bulgarian nationals in Belgium<sup>268</sup>. It was reported that in 2014, 60% of all Romanian and Bulgarian self-employed persons stopped working after their first year as a result of limited language knowledge, lack of preparation and information gathering, and misuse of the self-employed status<sup>269</sup>. Since the start of 2013, approximately **3,000 EU citizens** – especially Romanians – who were wrongfully enrolled as self-employed, have had this status revoked by the National Institute for the Social Security of the Self-employed (*Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen/ Institut National d'Assurances Sociales pour Travailleurs Indépendants*)<sup>270</sup>. Since 2014, there appears to be a decline in the registration of self-employed Romanians and Bulgarians and an increase in the number of registrations as employees and jobseekers<sup>271</sup>.

In order to **prevent misuse of the self-employed status**, a number of measures have been adopted over the past few years. Since November 2015, self-employed EU citizens must prove their registration with a social insurance fund by way of a new certificate presented to the municipality at the time of registration or, at the latest, three months later<sup>272</sup>. According to Crosspoint Migration-Integration, the implementation of this new rule, by which the social insurance funds email the certificates directly to the local authorities rather than handing it over to the concerned self-employed person, runs counter to the legislation and makes EU citizens dependent on third parties over whom they have no control whatsoever in order to successfully register as self-employed<sup>273</sup>. On 1 April 2016, new rules

<sup>261</sup> Information obtained from the Department of International Adoption FPS Justice, May 2016.

<sup>262</sup> Ibid, p. 18.

<sup>263</sup> Information obtained from the Department of International Adoption FPS Justice, May 2016.

<sup>264</sup> Ibid, pp. 19-20.

<sup>265</sup> Article 365-2 of the Civil Code.

<sup>266</sup> Act of 24 April 2003 reforming adoption, Official Journal 15 April 2003; Belgian NCP EMN, '[Focus study: Misuse of the right to family reunification: marriages of convenience and false declarations of parenthood](#)' (2012), pp. 12-13.

<sup>267</sup> ACV and ABVV, 'The New Mobile Employee – Policy report' (2015), p. 56.

<sup>268</sup> Neutral Trade Union for the Self-Employed, '[Self-employed persons from Eastern Europe quit faster: deal with misuses more firmly](#)' (2015).

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> ACV and ABVV, 'The New Mobile Employee – Policy report' (2015), p. 56.

<sup>272</sup> Royal Decree of 12 October 2015 amending Royal Decree of 8 October 1981 concerning access to the territory, residence, settlement and removal of foreigners, Official Journal 4 November 2015; Ministerial Decree of 12 October 2015 determining the layout for the subscription certificate mentioned in Article 50 para 2, 2° of the Royal Decree of 8 October 1981 concerning access to the territory, residence, settlement and removal of foreigners, Official Journal 4 November 2015.

<sup>273</sup> Crosspoint Migration-Integration, '[New standard certificate for registration EU self-employed](#)' (2015).



entered into force, stating that self-employed persons are only entitled to reimbursement for medical care after having paid their first quarterly social security contribution or having been granted an exemption<sup>274</sup>.

Lastly, the immigration authorities can refuse entry, or terminate the right to stay, of an EU citizen or of his/her family members where he/she has used **false or misleading information**, or false or falsified documents, or when they have resorted to fraud or other illegal means which were decisive for the recognition of this right<sup>275</sup>. The Immigration Office focuses mainly on identity fraud and false representation, as well as on marriages, legal cohabitations and adoptions of convenience<sup>276</sup>. The numbers of terminations of rights on the basis of abuse or fraud are low compared to those based on lack of sufficient resources<sup>277</sup>.

The Immigration Office reports 44 cases of '**false Europeans**' whose right of residence was terminated on the basis of fraud in 2014<sup>278</sup>. In 2013, this amounted to 50 persons whose **false documents** came from 13 different Member States with Portugal, Italy and France completing the top three<sup>279</sup>, compared to 41 in 2012<sup>280</sup>. The municipal services do not systematically check the residency documents of EU citizens<sup>281</sup>. In 2014, there were 56 annulments of marriages of convenience which resulted in termination of the right of residence on the basis of **fraud**<sup>282</sup>, compared to 131 in 2013 and 118 in 2012<sup>283</sup>. There were also six cases of fraud with family reunification in which residence was also terminated<sup>284</sup>. The number of detectable technical forgeries is decreasing, while fraud with source documents such as birth certificates and with look-a-likes is increasing<sup>285</sup>. Persons committing fraud by using false documents can be criminally prosecuted on the basis of forgery related charges<sup>286</sup>, but this does not often happen unless it concerns third country nationals involved in human trafficking<sup>287</sup>.

<sup>274</sup> Previously, self-employed persons were entitled to healthcare during the first year without having paid social security contributions; Royal Decree of 13 March 2016 amending Articles 252 and 176 of the Royal Decree of 3 July 1996 to implement the law concerning mandatory insurance for medical care and reimbursements, coordinated on 14 July 1994, Belgian Official Journal 30 March 2016.

<sup>275</sup> Article 42septies of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>276</sup> Advokatfirmaet Simonsen Vogt Wigg AS, 'Legal study on Norway's obligations under the EU Citizenship Directive 2004/38/EC' (2016), p. 297-298; Immigration Office, '[Activity Report 2013](#)' (2014), pp. 108-112, 117, 208-209, 212-213 and 215-224.

<sup>277</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 127.

<sup>278</sup> Immigration Office, '[Annual Statistical Report 2014](#)' (2015), p. 26.

<sup>279</sup> The other Member States are Slovakia, Czech Republic, Bulgaria, the UK, Romania, Spain, Lithuania, Greece, the Netherlands and Bulgaria; Immigration Office, '[Activity Report 2013](#)' (2014), p. 109.

<sup>280</sup> Immigration Office, '[Activity Report 2012](#)' (2013), p. 107.

<sup>281</sup> Idem.

<sup>282</sup> Immigration Office, '2014 Statistical Annual Report' (2015), p. 26.

<sup>283</sup> Immigration Office, '2013 Activity Report' (2014), p. 109.

<sup>284</sup> Immigration Office, '2014 Statistical Annual Report' (2015), p. 26.

<sup>285</sup> Immigration Office, '2013 Activity Report' (2014), p. 201; Immigration Office, 'Activity Report 2012' (2013), p. 187.

<sup>286</sup> Chapter IV of Book 2 of the Criminal Code.

<sup>287</sup> Information obtained from Myria, May 2016.



