REPORT
on the Free Movement of Workers in Belgium in 2007

Rapporteurs: Prof. Jean-Yves Carlier and
Jean-Pierre Jacques
Catholic University of Louvain

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List of Abbreviations

art.	Article
CCE	Conseil du contentieux des étrangers (Council for Aliens Disputes)
C.D.E.	Cahiers de droit européen
C.D.S.	Chronique de droit social
CE	Conseil d'État (Council of State, Supreme administrative court in Belgium)
C.E.D.H.	Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales
C.J.C.E.	Cour de Justice des Communautés Européennes (= ECJ)
C.T.	Cour du Travail (Labour Appeal Court)
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
E.T.L.	European Transport Law
GOA	Governmental Office for Aliens
J.D.E.	Journal de droit européen (= J.T.D.E. after 2008)
J.T.	Journal des tribunaux
J.T.D.E.	Journal des tribunaux-droit européen
J.T.T.	Journal des tribunaux du travail
M.B.	Moniteur Belge
R.D.E.	Revue du droit des étrangers
R.D.C.	Revue de droit commercial
Rev. b. sec. soc.	Revue belge de sécurité sociale
Rec.	Recueil
Rev. not. b.	Revue du notariat belge
R.T.D.E	Revue trimestrielle de droit européen.
Rev. trim. dr. fam.	Revue trimestrielle de droit familial
Rev. trim. dr. eur.	Revue trimestrielle de droit européen
Rev. trim. D.H.	Revue trimestrielle des droits de l'homme
ss.	et suivant
T.T.	Tribunal du travail (First Instance Labour Court)
T.R.V.	Tijdschrift voor rechtspersonen en vennootschap
T.Vreemd	Tijdschrift vreemdelingen recht.
R.W.	Rechtskundig Weekblad

Introduction and Summary of the main issues*

Past

Belgium has a long experience, reinforced by the presence of the European institutions in Brussels, in matters of free movement of European citizens and members of their family.

There are therefore many established rights ("acquis communautaire") that are not issues any more. This is not always the case in other countries. Therefore, to make comparison easier, some of the established rights are reminded at the beginning of the chapters.

2007

In 2007, Belgium made major modifications in the general Alien's law. Two modifications are important for free movement of EU citizens.

1. The transposition of *Directive 2004/38* (art 40 to 46bis of the law). Permanent residence is allowed after *3* years (and not 5) of residence except for students where it is 5 years (Chap. I and V).
2. A *new* administrative *jurisdiction* (*Conseil du contentieux des étrangers*, Council for Aliens Disputes) is created and operational since 1st June 2007. It is competent for all the Alien's law, including EU citizens. The difference between two forms of control – full control for refugee law and legality control for all other migration law, including EU citizens – could raise question on the equality principle (Chap. I).

In the case law, the judgment by the ECJ on 1st April 2008, following AG opinion in 2007, in the case C-212/06 of the Flemish care insurance scheme, could be of importance for two topics related to free movement. First, the "purely internal situation" exception seems restricted. Second, the autonomy of Communities in Federal States is confronted more and more with EU free movement (Chap. III).

About the free movement of students and equal access to studies, if the Commission did decide to suspend the procedures against Austria and Belgium, there is still a preliminary question by the Belgian Constitutional Court pending at the ECJ.

* We thank Herwig Verschueren, professor at the University of Antwerp and the Vrije Universiteit Brussels, for his invaluable remarks on this report.

Chapter I
Entry, Residence, Departure

SUMMARY

Acquis

In Belgium, entry, residence and departure are regulated by the Immigration law of 1980 (Law 15 December 1980 on access to the territory, residence, establishment and removal of foreigners).

This law has been amended more than 20 times since 1980. There is, in the law, a section on the Entry (Chapter II, Title I, "access and short stay") and a section for EU citizens (Chapter I of Title II : "Foreigners from EC Member State, members of their family and foreigners members of the family of a Belgian national"). As shown by the translation of the title of this chapter, there is one specificity in Belgium: in order to avoid reverse discrimination, family members of a Belgian have the same rights as family members of a EU citizen.

As for entry, no specific formality is required of an EU Member State citizen who wishes to enter or reside in Belgium. The EU citizen is automatically registered without taking any further step. Nor is any professional card required to exercise a self-employed activity.

Family members of a Belgian or EU citizen, who are foreigners from third countries, will normally need a visa to enter. But this requirement is not absolute, in application of the *MRAX* case.

All foreigners, EU citizens as well as third country nationals, have the right to vote in municipal elections under specific conditions.

2007

The most important modification in the Aliens law in 2007 is the creation of a new administrative jurisdiction, the *Conseil du contentieux des étrangers* (CCE, Council for Aliens disputes). This new Board will be competent for all aliens, including EU citizens. A question regarding the non discrimination principle could appear as the CCE will have full jurisdiction for refugee cases, not for EU citizen cases.

The 2004/38 EC Directive was transposed by a law of 25 April 2007. However, this law is not in force yet, raising questions on the *effet direct* of some articles of the Directive. The law will be in force on 1 June 2008.

A. ENTRY

No case or problem reported.

B. RESIDENCE

Judicial practice

In a criminal case, it was alleged that the fact that the person concerned was a French national should entitle to stay and reside in Belgium without proving ownership of a passport and visa. The Belgian Supreme Court (Cour de cassation) decided on 15 November 2006 (published in 2007 – Annex n° 2) that the suppression of control resulting from the 1990 Schengen Convention does not allow to require that the citizen hold and show a residence permit or any document proving the regularity of his or her stay on Belgian territory. This decision seems to be a correct application of the *Oulane* case. After the judgment on case C-408/03 (ECJ, 23 March 2006), a decree of 28 November 2007 gives one month more, after 5 months, to give the requested documents, before an order to leave (annex n° 44, see also infra, Chapter VI).