## 5. REFUSAL OF ENTRY OR RESIDENCE AND EXPULSIONS OF EU CITIZENS AND THEIR FAMILY MEMBERS

### KEY FINDINGS

- In Belgium, EU citizens and their family members' **residence can be terminated** if they are no longer working, self-employed, studying, or if they no longer have 'sufficient resources' and become an 'unreasonable burden' on the social system. The consequence of terminating residence is not physical expulsion, but EU citizens and family members are ordered to leave, they are **no longer registered** and are **no longer entitled to social benefits**, which could be considered de facto expulsion.
- There is a **high number of terminations of residence rights** in Belgium that has increased in the last few years. In 2014, residence permits of 2,042 EU citizens and their family members were revoked. The majority of the decisions were based on the individual having been deemed an **unreasonable burden** on the social security system.
- Many concerns have been raised that residence rights are withdrawn **without due consideration of the personal circumstances** of the EU citizen and family members. In addition, critics argue that the systematic data transfers from social security databases to the Immigration Office **violate** Directive 2004/38/EC. Refusal of entry and residence can also be due to reasons of public order, national security or public health.
- **Physical expulsions** of EU citizens and their family members are rare and usually a result of fraud or due to **serious problems with public order**. Once EU citizens and their family members have a permanent right of residence, expulsion is only possible on serious grounds of public order or national security.

### 5.1. Refusal of entry or residence

#### 5.1.1. Refusal or withdrawal of residence rights

Similar to the provision in the Directive, the right of (temporary) residence of EU citizens in Belgium **can be terminated** if they no longer satisfy the conditions of this right, namely when they are no longer working, self-employed, studying, or if they no longer have 'sufficient resources' and become an 'unreasonable burden' on the social security system<sup>288</sup>. In practice, when the right of residence of an EU citizen is terminated, the Immigration Office sends that person an 'order to leave the territory'<sup>289</sup>. This does not mean that the EU citizen will be expelled but, rather, that his/her right to residence is terminated, that he/she is no longer registered in the Foreigners Register, and that he/she is **no longer entitled to receive social benefits**<sup>290</sup>, which could be considered as de facto expulsion.

<sup>288</sup> Article 42bis of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); Touquet, H. and Wets, J., 'Context, motive and opportunities of Central and Eastern European immigration: exploratory research with a focus on Roma' (2013), p. 24.

<sup>289</sup> State Secretary for Asylum and Migration, 'Withdrawal of residence rights of EU citizens in Belgium: evolution from 2008 to 2013' (2014).

<sup>290</sup> Ibid.



According to the Immigration Office, the **residence permits** of **2,042 EU citizens and their family members** (including third country nationals) were revoked in 2014<sup>291</sup>. Of these, the vast majority were workers, with 90 residents on the basis of having sufficient resources, 141 jobseekers, 933 self-employed, 222 family re-unification, 23 students. The right of residence is mostly revoked for Romanian citizens (634), followed by Bulgarians (295), Spanish (245), Dutch (209), Italians (185) and other nationalities (474)<sup>292</sup>, the order of which is the same as in 2013<sup>293</sup> and slightly different from 2012 when French nationals featured in the top five, with the Italians in sixth<sup>294</sup>.

In 2006, the CJEU ruled in the case *C-408/03 Commission v Belgium* that the **automatic nature of an order to leave** the Belgian territory for persons who failed to produce the necessary documents to obtain a residence card was **disproportionate**, as it failed to allow Belgian authorities to take into consideration the reasons for such a failure, or to allow the person to establish fulfilment of the conditions to enjoy his/her right of residence under EU law<sup>295</sup>. In 2007, Belgian legislation was **amended** to ensure that the personal situation of applicants – including the nature and regularity of their income, as well as the number of dependant family members – be taken into consideration when evaluating their sufficient resources<sup>296</sup>. In the same case, the CJEU also determined that the income of a third person must also be considered when evaluating whether or not an applicant has sufficient resources<sup>297</sup>.

However, as described in Sections 1.1.3 and 2.1.2, critics have raised **concerns** that, in practice, the Immigration Office withdraws such rights without due consideration of the personal circumstances of the EU citizen and his/her family members (including the presence of a child). Indeed, the Immigration Office is given a significant amount of discretion in assessing whether or not a person is an unreasonable burden, including the means to check whether or not the person benefits from social assistance<sup>298</sup>.

In recent years the fight against misuse of the social system by foreigners has become a priority.<sup>299</sup> Since 2011, the Ministry for Social Integration sends the Immigration Office a monthly list with **information** from the Bank for Social Security (*Kruispuntbank van de Sociale Zekerheid/ Banque Carrefour de la Sécurité Sociale*) containing personal data on **all EU/EEA citizens and their family members who have received social allowances** for three consecutive months over the past year<sup>300</sup>. The Immigration Office also receives data from other services: from the National Institute for the Social Security of Self-Employed Persons (*Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen/ Institut National*

<sup>291</sup> Immigration Office, '[Annual Statistical Report 2014](#)' (2015), p. 25.

<sup>292</sup> Ibid.

<sup>293</sup> Immigration Office, '[Activity Report 2013](#)' (2014), p. 108.

<sup>294</sup> Immigration Office, '[Activity Report 2012](#)' (2013), p. 106.

<sup>295</sup> Case C-408/03 *Commission v Belgium*, [2006] ECLI:EU:C:2006:192, para 18, 40 and 67-72.

<sup>296</sup> Royal Decree of 28 November 2007 amending Royal Decree of 8 October 1981 concerning access to the territory, the residence, the settlement and removal of foreigners, Official Journal, 14 December 2008; European Parliament, '[The Right of Citizens to move and reside freely within the territory of the European Union](#)' (2009), p. 57 and p.184.

<sup>297</sup> Case C-408/03 *Commission v Belgium*, [2006] ECLI:EU:C:2006:192, para 40; Communication of the European Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313 final, p. 8.

<sup>298</sup> CIRE, The right to residence of European citizens in Belgium, p.8 and Judicial Foreigners' Council [decision of 30 September 2013 No 111.076](#).

<sup>299</sup> State Secretary for Asylum and Migration Policy, 'General policy note on Asylum and Migration' (2014), p. 3-4, 21-22.

<sup>300</sup> State Secretary for Asylum and Migration, '[Withdrawal of residence rights of EU citizens in Belgium: evolution from 2008 to 2013](#)' (2014); Immigration Office, '[Activity Report 2012](#)' (2013), p. 13.



*d'Assurances Sociales pour Travailleurs Indépendants*) to help detect EU citizens who falsely claim to be self-employed<sup>301</sup>; from the DOLSIS-web application from the National Social Security Service (*Rijksdienst Sociale Zekerheid/ Office National de Sécurité Sociale*) to determine duration of employment of a person<sup>302</sup> and on EU citizens who have been unemployed for six consecutive months and who have worked for under 12 months prior to their unemployment period<sup>303</sup>. This information, inter alia, is used by the Immigration Office to investigate whether EU citizens fulfil the self-sufficiency criterion. While failure to do so can result in termination of the right of residence, it cannot be an automatic consequence of recourse to the social security system<sup>304</sup>. According to a number of academics and organisations, these **systematic data transfers violate Directive 2004/38/EC** because they result in automatic withdrawals of the right of residence by the Immigration Office without due consideration of the specific circumstances of each individual case<sup>305</sup>.

Until 2014 the migrant was required to prove compliance with the conditions of the right of residence<sup>306</sup>. However, since 2014 the Alien Litigation Council has placed increasing responsibility on migration authorities in this regard. This includes actively searching for information to undertake decisions terminating rights of residence, as well as on the right of the migrant to be heard and to present arguments supporting his/her case before the immigration authorities take a final decision<sup>307</sup>. In two cases, the Alien Litigation Council suspended two expulsion orders for third country nationals who had formed a dependent family with an EU citizen, on the basis of **violation of the right to be heard**<sup>308</sup>. In both cases, the third country national was unable to explain their family situation, which the Immigration Office should consider when taking a decision regarding expulsion, in addition to the rights of the child and the health situation of the individual<sup>309</sup>. In a ruling from 19 February 2015 on the residence permit of a third country national spouse of a Dutch resident in Belgium, the Council of State stated that the Immigration Office must hear the concerned party in order to allow him/her to provide arguments against the termination of his/her right to residence before deciding whether or not to terminate such right of a family member of an EU citizen<sup>310</sup>. The Immigration Office thus has a duty to actively investigate the case by collecting all relevant information, including by explicitly inviting the foreigner to be heard<sup>311</sup>.

<sup>301</sup> Immigration Office, '[Activity Report 2012](#)' (2013), p. 13.

<sup>302</sup> The Immigration Office can terminate the right of residence of EU citizens who have worked for less than one year where EU citizens stop working once they have accumulated sufficient working days to be entitled to employment benefits; Immigration Office, *ibid*, pp. 13-14.

<sup>303</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 128.

<sup>304</sup> State Secretary for Asylum and Migration, '[Withdrawal of residence rights of EU citizens in Belgium: evolution from 2008 to 2013](#)' (2014); Groenendijk, K., Guild, E., Cholewinski, R. Oosterom-Staples, H., Minderhoud, P., Mantu, S. and Fridriksdottir, B., *European Report on the Free Movement of Workers in Europe in 2013* (2014), pp. 94-95; CEPS, 'Dilemmas in the Implementation of Directive 2004/38 on the right of citizens and their family members to move and reside freely in the EU' (2009), p. 15.

<sup>305</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), pp. 127-129; Bailleux, A., Carlier, J.-Y., Dumont, D., Martens, P. and Nevens, J.E. (La Libre Belgique), '[Free movement of EU citizens: misuse by Belgium of its social security databases](#)' (2015); Letter from Inco, ABVV-FGTB, [EU Rights Clinic and BXL Laïque on the expulsions of EU citizens from Belgium](#).

<sup>306</sup> See, for example: *X v Belgium* [2012], Alien Litigation Council No. 84855; *X v Belgium* [2012], Alien Litigation Council No. 92621.

<sup>307</sup> See, for example: *X v Belgium* [2015], Alien Litigation Council No. 144652; *X v Belgium* [2015], Alien Litigation Council No. 146740; *X v Belgium* [2015], Alien Litigation Council No. 148537; Advokatfirmaet Simonsen Vogt Wigg AS, 'Legal study on Norway's obligations under the EU Citizenship Directive 2004/38/EC' (2016), pp. 238, 290-292 and 299.

<sup>308</sup> See, for example: *X v Belgium* [2015], Alien Litigation Council No. 128.856; *X v Belgium* [2015], Alien Litigation Council No. 130.247; Crosspoint Migration-Integration, '[Alien Litigation Council suspends expulsion order due to violation of the right to be heard](#)' (2014).

<sup>309</sup> Crosspoint Migration-Integration, '[Alien Litigation Council suspends expulsion order due to violation of the right to be heard](#)' (2014).

<sup>310</sup> See, for example: *XXX v Belgium* [2015], Council of State judgment No. 230.257; Crosspoint Migration-Integration, '[Foreign Affairs Office needs to hear concerned persons before ending right to residence](#)' (2015).



Myria states that, in several of its cases, the Alien Litigation Council has ruled that the Immigration Office **failed to take the importance of the child** sufficiently into account when making decisions on the right of residence of EU citizens, thereby violating Article 8 of the European Convention on Human Rights on the right to respect for private and family life<sup>312</sup>. For example, in 2015 the permanent residency rights of a Romanian woman and her family members who had been in Belgium for five years were withdrawn because they had been granted such rights on the basis of a fraudulent situation. The Alien Litigation Council found that the Immigration Office failed to consider the interests of the children who went to school in Belgium or to account for their adaptability in the case of a return to Romania<sup>313</sup>.

As a consequence of a more strict follow-up of cases and increased information-sharing between the different services over the past few years through the Crossroads Bank for Social Security, there has been a **considerable increase** in the number of EU citizens and their family members who have had their **right to residence revoked** because they were considered to have become an **unreasonable burden on the social system**<sup>314</sup>. While in 2010 this figure was 502 persons, it increased to 1,542 in 2011, 2,470 in 2013, 2,712 in 2013 and 2,042 in 2014<sup>315</sup>. This increase has been widely discussed by experts, the media, and migrant and human rights associations<sup>316</sup>. In 2013 the Immigration Office explained that the marked increase in the termination of rights of residence of EU citizens on all grounds from 2012 to 2013 was the result of a better follow-up of files<sup>317</sup>.

As described in Section 1.1.3, until the end of 2014 the right of residence of EU citizens in Belgium was also withdrawn or refused when they were provided with a job by the Public Centre for Social Welfare as a form of social service (so-called article 60 employment status)<sup>318</sup>. The Alien Litigation Council did not consider such employment to constitute 'effective and genuine work' as it **aims only at rehabilitating** and re-integrating people into the labour market and the social security system<sup>319</sup>. This interpretation generated residency problems for an unidentified number of EU citizens employed on the basis of this status<sup>320</sup>. Following a decision from the CJEU in which the court found that persons employed under a social assistance scheme should be regarded as a worker<sup>321</sup>, the Immigration Office and the Alien Litigation Council **now consider article 60 employment to be an 'effective and genuine economic activity'** through which the person

<sup>311</sup> Ibid.