About the criterion of "sufficient resources", see infra Chapter VI, follow-up of case C-408/03, *Commission v. Belgium*.

C. DEPARTURE

No case or problem reported.

D. REMEDIES

Text(s) in force

The new law on asylum and family reunification dated 15 September 2006 also creates a new jurisdiction that will be competent for all alien litigations: *Conseil du Contentieux des étrangers* (CCE, Council for Aliens Disputes). This new jurisdiction is operational since 1st June 2007. All EU citizens, as well as all aliens, will be handed over to this new jurisdiction. This new jurisdiction (CCE) has two competences. The first one is a full competence (legality and opportunity) in asylum cases. This was, before, the competence of the *Commission permanente de recours des réfugiés* (CPRR, Refugee permanent appeal board), which does not exist any more. The second competence is only a legality control in all other cases (more or less similar to the "*Wednesbury*" test in UK). This was, before, the competence of the Conseil d'Etat (CE, State Council). The Conseil d'Etat still exists, but will be competent only in "cassation", as an administrative Supreme Court. In consequence, for EU citizens and members of their families, as it would be quite rare that they could be involved in an asylum case (see Aznar Protocol and Directive 2004/83 excluding EU citizens, but see also the Belgian Declaration on the Aznar Protocol), the CCE would not have full jurisdiction but only a legality control. This could raise questions with regard to the EU non-discrimination principle (art. 12 CE) with access to justice. However, the Belgian authorities and the "Office des étrangers" (GOA), consider that the control allowed on the decision will be both a control of the legality of the decision as a control of the facts and circumstances on which the decision is taken, and the proportionality of the decision. In this view, these kinds of controls on the administrative act are closer to a control of full competence than a formal control of legality. This view could be disputable, also with regard to article 31 of Directive 2004/38, particularly para. 3.

The new law does not abolish the consulting procedure applicable before the adoption of any removal decision concerning an EU citizen. The Alien Consulting Commission will still be competent to give advice before adopting such a measure. This status quo in the protection given is, however, source of discrimination between asylum applicants and EU citizens, as the former will have the benefit of a fully competent jurisdiction when challenging a decision and the latter will only have the benefit of a legality control without any opportunity control on a decision concerning aliens. Even if there is a preliminary advice from an independent body and if it is not contrary to the case law (C-136/02, *Dör & Ünal*, 2005), it could be a question of equality of rights for EU citizens. According to GAO, the former Alien Consulting Commission is still competent to give advice before adopting measures of expelling an alien who is considered a risk to Belgian international relations, before adopting an order to leave concerning an alien who is neither authorised nor admitted to stay more than 3 months or to establish in Belgium, or before a ministerial decision of return or a Royal Decree of expulsion. This interpretation is based on and results from the Immigration law of 1980 provisions (Law 15 December 1980 on access to the territory, residence, establishment and removal of foreigners) which was not modified by the new law adopted on 15 September 2006.

The extent of the control of the CCE on the decisions regarding EU citizens and their family members should be clarified by the Belgian authorities on that specific point.

Draft legislation, circulars, etc.

Each year, instructions are sent to Belgian diplomatic and consular posts in Casablanca (Morocco), Tunis (Tunisia), and Istanbul and Ankara (Turkey) to deliver a return visa, during summer holidays, to aliens who claimed family reunification as family members of a EU citizen, who went on holidays in their country of origin and who want to return to Belgium, where the family reunification application is still pending (Notice given to Mayors of the kingdom regarding particular cases of return visa delivered during the summer holidays 2007 to aliens who return to Belgium for proceeding a family reunification procedure based on ex article 10, new article 10, ex article 10*bis*, new article 10*bis*, or 40 of the 15 December 1980 law, dated 23 July 2007, M.B. 1st August 2007 – Annex n° 1). According to EU regulation, a D-Type Schengen visa is delivered to the spouse and dependent children under 21 years of age, of Belgian or EU citizens. The delivery of such return visa is for the period from 1st July until 30 September 2007 only.

Transposition of the 2004/38/EC Directive

The 2004/38/EC Directive has been transposed in Belgian legislation by the law adopted on 25 April 2007 modifying the Alien's law of 15/12/1980. This law has been published in the Official Journal (*Moniteur belge*) on 10 May 2007 and has not yet entered into force. In fact, the law has to be followed by Arrêtés royaux (Royal Decrees) to enter into force and, due to the political crisis in Belgium, this was not the case. However, the law will enter into force at the latest on 1st June 2008 (Annex n° 5). Previously as said in the 2006 report, there was only a circular of 10 May 2006 (*M.B.*, 26 May 2006). This raises, of course, questions for the period between 30 April 2006 (date of transposition) and 1st June 2008, as to the direct effect (*effet direct*) of some articles of the Directive (see *infra*, Ch. II, members of the family). Be-

sides this question, generally speaking the 2004/38 EC Directive was well transposed. Articles 40 to 46bis new of the Alien's law are, for the most part, a copy of Directive 2004/38.

The law introduces a title for Chapter I of Title II of the Alien's law, devoted to derogations for certain categories of foreigners. Before, the title of Chapter I was "Foreigners with the nationality of a Member State". Now, the title of Chapter I is "Foreigners, EU citizens and members of their family and members of the family of a Belgian". The reference to EU citizenship is new. The assimilation of the foreigner member of the family of a Belgian to the members of the family of an EU citizen is in the continuity of the Belgian specificity against reverse discrimination. But there are some differences. For instance, the new art. 40ter al. 2 of the Law introduces for non-EC-ascendants a supplementary condition for the Belgian supporter to have sufficient means of subsistence for his ascendant member of the family. This provision departs from the previous provisions of this law on equal treatment for residence purposes of members of the family of Belgian nationals with members of the family of EU citizens.