<sup>312</sup> See, for example: *X v Belgium* [2014], Alien Litigation Council No. 117.967, point 4.3.2; Myria, '[2015 Migration in numbers and in rights](#)' (2016), pp. 113-114; Children's Rights Commissioner, '[Policy note on Asylum and Migration: from a children's rights perspective](#)' (2015), pp. 3-4.

<sup>313</sup> *X v Belgium* [2014], Alien Litigation Council No. 126.119, point 2.3.

<sup>314</sup> Myria, *ibid*, pp. 126-128 and 207; Immigration Office, '[Activity Report 2012](#)' (2013), p. 14 and p. 106.

<sup>315</sup> Myria, *ibid*, p. 127.

<sup>316</sup> Belgian NCP EMN, '[Annual report on asylum and migration policy in Belgium](#)' (2015), p. 93; Shaw, J., 'Between Law and Political Truth? Member State Preference, EU Free Movement Rules and National Immigration Law' [2015] Cambridge Yearbook of European Legal Studies 247, 251-252; Knack, '[Expulsions of EU citizens. A phenomenon that alarms and mobilises us](#)' (2014); Knack, '[Increasing number of EU citizens expelled from our country](#)' (2013); RTBF Info, '[The number of EU citizens expelled from Belgium has tripled in three years](#)' (2014).

<sup>317</sup> Immigration Office, '[Activity Report 2013](#)' (2014), p. 108.

<sup>318</sup> Article 60(7) of the Law of 1976 on the Public Centres for Social Welfare (*OCMW-wet – CPAS-loi*).

<sup>319</sup> See, for example: *X v Belgium* [2014], Alien Litigation Council No. 118 038; *X v Belgium* [2013], Alien Litigation Council No. 106.290; *X v Belgium* [2012], Alien Litigation Council No. 92.955, point 1; Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 129; Crosspoint Migration-Integration, '[Notion of 'EU employer' and Belgian article 60 employment](#)' (2013).

<sup>320</sup> See, for example, a French citizen working in Belgium for the Salvation Army on the basis of article 60: Case C-456/02 *Michel Trojani v Centre public d'aide sociale de Bruxelles* [2004] ECLI:EU:C2004:488, para 19 and 24; an Italian citizen working for a magician as a street artist in Belgium on the basis of article 60: Durant, J; (RTBF), '[Belgium: Italian accordion player facing expulsion](#)' (2014); Bruxelles Nieuws, '[Italian artist fights against expulsion](#)' (*Italiaanse artiste vecht tegen uitzetting*) (2013); Verschueren, H., 'The right to residency and employment in the framework of article 60 para 7 CPAS-Law' [2015:3] T. Vreemd. 158, 158-168.

<sup>321</sup> Judgement of the Court of 31 May 1989, *Betray v Staatssecretaris van Justitie*, Case 344/87, European Court reports 1989 Page 01621.



concerned forms part of the normal labour market, thereby constituting employment for the purposes of determining the right of residence of EU citizens<sup>322</sup>.

As highlighted in Section 4.2 above, the immigration authorities can refuse the entry, or terminate the right to stay, of an EU citizen or his/her family members as a result of fraud such as identity fraud and false representation, as well as for marriages, legal cohabitation and adoptions of convenience which have been decisive for the recognition of this right<sup>323</sup>.

The numbers of **terminations of residence rights** on the basis of abuse or fraud are lower than those based on lack of sufficient resources<sup>324</sup>. According to the Immigration Office data, in 2013, 2,712 EU citizens' residence rights were terminated. The **vast majority** of the decisions (1,677 EU citizens and family members, approximately 60% of the total) were based on the individual being deemed to be an **unreasonable burden** on the social security system, with about 38% (1,035) based on failure to meet residence conditions and with a further small percentage motivated by fraud<sup>325</sup>.

#### 5.1.2. Refusal of entry

EU citizens and their family members can be **prohibited from re-entering** Belgium for up to 10 years following an expulsion decision<sup>326</sup>. Since 2013, when annulling marriages and legal cohabitations of convenience, the judge has also been entitled to expel the persons concerned and prohibit them from re-entering the country for five years<sup>327</sup>.

In 2014, the Alien Litigation Council ruled that **an active entry ban should not automatically lead to a refusal of residence** of an Armenian national who is the partner of a Dutch national living in Belgium<sup>328</sup>. The Immigration Office may not assume a danger to public order from the simple fact that a person did not comply with a previous order to leave the Belgian territory. The Alien Litigation Council stresses that the elements relating to the right to private and family life in an application of residence should be considered in-depth despite the entry ban. According to Myria, the Immigration Office considers an application for residence by a family member of an EU citizen against whom an entry ban is in place as an implicit request to remove the entry ban<sup>329</sup>.

<sup>322</sup> State Secretary for Asylum and Migration Policy, 'General policy note on Asylum and (2014), p. 31; Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 129; Immigration Office, 'Announcement: EU citizens with article 60 employment are considered EU employees with residence rights' [2014:4] T. Vreemd. 437, 450; Crosspoint Migration-Integration, '[EU citizens with article 60 employment are EU employees with right to residence after all](#)' (2014); See, for example, *X v Belgium* [2015], Alien Litigation Council No. 148.740; Verschueren, H., 'The right to residency and employment in the framework of article 60 para 7 CPAS-Law' [2015:3] T. Vreemd. 158, 168.

<sup>323</sup> Article 42septies of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>324</sup> Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 127.

<sup>325</sup> Immigration Office, '[Activity Report 2013](#)' (2014), p. 108.

<sup>326</sup> Article 20-21 and 25-26 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); Advokatfirmaet Simonsen Vogt Wigg AS, 'Legal study on Norway's obligations under the EU Citizenship Directive 2004/38/EC' (2016), p. 258 and p. 283.

<sup>327</sup> Article 146bis and Article 184 of the Civil Code; Articles 13(2bis) and (3)(3°), 74/11 and 79quater of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>328</sup> *X v Belgium* [2014], Alien Litigation Council No. 135.627, points 3.15 and 3.16; Myria, '[2015 Migration in numbers and in rights](#)' (2016), p. 148.

<sup>329</sup> Myria, *ibid*, p. 148. Crosspoint Migration-Integration, '[Entry ban and family reunification or humanitarian regularisation](#)' (2014).



EU citizens and their family members may also be refused entry and residence in Belgium for reasons of **public order, national security or public health**<sup>330</sup>. These reasons may not be invoked on economic grounds. In addition, such decisions must respect the principle of proportionality and be exclusively based on the personal conduct of the individual concerned (excluding prior criminal convictions as the only motivation), which presents a real, present and sufficiently serious threat to a fundamental interest of Belgian society<sup>331</sup>. With regard to **public health**, only those diseases that are included in the legislation - World Health Organisation infectious diseases leading to quarantine - can be grounds to restrict the right of entry or residence<sup>332</sup>.

## 5.2. Expulsions of EU citizens and their family members

The legislation provides that EU citizens and their family **members with a right of residence for at least one year can be expelled** by the adoption of a Royal Decree after the Consultative Commission on Foreigners (*Commissie voor advies voor vreemdelingen/ Commission consultative des étrangers*) has given its opinion<sup>333</sup>. On 15 March 2016, the Belgian Parliament Chamber of Representatives adopted a **bill**, which is awaiting the King's signature, to amend the legislation and bring an end to this type of expulsion<sup>334</sup>.

In practice, **expulsions of EU citizens only** take place when there has been **fraud** or when there are sufficiently serious problems with **public order**<sup>335</sup>. Once EU citizens and their family members have acquired a **permanent right of residence**, expulsion is **only** possible on serious grounds of **public order or national security**<sup>336</sup>. Currently, there is no list of offences which constitute a threat to public order or public security in Belgium<sup>337</sup>.

According to the legislation, EU citizens and their family members who have resided in Belgium for at least 10 years, as well as children with EU citizenship and their family members, can only be expelled when they pose a serious threat to national security<sup>338</sup>. An exception to this prohibition can be applied to child EU citizens, when – based on the applicable international conventions – expulsion would be in their best interests<sup>339</sup>. EU citizens who have resided legally in Belgium for at least 20 years may only be expelled in

<sup>330</sup> Article 10(2), Article 10bis(2), Article 11(1)(3°) and Article 43 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>331</sup> Article 43 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>332</sup> Article 10(2), Article 10bis(2) and Article 11(1)(3°) of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); Article N, which was added to the Act by the Act of 25 April 2007, determines which diseases can threaten public health, namely those maintained in the international health rules of the World Health Organisation (23 May 2005) which can lead to quarantine, tuberculosis of the respiratory system in an active stage or with developmental trends, other infectious diseases caused by infection or parasites insofar as they are covered in Belgium by protective provisions in respect of its residents.

<sup>333</sup> Article 45(1) of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>334</sup> Chamber of Representatives, '[Draft Law of 15 March 2016 on various provisions concerning asylum and migration and to change the Act of 15 December 1980 concerning access to the territory, residence, settlement and removal of foreigners and the Act of 12 January 2007 concerning the reception of asylum seekers and of certain other categories of foreigners](#)' DOC 54 1696/002.

<sup>335</sup> State Secretary for Asylum and Migration, '[Withdrawal of residence rights of EU citizens in Belgium: evolution from 2008 to 2013](#)' (2014).

<sup>336</sup> Article 45(2) of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>337</sup> Advokatfirmaet Simonsen Vogt Wigg AS, 'Legal study on Norway's obligations under the EU Citizenship Directive 2004/38/EC' (2016), p. 297.

<sup>338</sup> Article 21(3)(1°) and article 45(3) of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>339</sup> Article 45(3)(2°) of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).



cases where they pose a serious threat to the security of the country<sup>340</sup>. Since 2014, the authorities have been required to **take into account the length of stay** in Belgium, **age, health, family and economic situation**, level of social and cultural **integration** in Belgium and strength of ties with the country of origin, when taking a decision to expel an EU citizen on grounds of public order or public security<sup>341</sup>.

In **practice**, however, as described in Section 2.1.2, the Immigration Office has been criticised for **not giving sufficient consideration to the personal circumstances** of the EU citizens and family members before issuing expulsion orders. In one case, for example, the Alien Litigation Council argued that the Immigration Office failed to consider how, in concrete terms, an order to leave Belgium delivered to a father on the basis of a conviction for violating drug legislation six years earlier would impact on his wife and two children who had a permanent right of residence in Belgium<sup>342</sup>.

As required by the Directive, the legislation specifies that expulsion decisions must be based on the personal behaviour of the person and cannot be due to **economic reasons**<sup>343</sup>. However, critics have noted that many 'de facto' expulsions (as a result of an 'order to leave the territory') based on the individual being deemed an 'unreasonable burden on the social system' appear to be an almost systematic result of receiving social assistance and unemployment benefits **without full consideration of personal circumstances** such as health or family situation<sup>344</sup>.

As mentioned in Section 5.1, the **majority** of decisions to **terminate residence rights** were taken because the individual was deemed an **unreasonable burden** on the social security system, while the remainder related to failure to meet the conditions of residence, or fraud<sup>345</sup>. When the right of residence is terminated, the EU citizen and family members receive an 'order to leave the territory'<sup>346</sup>. The order does not automatically lead to expulsion but, rather, the EU citizen and his/her family members are no longer registered in Belgium and are no longer entitled to receive social benefits<sup>347</sup>. A number of EU citizens are also expelled, although the published data does not differentiate between EU and non-EU nationals, making it difficult to determine the number of EU citizens involved. In 2013, Immigration Office data showed that 303 Romanians and 188 Bulgarians were repatriated to their country of origin, compared to 277 and 166 respectively in 2012<sup>348</sup>. Since the end of the restrictions against Bulgarians and Romanians in 2014, they are no longer among the top nationalities expelled, according to the published data of the Immigration Office<sup>349</sup>.

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<sup>340</sup> Article 21(2)(1°) of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>341</sup> Article 11 para 2 and Article 45 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#); Act of 19 March 2014 amending the Act of 15 December 1980 concerning access to the territory, residence, settlement and removal of foreigners, Official Journal 5 May 2015.

<sup>342</sup> *X v Belgium* [2014], Alien Litigation Council No. 125.425.

<sup>343</sup> Article 20 of the [Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners](#).

<sup>344</sup> INCA CGIL, '[Sorry, this access route is closed. Your rights and responsibilities when you work in another Member State](#)', p.18.

<sup>345</sup> Immigration Office, '[Activity Report 2013](#)' (2014), p. 108.