On one important point, as announced in the 2006 report with the draft law at that time, Belgium did use article 37 of Directive 2004/38 and give a more favourable national provision. Indeed, article 42 quinquies Alien's law provides that a right of permanent residence (art. 16 Dir. 2004/38) is recognised to the EU citizen and to the family members after "a continuous period of residence of **3** years", instead of 5 years. The period is 5 years for students (art. 42 quinquies, § 2 and art. 40 §4, al. 1, 3°). If a trial is pending before the CCE, there would be a waiting period until the end of the procedure before getting permanent residence.

There is also a broader definition of the notion of members of the family in the Belgian law, including in particular same-sex marriages and the broader definition of partnership compared to the definition in Directive 2004/38 (see. Art. 40bis, §2, al. 1, 2° Alien's Law).

The law confirms the Belgian choice to continue to deliver residence permits to EU citizens. It provides that these new permits will not be limited in time.

Chapter II
Access to Employment

SUMMARY

Acquis

Generally, access to employment is not a problem any more for EU citizens in Belgium (unless from 8 new Members States + Bulgaria and Romania, infra Chapter VIII). EU citizens do not need any working permit. Practices do not show many problems related to the language requirements, the recognition of diplomas and the nationality for captains of ships.

2007

The most important novelty in 2007 is the Decree for the transposition of Directive 2005/36 on recognition of professional qualification.

1. Equal treatment in access to employment (e.g. assistance of employment agencies)

There are no cases reported in Belgium as the *ITC* case in Germany (C-208/05, 11 January 2007). On equal treatment in access to employment, see *infra*, Chapter III, point 2.

A royal decree was adopted on 12 September 2007 (Annex n° 50) regarding the nationality condition for access to posts of captains of ships registered in Belgium. Previous legislation required the Belgian nationality for achieving a commander function on a ship. This condition is not required any more, as the new royal Decree allows Belgian authorities to accept any applicant who is citizen of a EU Member State to become commander. The reason for this modification is clearly expressed in the report to His Majesty preceding the royal Decree. It is explained that the modification results from ECJ cases C-47/02 and C405/01 of 30 September 2003. Belgium has been summoned twice (on 15 July 2005 and 28 March 2007) by the Commission.

2. Language requirement

No case or problem reported.

3. Recognition of diplomas

Text(s) in force

Regarding transposition of Directive 2005/36/EC, according to the GOA's information, the government decided on 10 March 2006 that a "mixed" method of transposition will implement this Directive. On the one hand, a "horizontal" transposition will be used through a basic law and, on the other hand, a "vertical" transposition will be used as soon as concerned authorities will be entitled to adopt enforcement measures of execution for regulated professions for which they are competent. The future "horizontal" law of transposition will be a

subsidiary law as it will be applicable only when no "vertical transposition" has been adopted by the different above-mentioned competent authorities.

An "ad hoc" working group was set up including all the federal departments concerned (Regions and Communities added as non-federal authorities) under the direction of the Federal administration of Scientific Policy. Meetings of this working group had already raised a first draft of the future basic law in 2006.

This draft legislation has been adopted on 17 August 2007 by a Royal Decree containing measures in order to transpose Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Annex n° 41). This new regulation entered into force on 1st September 2007 whereas the Directive had to be transposed by 20 October 2007. The reason given by the delegate from the Minister is that several other Royal Decrees relating to access to professions will be also abrogated on 1st September 2007.

On 13 December 2007 (published in the Official Journal on 02/04/2008 – Annex n° 42), a "horizontal" law has been adopted which also implements the Directive but only where regulated professions are not concerned by the "vertical" transposition of the Directive (art. 4, §2) and is not applicable for the 7 specific regulated professions, namely doctors, nurses responsible of general care, dental practitioners, veterinarian surgeons, midwives, pharmacists and architects except if the directive provisions relating to these professions refer explicitly to provisions of this law (art. 4, §3).

Chapter III
Equality of treatment on the basis of nationality

SUMMARY

Acquis

Since the ECJ case law about Moroccans in the nineties (C-18/90, *Kziber*, 1991), Belgium has had a broad application of non discrimination on the basis of nationality, even for non EU workers. The ECHR case law also seems applied (*Gaygusuz*, *Koua Poirrez*).

2007

With case C-212/06 on the relationship between Regulation 1408/75 and article 39 CE, the question of social rights given by autonomous Communities in a Federal State is answered. However, the question of equality of treatment between citizens within the State will become more and more important.

1. Working conditions, social and tax advantages (direct, indirect discrimination)

A Flemish Decree adopted on 15 December 2006 appears to be discriminatory. It concerns the Flemish Code of Public Housing. Amongst the conditions required by the authority to allow access to social housing, the applicant must be able to demonstrate a willingness to learn the Flemish language. This condition seems to be an indirect discrimination based on language to obtain a social advantage. The language requirement is pointed out by the United Nations. An action has been brought to the Constitutional Court by the Government of the French speaking Community and is still pending (Annex n° 7). This procedure has been joined with another action against the same Decree brought by the League for Human Rights on 14 August 2007 (Annex n° 8).

The application form for social housing in the Walloon Region does mention the nationality. The applicant must specify whether s/he is Belgian, EU national or third country national. One cannot evaluate the incidence of that mention in the application form on the allowance of social housing, since no nationality-based statistics are given by the authority. To be certain that no discrimination occurs, one could suggest the withdrawal of that mention from the application form. At least, the distinction between Belgian and EU nationals should disappear (Annex n° 10).

The Flemish Authority adopted a Decree on 8 June 2007 concerning financial aid for studies (Annex n° 43). Article 9 does mention a nationality condition to apply for this financial aid. According to this provision, financial support can be give to children of Belgian citizens but also, by exception, to children of citizens from the European Economic Area if they prove to have worked under a contract of employment for at least two years immediately preceding the 31st December of the concerned academic year, for at least 12 months and at least 32 hours per month. The Decree refers to citizens who are entitled to claim the applicability of art. 12 or 7 of the Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

2. Other obstacles to free movement of workers?

A case has been lodged by the Centre for Equal Opportunities and Combating Racism in front of the Industrial tribunal of Brussels against a firm that publicly alleged to refuse recruiting of Moroccan citizens as workers. If the case does not concern directly free movement of EU workers, it could affect EU workers who could be discriminated on a racial basis. It does also concern the agreements with the Maghreb countries.