<sup>346</sup> State Secretary for Asylum and Migration, '[Withdrawal of residence rights of EU citizens in Belgium: evolution from 2008 to 2013](#)' (2014).

<sup>347</sup> Ibid.

<sup>348</sup> Immigration Office, '[Activity Report 2013](#)' (2014), p. 195.

<sup>349</sup> Immigration Office, '[Annual Statistical Report 2014](#)', p.25.



## 6. CONCLUSIONS

Overall, the Directive is generally correctly transposed in Belgian national legislation. Transposition has been a long process, with further infringement proceedings required in 2013, together with numerous amending acts, in order to bring the legislation into line with the Directive. Belgium amended its legislation in 2011, 2012, 2013, 2014 and 2015 to address most of the conformity issues identified in the 2008 Commission Report, e.g. transposing the requirement to facilitate the entry and residence of EU citizens' family members. However, some small transposition issues remain with respect to Articles 7(3), 14, 17(1)(c), 20(1) and 27(3) of the Directive. A number of the transposition issues relate to incorrect wording used in the national legislation, which affects the scope of the rights. For example, when transposing Article 7(3), the Belgian legislation uses the term 'residence right' rather than 'worker status' for the right to retain the status of worker or self-employed under certain circumstances, such as temporary illness.

In practice, Belgian implementation of the right to free movement and residence under the Directive is problematic. Recent years have seen increased restrictions and obstacles for EU citizens and their family members (in particular third country nationals), who are often seen as an economic burden. As a result, the Directive's provision to terminate residence rights on the grounds of presenting an unreasonable burden on social security has been open to exploitation. Automatic data transfer from the social security database to the Immigration Office, lack of consideration of personal circumstances (such as the presence of an EU citizen child) and strict interpretation of the notion of being a 'burden on the social security system' has led to a high number of withdrawals of residence rights and orders to leave the territory. In addition, EU citizens and their family members, in particular third country national family members, are becoming a priori suspects of fraudulent marriage and cohabitation of convenience, for which Belgium has intensified its controls.

The right to entry of family members is not easily accessible, with more than one-third of visas for family reunification with a Belgian or EU citizen denied, usually as a result of a strict interpretation of the requirement to have sufficient resources. Other barriers for family members include long delays in issuing visas, demands for additional documentation, unjustified reasons for denying visas, failure to use the accelerated procedure for visa applications, confusing information and cumbersome administrative formalities.

In addition to facing possible refusals or withdrawal of residence rights on the grounds of 'lack of sufficient resources', 'lack of real chance to obtain employment', and 'unreasonable burden', EU citizens experience a number of practical barriers in exercising their right to free movement and residence in Belgium. These occur mainly in relation to residence rights, access to social security and healthcare. Most of the barriers are encountered in relation to administrative burden and bureaucracy (e.g. delays, excessive documentation and cumbersome administrative formalities). In addition, a number of instances of incorrect application of the Directive have been reported in relation to access to social rights and healthcare, as well as a lack of cooperation between Belgian national authorities and those of other Member States.

EU citizens and their family members benefit from strong legal protection against discrimination in the exercise of their free movement rights. Here again, however, issues of discrimination based on nationality, ethnic and racial origin and, to a lesser extent, sexual



orientation and civil status exist in practice. This discrimination takes the form of unjustified administrative fees, excessive formalities, problems with access to justice, goods and services, employment and housing. For example, a foreigner's contribution has been established to cover the administrative costs connected to the processing of residence applications, which applies only to non-nationals. Cases of discrimination with respect to civil status and sexual orientation have also been identified, with examples given of unjustified formalities and refusal to recognise registered partnerships. Lastly, Roma are particularly vulnerable to discrimination in exercising their free movement rights as they face more frequent refusals to register residence and stigmatisation at all levels, together with infrastructure problems, such as the lack of caravan sites for Roma to reside in Belgium.



## ANNEX I: TRANSPOSITION OVERVIEW TABLE

**Table 1: Transposition Overview**

Directive's provisions	National provisions	Assessment	Changes since 2008
Article 3(2) Beneficiaries: <ul style="list-style-type: none"> <li>- Family members</li> <li>- Partners</li> </ul>	<p>Articles 40bis, 41, 47(1), 47(2) and 47(3) of the <a href="#">Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a></p> <p>Article 45 of the <a href="#">Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners</a></p>	<p><b>In line with the Directive</b></p>	<p>The 2008 Commission Report found this provision not fully in line with the Directive. The provisions have since been amended - in 2011, 2014 and 2015 - and are mostly in line with the Directive, with the exception of the last sentence of Article 3(2).</p> <p>Regarding <b>family members</b>, Article 41 has been fully replaced by the <a href="#">Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a>. Article 45 of the <a href="#">Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners</a> has been replaced by the <a href="#">Royal Decree of 13 February 2015 amending Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners</a>. The new provisions effectively provide the right to entry for family members of EU citizens and facilitate their entry and residence. The definition of a family member of an EU citizen was amended in 2014 (<a href="#">Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a>) to include a family member who is dependent or where a serious health issue requires the personal care of the family member. This brings it into line with the Directive.</p> <p>Similarly, Article 40bis of the <a href="#">Act of 15 December 1980 on access to the territory, residence, settlement and removal of</a></p>



			<p><a href="#">foreigners</a>, which defines who can be considered a <b>partner</b>, has been replaced by the <a href="#">Act of 8 July 2011 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners regarding family reunification requirements</a>. This effectively expanded this category to include registered partners under the following conditions: in a durable relationship, living together, not being in a durable relationship with someone else, being single without any other durable partnership and being over 21 years old. A durable relationship can be proven if the parties have lived together for at least one year, or have met for three times amounting to 45 days in total in the past two years, or have a child together.</p> <p>Same-sex marriage and registered partnerships are recognised in Belgium and benefit from the same rights as different-sex marriage and registered partnerships.</p> <p>The amended provision (Article 40bis) now mentions that, when assessing whether or not the person has sufficient resources for the residence application, his/her personal circumstances will be taken into account. This addresses a gap that existed previously, whereby the last sentence of Article 3(2) was not transposed explicitly in Belgian law. Similar wording applies to the right of the third country national family member to accompany or join an EU citizen. The transposition of Article 3(2) is now, therefore, in line with the Directive.</p>
<p>Article 5 (1) (2) Right of entry</p> <p>- No entry visa or equivalent formality may be imposed on Union</p>	<p>Articles 1, 2 and 41 of the <a href="#">Act of 15 December 1980 on access to the territory, residence, settlement</a></p>	<p><b>In line with the Directive</b></p>	<p>In 2008, Article 5(2) regarding <b>visa facilities</b> was not yet transposed. This has been done through amendments to the legislation adopted in 2014 and 2015.</p> <p>Article 41 has been fully replaced by the <a href="#">Act of 19 March 2014</a></p>



citizens - To facilitate granting third country family members the necessary entry visas	<a href="#"><u>and removal of foreigners</u></a>  <i>Articles 45, 46 and 47 of <a href="#"><u>Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners</u></a></i>		<a href="#"><u>amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners.</u></a> Article 45 of the <a href="#"><u>Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners</u></a> has been replaced by the <a href="#"><u>Royal Decree of 13 February 2015 amending Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigner.</u></a> The new provisions effectively provide the right to entry to family members of EU citizens and facilitate their entry, as a visa must be provided within 15 days and without cost (if the person fulfils the legal requirements).
Article 6 Right of residence up to three months without any conditions or any formalities other than an ID	<i>Articles 2, 40(3), 40bis(3) and 41 of the <a href="#"><u>Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</u></a></i>	<b>In line with the Directive</b>	This provision was considered fully transposed in 2008. As noted by the study commissioned by the European Parliament EU citizens and their family members failing to report their presence are liable for a EUR 200 fine <sup>350</sup> . Belgian citizens also have an obligation to register their main residence at the municipality; failure to do so can be sanctioned by a fine of EUR 26 to EUR 500 in accordance with Article 7 of the <a href="#"><u>Act on population registries, identity cards, foreigners cards and residence cards</u></a> and Act 7 of the <a href="#"><u>Royal Decree on population registries and foreigners registry.</u></a>
Article 7 (1) (2) Right of residence for more than three months for EU citizens and their family members based on employment, sufficient resources or student status	<i>Articles 40(4), 40bis(4) and 42bis of the <a href="#"><u>Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</u></a></i>	<b>In line with the Directive</b>	This provision was already considered fully transposed in 2008.  According to the legislation, sufficient resources meant at least the level of income at which the person can receive social assistance. As part of the evaluation of resources, the personal circumstances of the citizen of the Union are taken into account, including the nature and regularity of income and

<sup>350</sup> European Citizen Action Service, [Comparative Study on the application of Directive 2004/38/EC of 29 April 2004 on the Rights of Citizens and their family members to move and reside freely within the territory of the Member States](#), European Parliament (2009), pp. 53-54.



			number of dependent family members.
Article 14 Retention of residence rights as long as they do not become an unreasonable burden on the social assistance system	Articles 40, 41ter, 42bis, 42ter and 42quater of the <a href="#">Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a>	<b>Incomplete transposition</b>	<p>This provision was considered not fully transposed in 2008.</p> <p>Regarding Article 14(1) and (2), there is still no statement that the verification of the conditions of residence must not be carried out systematically.</p> <p>The transposing provisions of Article 14(3) have been amended by <a href="#">Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a> to bring it into line with the Directive. It does so by allowing decisions to terminate residency rights because an individual has become an unreasonable burden on the social assistance system to take into account the personal circumstances of EU citizens and their family members, as well as considerations such as the length of stay in the country and the temporary nature of the assistance, among others. This effectively guarantees that the decision is not the automatic result of recourse to social assistance.</p> <p>However, the legislation does not explicitly provide that the verifications of residence conditions should not be carried out systematically.</p> <p>Additionally, Belgian legislation requires jobseekers to provide evidence that they are continuing to seek employment and that they have a genuine chance of being employed without specifying from which point in time they must start providing evidence. Such requirement is not fully with the CJEU <i>Antonissen</i> case since it effectively requires to prove the continuity of employment and change of being employed even</p>



			before six months, while the CJEU held that a Member State may require a EU citizen to leave if (s)he has not found employment there after six months, unless the person concerned provides evidence that (s)he is continuing to seek employment and that he has genuine chances of being engaged.
Article 16 Right of permanent residence	Articles 39(79) and 42 quinquies of the <a href="#">Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a>	<b>In line with the Directive</b>	<p>In 2008, the transposing legislation was, on the one hand transposed more favourably than the Directive and, on the other hand, incorrectly transposed.</p> <p>In 2008, the Belgian legislation provided a more favourable transposition in that it granted the right to permanent residence after <b>three years</b> of uninterrupted residence. This changed with the amendment to the legislation made by the <a href="#">Programme Act of 28 June 2013</a>, whereby <b>five years</b> of uninterrupted residence are now required to obtain the right to permanent residence.</p> <p>In addition, the wording considered incorrect in 2008 has now been removed by the <a href="#">Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a>. The text now requires the citizen and family members to comply, during the period of residence, with the requirements of the Directive and not with the more limited 'national transposing measures'.</p>
Article 24(1) Equal treatment	<p>Articles 10, 11 and 191 of the Belgian Constitution</p> <p>Article 11 of the <a href="#">Civil Code</a></p>	<b>In line with the Directive</b>	In 2008 this provision was already correctly transposed as the Constitution guarantees equal treatment between nationals and non-nationals, except when the laws establish exceptions. The Constitutional Court had also further defined the principle of equal treatment between nationals and non-nationals.



	<a href="#"><i>Article 3 of the Act of 26 May 2002 on the right to integrated social assistance</i></a>		The provision transposing Article 24(2) on access to social assistance has been amended by the <a href="#"><u>Programme Act of 28 June 2013</u></a> to specify that the EU citizens and their family members who have been resident for more than three months can access social assistance after the three first months of residence. While this is in line with the second paragraph of Article 24, it constitutes a step back from the previous more favourable treatment of EU citizens and their family members.
Article 27 Restriction on the freedom of movement and residence of Union citizens and their family members, on grounds of public policy, public security or public health	<a href="#"><i>Articles 19 and 43 of the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</i></a>	<b>Incorrect transposition</b>	<p>As in 2008, Article 27(1) and (2) are correctly transposed in Belgian legislation.</p> <p>The issues with the transposition of Article 27(3) remain the same as in 2008. There is no provision that the information on criminal records cannot be requested after three months of residence or entry into the country. In addition, whereas under the Directive, the 'host Member State may, should it consider it essential, request [...] information concerning any previous police record the person concerned may have', Belgian transposing provision states that such a request can be made 'as necessary'.</p> <p>Article 27(4) was not fully transposed in 2008 as it did not include the obligation for Belgium to allow the return of persons with Belgian passports and identity cards expelled from another EU Member States on grounds of public health, safety and order. The <a href="#"><u>Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</u></a> amended Article 19 in order to include some categories of non-nationals who will be allowed to re-enter Belgium in such cases. They include non-nationals with permanent residence in Belgium. The legislation does not provide for the specific case of Belgians expelled from another Member State. However the Consular Code</p>