On 6 February 2007, the Industrial tribunal requested in this case a preliminary ruling from the ECJ (case C-54/07), (Annex n° 32). Questions are more on the application of Directive 2000/43 on non-discrimination than on free movement:

> "- Is there direct discrimination within the meaning of Article 2(2)(a) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin where an employer, after putting up a conspicuous job vacancy notice, publicly states:
> 'I must comply with my customers' requirements. If you say "I want that particular product or I want it like this and like that", and I say "I'm not doing it, I'll send those people", then you say "I don't need that door". Then I'm putting myself out of business. We must meet the customers' requirements. This isn't my problem. I didn't create this problem in Belgium. I want the firm to do well and I want us to achieve our turnover at the end of the year, and how do I do that? - I must do it the way the customer wants it done!'?
> - Is it sufficient for a finding of direct discrimination in the conditions for access to paid employment to establish that the employer applies directly discriminatory selection criteria?
> - For the purpose of establishing that there is direct discrimination within the meaning of Article 2(2)(a) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, may account be taken of the recruitment of exclusively indigenous fitters by an affiliated company of the employer in assessing whether that employer's recruitment policy is discriminatory?
> - What is to be understood by 'facts from which it may be presumed that there has been direct or indirect discrimination' within the terms of Article 8(1) of the Directive? How strict must a national court be in assessing facts which give rise to a presumption of discrimination?
> (a) To what extent do earlier acts of discrimination (public announcement of directly discriminatory selection criteria in April 2005) constitute 'facts from which it may be presumed that there has been direct or indirect discrimination' within the terms of Article 8(1) of the Directive?
> (b) Does an established act of discrimination in April 2005 (public announcement in April 2005) subsequently give rise to a presumption of the continuation of a directly discriminatory recruitment policy? Having regard to the facts in the main proceedings, is it sufficient, in order to raise the presumption (that an employer operates and continues to pursue a discriminatory recruitment policy) that, in April 2005, in answer to the question whether, as an employer, he did not treat people from foreign and indigenous backgrounds in the same manner and was thus actually a bit racist, he publicly stated: 'I must comply with my customers' requirements. If you say "I want that particular product or I want it like this and like that", and I say "I'm not doing it, I'll send those people", then you say "I don't need that door". Then I'm putting myself out of business. We must meet the customers' requirements. This isn't my problem. I didn't create this problem in Belgium. I want the firm to do well and I want us to achieve our turnover at the end of the year, and how do I do that? - I must do it the way the customer wants it done!'?
> (c) Having regard to the facts in the main proceedings, can a joint press release issued by an employer and the national body for combating discrimination, in which acts of discrimination are at least implicitly confirmed by the employer, give rise to such a presumption?
> (d) Does the fact that an employer does not employ any fitters from ethnic minorities give rise to a presumption of indirect discrimination when that same employer some time previously had experienced great difficulty in recruiting fitters and, moreover, had also stated publicly that his customers did not like working with fitters from ethnic minorities?
> (e) Is one fact sufficient in order to raise a presumption of discrimination?
> (f) Having regard to the facts in the main proceedings, can a presumption of discrimination on the part of the employer be inferred from the recruitment of exclusively indigenous fitters by an affiliated company of that employer?

- How strict must the national court be in assessing the evidence in rebuttal which must be produced when a presumption of discrimination within the meaning of Article 8(1) of the Directive has been raised? Can a presumption of discrimination within the meaning of Article 8(1) of the Directive in question be rebutted by a simple and unilateral statement by the employer in the press that he does not or does not any longer discriminate and that fitters from ethnic minorities are welcome; and/or by a simple declaration by the employer that his company, excluding the sister company, has filled all vacancies for fitters and/or by the statement that a Tunisian cleaning lady has been taken on and/or, having regard to the facts in the main proceedings, can the presumption be rebutted only by actual recruitment of fitters from ethnic minorities and/or by fulfilling commitments given in the joint press release?
- What is to be understood by an 'effective, proportionate and dissuasive' sanction, as provided for in Article 15 of Directive 2000/43/EC?
Having regard to the facts in the main proceedings, does the abovementioned requirement of Article 15 permit the national court merely to declare that there has been direct discrimination?
Or does it, on the contrary, also require the national court to grant a prohibitory injunction, as provided for in national law? Having regard to the facts in the main proceedings, to what extent is the national court further required to order the publication of the forthcoming judgment as an effective, proportionate and dissuasive sanction?"

On 12 March 2008, Advocate General Poiares Maduro gave his opinion (Annex n° 33) according to which the questions referred by the Arbeidshof in Brussels (Industrial Court of Brussels) should be answered as follows:

"1) A public statement made by an employer in the context of a recruitment drive, to the effect that applications from persons of a certain ethnic origin will be turned down, constitutes direct discrimination within the meaning of Article 2(2)(a) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
2) Once a prima facie case of discrimination based on racial or ethnic origin has been established, it is for the respondent to prove that the principle of equal treatment has not been infringed.
3) Where a national court finds that there has been a breach of the principle of equal treatment, it must grant remedies that are effective, proportionate and dissuasive."
One has to see how this normal interpretation of Directive 2000/43 will be applied in the case and in practice.

3. Specific issues: frontier workers

a. Maritime sector

See *supra*, Chapter II, 1.

Recent legal literature

M. WATHELET, 'L'arrêt Meca-Medina et Majcen: plus qu'un coup dans l'eau', Observations sous arrêt Meca-Medina, *J.L.M.B.*, 2006-41 p. 1799 (Annex n° 30)

4. Relationship between Regulation 1408/71 and Article 39 and Regulation 1612/68

In the 2006 report, we mentioned a decision given by the Constitutional Court on 19 April 2006 to ask 4 questions to the ECJ concerning the Flemish care insurance scheme (Case C-212/06). The case analysed by the Constitutional Court is quite complex and involves a new Flemish Decree modifying the right to obtain care insurance coverage, depending on the place of work and the place of residence. The example given by applicants is about a Belgian

or French worker who works in Flanders. This worker would be covered by the Flemish care insurance as long as he lives in France, in Flanders or in Brussels. However, he would lose the benefit of the insurance coverage if he transferred his residence in the Walloon Region. In a first argument, applicants alleged the new law is in violation of art. 18, 39, 43 of EC Treaty and art. 2, 3, 13, 18, 19, 20, 25 and 28 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community. Applicants allege also that the Flemish Decree is in the application field of the Regulation (EEC) 1408/71 and, further, contrary to the *Lancry* (9/08/1994) and *Elsen* cases (23/09/2000).

A second argument is about reverse discrimination. Applicants allege that if this kind of reverse discrimination could be acceptable in the matter of social security regimes pointed by Regulation 1408/71, it would be different and in violation to EC law if the concerned workers did use their right to free movement. This refers to the *Maris* case ruled on 6 December 1977. For example, a national working in the Flemish Region who, after using free movement right, leaves the Member State where he lived to return and live in Belgium, more specifically in the Walloon Region, would lose the benefit of the care insurance regime. The new Decree would create a discrimination between foreign residents and some national residents.

On 28 June 2007, the opinion of Advocate General Sharpston was delivered (annex n° 4). The conclusion is clear as she considers that the questions referred by the Cour d'arbitrage (Court of Arbitration), now Cour constitutionnelle (Constitutional Court), of Belgium should be answered as follows:

> "– A care insurance scheme such as the one established by the Flemish Community falls within the scope *ratione materiae* of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as defined in Article 4 thereof.
> – In so far as nationals of other Member States working in Belgium and Belgian nationals who have exercised rights of freedom of movement are concerned, Articles 39 and 43 EC and Article 3 of Regulation No 1408/71 preclude an autonomous Community of a federal Member State from adopting provisions which, in the exercise of its powers, allow only persons residing in the territory for which that autonomous Community is competent or in another Member State to be insured under and covered by a social security scheme within the meaning of that regulation, to the exclusion of persons, whatever their nationality, who reside in a part of the territory of the same federal State for which another autonomous Community is competent.
> – Community law would preclude a system where access to benefits under the Flemish care insurance is unequivocally dependent on residence in the Dutch-speaking region or the bilingual region of Brussels-Capital, irrespective of the category of claimant."

The concern expressed in the 2006 report about potential discrimination towards a EC citizen seems to be out of matter today. Indeed, on 1st April 2008, the ECJ confirms partly the Advocate general's opinion when it answers the preliminary questions as (Annex n° 31):

> "1. Benefits provided under a scheme such as the care insurance scheme established by the Decree of the Flemish Parliament on the organisation of care insurance (Decreet houdende de organisatie van de zorgverzekering) of 30 March 1999, in the version contained in the Decree of the Flemish Parliament amending the Decree of 30 March 1999 (Decreet van de Vlaamse Gemeenschap houdende wijziging van het decreet van 30 maart 1999 houdende de organisatie van de zorgverzekering) of 30 April 2004, fall within the scope *ratione materiae* of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 307/1999 of 8 February 1999.

2. On a proper construction of Articles 39 EC and 43 EC, legislation of a federated entity of a Member State, such as that governing the care insurance scheme established by the Flemish Community by the decree of 30 March 1999, as amended by the Decree of the Flemish Parliament of 30 April 2004, limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme to persons either residing in the territory coming within that entity's competence or pursuing an activity in that territory but residing in another Member State, is contrary to those provisions, in so far as such limitation affects nationals of other Member States or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community.
3. On a proper construction of Articles 39 EC and 43 EC, legislation of a federated entity of a Member State limiting affiliation to a social security scheme and entitlement to the benefits provided by that scheme only to persons residing in that entity's territory is contrary to those provisions, in so far as such limitation affects nationals of other Member States working in that entity's territory or nationals of the Member State concerned who have made use of their right to freedom of movement within the European Community."

However, the ECJ does not confirm the Advocate General's views on the opportunity to include, partially, internal situations in EC law on the basis of the application of the non-discrimination principle with citizenship and to condemn reverse discrimination. The ECJ leaves this still open to the national judge.

It is early to know how this decision will be followed by the Flemish authorities. This case touches one point that could be important in the future, about the competence of autonomous Communities of a Federal Member State. Some rich Communities try to bypass free movement between Member States, by obstacles within a State. As was said by A.G. Sharpston in her opinion: "what sort of European Union is it if freedom of movement is guaranteed between Dunkirk (France) and De Panne (Belgium), but not between Jodoigne and Hoegaarden" (within Belgium) (para. 116). Exclusive of "purely internal situation" is, by the way, more and more… excluded.

The Industrial Court of Brussels also decided that the assimilation of the family member of a Belgian to a family member of an EU citizen has effect with regard to the right of residence and for the right to work, but not for a social right. In this decision, a Rwanda citizen spouse of a Belgian woman may not have a right to unemployment benefits as there is no treaty with Rwanda and he may not use the EU citizenship or Regulation 1408/71 (annex n° 49).

In a decision of 12 December 2007, the Constitutional Court confirms the reference to the Strasbourg case law in *Koua Poirrez*, about disability allowance. Even if the case does not concern an EU citizen but an American, it is important for the equality treatment principle that has to be interpreted also with a view on the ECtHR case law (annex n° 39).

Chapter IV
Employment in the Public Sector

SUMMARY

Acquis

In principle, employment in the public sector in Belgium is quite open to EU citizens except when there is direct or indirect participation in the exercise of powers conferred by the public law.