			provides that any Belgian national is allowed to enter the country even without a passport or identity card. It can, therefore, be considered that the legislation is in line with Article 27(4) of the Directive.
Article 28 Protection against expulsion	<i>Article 45 of the <a href="#">Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a></i>	<b>In line with the Directive</b>	<p>This provision was not fully transposed in 2008 as the individual considerations before taking a decision on expulsion were not specified in the legislation.</p> <p>The <a href="#">Act of 19 March 2014 amending the Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a> amended Article 43, which now requires that considerations such as the length of residence in the territory, age, state of health, family and economic situation, social and cultural integration in the host Member State and the extent of links with the country of origin, be taken into account. The provision is now in line with the Directive.</p>
Article 35 Abuse of rights	<i>Article 42septies of the <a href="#">Act of 15 December 1980 on access to the territory, residence, settlement and removal of foreigners</a></i>  <i>Article 54 and Annex 21 of the <a href="#">Royal Decree of 8 October 1981 on access to the territory, residence, settlement and removal of foreigners</a></i>	<b>In line with the Directive</b>	<p>The 2008 Commission Report found Article 35 to be in line with the Directive.</p> <p>Both Article 42septies of the Act of 15 December 1980 and Article 54 and Annex 21 of the Royal Decree of 8 October 1981 were amended by the <a href="#">Act of 8 July 2011 amending Act of 15 December 1980 regarding family reunification requirements and the Royal Decree of 21 September 2011 modifying several Royal Decrees</a>. The amendments addressed previous incoherences and provide further clarity.</p>



## ANNEX II: DATA ON REFUSALS AND EXPULSIONS

**Table 2: Data on refusal of entry, refusal of residence and expulsions**

Data	2012	2013	2014	2015 if available	Reasons
Refusal of entry	Belgian and EU citizen – family reunion: 3997 <sup>351</sup>	Belgian and EU citizen – family reunion: 2615	EU citizens – family reunion: 342 <sup>352</sup>		
Refusal of residence	2,407 EU citizens and their family members (termination of right of residence) <sup>353</sup> , of which 1,918 because they were deemed an unreasonable burden on the social system <sup>354</sup> . 489 terminations of residency on the basis of fraud, <sup>355</sup> of which 118 concerned marriages of convenience <sup>356</sup> .	2,712 EU citizens, including their family members (termination of right of residence for lack of sufficient resources), 1,677 of which were considered to constitute an unreasonable burden on the social assistance system <sup>357</sup> . The remaining 1,035 EU	2,042 EU citizens and their family members (residence permit revoked). Breakdown according to the citizen/family member's status: 90 (residents on the basis of having sufficient resources), 141 (job-seeker), 993 (self-employed), 222 (family-reunification), 23		<ul style="list-style-type: none"> <li>• Being an unreasonable burden on the social assistance system;</li> <li>• Fraud;</li> <li>• False or falsified European identity document;</li> <li>• Marriages of convenience;</li> <li>• Lack of sufficient resources</li> </ul>

<sup>351</sup> Myria, 'Migration Annual Report 2013' (2013), p. 47.

<sup>352</sup> Myria, '2015 Migration in numbers and in rights' (2016), p. 48.

<sup>353</sup> Immigration Office, 'Activity report 2012' (2013), p. 105.

<sup>354</sup> Ibid.

<sup>355</sup> Ibid.

<sup>356</sup> Immigration Office, 'Activity report 2013' (2014), p. 109.

<sup>357</sup> Ibid., p. 108.



		citizens had residence rights terminated for other reasons, such as fraud (291), annulment of marriage of convenience (131), and false or falsified European identity documents (50) <sup>358</sup> .	(student) and 633 (employee) <sup>359</sup> .  Termination of right to residence for fraud: 44 ('false Europeans'), 56 (annulment of marriage of convenience), 6 (family re-unification) <sup>360</sup> .		
Expulsion		277 Romanians and 188 Bulgarians for fraud or crime against public order <sup>361</sup> .	303 Romanians and 188 Bulgarians for fraud or crime against public order <sup>362</sup> .		<ul style="list-style-type: none"> <li>• Fraud;</li> <li>• Crime against public order</li> </ul>

Source: Immigration Office

<sup>358</sup> Immigration Office, 'Activity report 2013' (*Activiteitenrapport 2013*) (2014), available at [https://dofi.ibz.be/sites/dvzoe/NL/Documents/2013\\_NL.pdf](https://dofi.ibz.be/sites/dvzoe/NL/Documents/2013_NL.pdf), p. 108.

<sup>359</sup> Immigration Office, '[2014 Annual statistical report](#)' (*Statistisch jaarverslag 2014*) (2015) available at, p. 25.

<sup>360</sup> Immigration Office, '[2014 Annual statistical report](#)' (2015), p. 26.

<sup>361</sup> State Secretary for Asylum and Migration, '[Withdrawal of residence right of EU-citizens in Belgium: the evolution from 2008 to 2013](#)' (2014) available at . Immigration Office, [2013 Activity report](#) (2014), p. 195.

<sup>362</sup> State Secretary for Asylum and Migration, '[Withdrawal of residence right of EU-citizens in Belgium: the evolution from 2008 to 2013](#)' (2014) . Immigration Office, [2013 Activity report](#) (2014), p. 195.



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*vreemdelingen/ Arrêté royal modifiant l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*), Official Gazette 14 December 2008.

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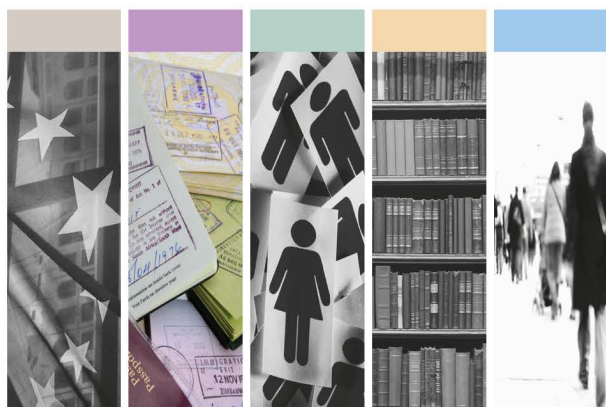
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