In practice, there does not seem to be much refusal of access to employment or of professional advantages due to language requirement, recognition of professional experience or of diplomas.

However, up to now, the rate of non-Belgians in the public sector seems low.

2007

It is almost impossible to have a better picture of the true employment situation for EU citizens in the public sector. A number of questions have been asked last year by a Member of Parliament on that point. Answers showed that there were no precise figures available. The same statement has to be made this year, as no specific statistics are available on that question.

1. ACCESS TO PUBLIC SECTOR

Nationality condition for access to positions in the public sector

On 11 January 2007, the rules applying to the working conditions of civil servants in the Belgian Institute for telecommunication and postal services were modified. It appears from the new regulation that the nationality condition is required (art. 6) only when the position occupied by the civil servant involves a direct or indirect participation in the exercise of powers conferred by the public law (Annex n° 11). This deems to prove that, in principle, employment in the public sector in Belgium is quite open to EU citizens except when there is direct or indirect participation in the exercise of powers conferred by the public law.

As to language requirement, recruitment procedures, recognition of diplomas, and recognition of professional experience for access to the public sector no specific problems were reported.

2. EQUALITY OF TREATMENT

Several verifications have been made regarding discriminations that could be applicable to the public sector. All the public job offers are published officially on the website of the Public recruitment office (SELOR). From the controls made, there is no language requirement condition for access to jobs in the public sector. If it can seem obvious that such a condition is not published officially, the case law of the Supreme administrative jurisdiction (Conseil d'Etat- State Council) was assessed on that particular aspect. Except some old cases ruled in

the 80's, the recent case law does not show any cases of discrimination on basis of language requirements or on basis of refusal of recognition of professional experience.

Chapter V
Members of the Family

SUMMARY

Acquis

The position of the family members is strengthened in Belgium by the refusal of reverse discrimination for family members of Belgian citizens.

2007

No important issue on this topic in 2007 in Belgium (see, however, *supra*, Ch. I, Transposition of Directive 2004/38).

1. RESIDENCE RIGHTS

After the *MRAX* case, it does not seem that Belgium would make application of a condition of previous legal residence (*Akrich*). Belgium seems in accordance with *Jia*. It is too early to know what consequence *Eind* could have, but it does not seem *prima facie* that Belgian authorities are reluctant to recognize family reunification already accepted in another Member State.

In the 2006 report, we mentioned the judgment given by the Civil tribunal of Brussels according which, if a Belgian local administration declares admissible an application for a residence permit for a foreign parent of a Belgian child, the GOA (Governmental Office for Aliens) cannot refuse to take this application into consideration. This case was lodged according to the provisory proceeding without prejudice of the merits which can be decided later (see Annex n° 41 of the 2006 Report). The CCE decided, on 10 October 2007, not to cancel a GOA decision which refuses to recognise the right of residence to a Belgian child's mother (Annex n° 46).

Basing its decision on the application of the *Baumbast* and *Chen* cases, the CCE considered that the refusal of residence permit did not concern the Belgian child. Additionally, the Court reminded that the right of residence of the Belgian child is a consequence of his Belgian nationality but not a consequence of any EC provision. Moreover, the situation of the Belgian child is different from the *Chen* case as the child never used his free movement right since he has always be resident in Belgium. Consequently, he is not entitled to allege the EU rights protection as beneficiary of the EU citizenship.

To understand the judgment, one must bear in mind the specificity of the Belgian Alien's Act which implements family reunification for family members of a Belgian citizen. Article 40(6) of the Alien's Act 15/12/1980 considers these family members as EU citizen by assimilation. This principle of assimilation is a specificity of the Belgian law to exclude reverse discrimination. Regarding the *Chen* case, the ECJ ruled that the use of EU law to acquire a nationality of a Member State and the benefit of the residence permit given through this EU nationality is not forbidden by EU law. In the same case, the ECJ reminds that under international law, it is up to each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality. Applying this ruling in Bel-

gium, article 10 of the Belgian nationality Code gives the Belgian nationality to a stateless child born in Belgium. This provision raises some cases in which parents, third country nationals, considered as EU citizens in accordance with the above-mentioned assimilation principle, should have received a residence permit in Belgium. This occurred with Equatorial parents who did not declare their child at their own Embassy in order to benefit first from the stateless status for their children, then from the Belgian nationality for their children, and then from the Belgian assimilation principle for themselves.

The same assimilation principle raised another debate relating to social benefits, when the parents of a Belgian child, by application of article 10 of the Belgian nationality Code, are irregular on the territory. Arguing their quality of EU citizen by assimilation, they lodged several actions to obtain social benefits in Belgium. Applying the *Chen* case, the Industrial Tribunal of Brussels decided, on 4 June 2007, to refuse social benefits to the parents of a Belgian child as no border has been crossed by the applicants and they have no sufficient resources (Annex n° 47). Another decision of the same Industrial Court confirms this point with reference to Directive 2004/38 and exclusion of purely internal situations (annex n° 48). These jurisprudence show the limits of the Belgian principle of assimilation of family members of a Belgian with family members of a EU citizen.

As the Belgian law of transposition of Directive 2004/38 will enter into force in June 2008, the *effet direct* of some dispositions could be examined. For instance, the *Conseil du contentieux des étrangers* could examine the autonomous right of residence for a spouse after divorce in case of "particularly difficult circumstances" (Dir. 2004/38, art. 13, para. 2, c) even if this is not provided by the Belgian law before June 2008.

2. ACCESS TO WORK

No specific problem or case reported.

3. ACCESS TO EDUCATION AND STUDY GRANTS

No specific problem or case reported.

4. OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)

See infra, Chapter VI, the follow-up of C-408/03, *Commission v. Belgium*, about the income of a partner to be taken into account for the sufficient resources.

Chapter VI
Relevance/Influence/Follow-up of recent Court of Justice Judgments

The implementation of the recent *Jia* case into the judicial practice is not a problem in Belgium, as the Alien Act of 15/12/1980 did not require any residence in another Member State to recognize free movement to EU citizens. This ruling was obvious in Belgium, as the Alien's Act contains an assimilation principle towards third country national family members of a Belgian.

The implementation of the *Commission v. Belgium* case (judgment 23 March 2006, C-408/03) has been realised by the adoption of a Royal Decree on 28 November 2007 modifying the Royal Decree of 8 October 1981 on access to the territory, residence, establishment and removal of foreigners (Annex n° 44). As the ECJ ruled that by excluding the income of a partner residing in the host Member State in the absence of an agreement concluded before a notary and containing an assistance clause, Belgium has failed to fulfil its obligations under Article 18 EC and Council Directive 90/364/EEC of 28 June 1990 on the right of residence when applying that directive to nationals of a Member State who wish to rely on their rights under that directive and on Article 18 EC. The new regulation provides that income from an EU partner citizen has to be taken into consideration even if the couple does not conclude a mutual agreement of assistance before a notary (art. 3). Concerning the automatic delivery of an order to leave to an EU citizen, the new regulation acknowledges that, according to the opinion of the Commission given on 17 October 2007, it is not sufficient to modify the administrative practice by a circular to comply with the judgment. Consequently, the Royal Decree dated 8 October 1981 has been modified as to allow an EU citizen an extension of one month to communicate any documents proving his or her situation.

Several decisions of the ECJ have been published in different national law reviews in 2007. Even if it cannot be considered as implementation of the ECJ case-law, it contributes to spreading the knowledge of the ECJ lessons? See www.jura.be.

For instance :

- CJCE, judgment *De Cuyper* of 18/07/2006, *J.D.E.*, n° 135, 1/2007, p. 19.
- CJCE, judgment *ONP / Jonkman*, of 10/06/2007, *J.T.T.*, n° 986, 22/2007, p. 357 (Annex n° 29)
- CJCE, judgment *Chateignier / Onem* of 09/11/2006, *J.T.T.*, n° 968, 4/2007, p. 53 (Annex n° 26)
- CJCE, judgment *Keller* of 12/04/2005, C-145/03, *J.T.D.E.*, n° 136, 2/2007, p. 53, 15/02/2007 (Annex n° 21)
- CJCE, judgment *Pirkko Marjatta Turpeinen* of 09/11/2006, C-520/04, *J.T.D.E.*, n° 135, 1/2007, p. 13, 15/01/2007 (Annex n° 22)
- CJCE, judgment *ITC Innovative Technology Center GmbH* of 11/01/2007, C-208/05, *J.T.D.E.*, n° 139, 5/2007, p. 152, 15/05/2007 (Annex n° 23)
- CJCE, judgment *Kaj Lyyski* of 11/01/2007, C-40/05, *J.T.D.E.*, n° 139, 5/2007, p. 153, 15/05/2007 (Annex n° 24)
- CJCE, judgment *Commission v. Austria* of 21/09/2006, C-168/04, *J.T.D.E.*, n° 137, 3/2007, p. 88, 15/03/2007 (Annex n° 25)
- CJCE, judgment *Cadman* of 03/10/2006, C-17/05, *J.T.D.E.*, n° 137, 3/2007, p. 87, 15/03/2007 (Annex n° 27)

- CJCE, judgment *Stamatelaki* of 19/04/2007, C-444/05, *J.T.D.E.*, n° 141, 7/2007, p. 213, 15/09/2007 (Annex n° 28)

Chapter VII
Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers

DRAFT LEGISLATION, CIRCULARS, ETC.

The Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research has been transposed in Belgian legislation by the law adopted on 21 April 2007 modifying the 1980 Alien's Law. New articles 61/10 to 61/13 have been introduced in this law in order to comply with the Directive (Annex n° 40).

STUDENTS

Each year, the Governmental Office for Alien (GOA) publishes a notice relating to the minimum means of subsistence necessary for students who wish to study in Belgium for the next academic year. This notice is edited in the Official Journal before the beginning of the academic year (Annex n° 6).

Free movement of students and application of the non-discrimination principle is an acquis in Belgian law since the *Gravier* case (C-293/83, 1985). However this could be challenged again as, in the French-speaking part of Belgium, the authorities are confronted with more and more French students, representing from 30% to 50 % of the students in some studies, mainly paramedical. In fact, France is applying a *numerus clausus* in those studies whereas Belgium is not. A Decree which limits to 30% the part of students who have not been residing in Belgium for at least 3 years before the studies, was adopted on 16 June 2006. Two actions have been brought in front of the Constitutional Court in August and December 2006. The case is still pending currently but the Constitutional Court has asked preliminary rulings at the ECJ on 14 February 2008 (Annex n° 34). The questions are

> "1. Must articles 12, first indent, and 18, paragraph 1, of the EC Treaty, combined with article 149, paragraphs 1 and 2, second indent and with article 150, paragraph 2, third indent of the same Treaty, be interpreted as they prevent an autonomous community of a Member State which is competent for higher education and which faces massive arrival of students from a neighbour Member State in several training of medical sector funded by public authority and resulting as a consequence of restrictive policy pursued by a neighbour Member State, to take measure as the ones contained in the French Community Decree of 16 June 2006 regulating the numbers of students in some first cycle training of the higher education, when this Community invokes valid reasons to claim that this situation risks to overweight public finance and to endanger the quality of the education given ? (… en ce sens que ces dispositions s'opposent à ce qu'une communauté autonome d'un État membre compétente pour l'enseignement supérieur, qui est confrontée à un afflux d'étudiants d'un État membre voisin dans plusieurs formations à caractère médical financées principalement par des deniers publics, à la suite d'une politique restrictive menée dans cet État voisin, prenne des mesures telles que celles inscrites dans le décret de la Communauté française du 16 juin 2006 régulant le nombre d'étudiants dans certains cursus de premier cycle de l'enseignement supérieur, lorsque cette Communauté invoque des raisons valables pour affirmer que cette situation risque de peser excessivement sur les finances publiques et d'hypothéquer la qualité de l'enseignement dispensé ?)
>
> 2. Would the answer to question sub 1 be different if this Community can demonstrate that this situation results in too few students resident on this Community's territory achieving their diploma, to allow sufficient qualified medical staff to maintain the quality of the public health sys-

tem within this Community? (En va-t-il autrement, pour répondre à la question mentionnée *sub* 1, si cette Communauté démontre que cette situation a pour effet que trop peu d'étudiants résidant dans cette Communauté obtiennent leur diplôme pour qu'il y ait durablement en suffisance du personnel médical qualifié afin de garantir la qualité du régime de santé publique au sein de cette Communauté ?)

3. Would the answer to question sub 1 be different if this Community, taking into consideration article 149, first indent of the EC Treaty and article 13.2, c), of the International Pact relating to economic, social and cultural rights which contains an standstill obligation, choose to maintain a large and democratic access to a higher education of quality for the population of this Community?"

Forced by Austria with a view on the Lisbon Treaty, the Commission decided to suspend any direct procedure against Belgium and Austria, facing the same problem with German students in medicine. This does not preclude the fact that ECJ is still able to answer a preliminary question.

DIRECTIVE 2003/86 AND 2004/83

A law has been enacted on 15 September 2006 (published in *Moniteur belge* on 6 October 2006) implementing Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

Important modifications of the current Alien's Act (15/12/1980 Act concerning access to the territory, residence, establishment and removal of foreigners) were adopted. The former version of this Act already contained some provisions relating to the right to family reunification for EU citizens, since the new law adopted on 15 September 2006 has to adapt the current state of legislation to the new rights given by the 2003/86 Directive.

The same law adopted on 15 September 2006 transposed Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, and Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

EUROPEAN MIGRATION NETWORK

Belgium is part of the European Migration Network (EMN). The Belgian contact point of the European Migration Network is Benedikt Vulsteke at Direction Générale Office des Etrangers, WTCII, Chaussée d'Anvers, n° 59B, 1000 Bruxelles, www.dofi.fgov.be; benedikt.vulsteke@dofi.fgov.be.

In 2007, concerning this network, several reports have been published related to policies with repercussions on free movement of workers, as:

- **"**Illegally Resident Third Country Nationals in EU Member States: state approaches towards them, their profile and social situation" produced by the European Migration Network, January 2007. This EMN Synthesis Report aims to summarise and compare, within a European perspective, the findings from nine National Contact Points (Austria, Belgium, Germany, Greece, Ireland, Italy, Sweden, The Netherlands and the United Kingdom) of the European Migration Network (EMN), on the situation of the European population that does not or no longer fulfils the conditions for entry into, presence in, or residence on the territory of the Member States of the European Union.

http://dofi.fgov.be/nl/statistieken/belgian%20migration%20point/14%20EMN%20Synthesis%20Report%20on%20Illegal%20Immigration.pdf
The Synthesis Report, and the EMN NCP Country Study reports upon which it is based, may also be obtained from the EMN website: http://www.european-migration-network.org

- "Annual Policy Report 2006" produced by the European Migration Network, October 2007, EMN.
Annual Policy Reports provide an overall insight into the most significant political and legislative (including EU) developments, as well as public debates in the area of migration and asylum. This is the third in a series of such reports, this time covering the period 1st January 2006 to 31st December 2006.
http://dofi.fgov.be/nl/statistieken/belgian%20migration%20point/16b%20Annual%20Policy%20Report%202006%20on%20Asylum%20and%20Migration.pdf

- "Conditions of entry and residence of Third Country Highly-Skilled Workers in Belgium", published in December 2006.
The report is the Belgian contribution to an EU-wide investigation on highly-skilled migration and the approach of the Member States towards this issue. This study is being undertaken by the National Contact Points of the European Migration Network (EMN). The intention is to identify similarities and differences in the approaches of the EU Member States towards the conditions of entry and residence of Third Country Highly-Skilled Workers by comparing the studies made on the national level, to stimulate the exchange of information, to promote goodwill and understanding between the Member States and, in this way, to contribute to well-founded and well-informed policy making. During one of the EMN-meetings, it was agreed to undertake a study covering the topic of highly-skilled workers, mainly because of its strong relevance to the Policy Plan on Legal Migration (COM(2005) 669) and in particular the proposed development of a directive on conditions of entry of TC Highly-Skilled Workers."
http://dofi.fgov.be/nl/statistieken/belgian%20migration%20point/12%20TC%20Highly%20Skilled%20Workers%20in%20Belgium2006.pdf

Recent legal literature

On the Belgian reform of immigration law, see:

FOBLETS, M., LUST, S., VANHEULE, D., DE BRUYCKER, P. (eds), Migratie- en migrantenrecht. Recente ontwikkelingen. Deel 12. De nieuwe Vreemdelingenwet. België in lijn met de Europese regelgeving (*The new Aliens Law. Belgium and EC law*), Série 'De vreemdeling in het Belgisch recht', n° 12, Bruges: Die Keure 2007, 520 p.

SAROLÉA, S., JACQUES J.-P., KAISER M., DOYEN I., *La réforme du droit des étrangers*, Bruxelles : Kluwer 2007.

See also:

FOBLETS, M., VANHEULE, D., Het federale vreemdelingenbeleid in België: enkele recente wetswijzigingen, *T.B.P.* 2007, liv. 7, 387-408

FOBLETS, M., BOUCKAERT, S., "Het Belgische vreemdelingenrecht ingrijpend hertekend. Een overzicht van de wetswijzigingen 2006-2007", in VAN HOUTTE, H. (ed.), *Internationaal Privaatrecht* , Actes de l'après-midi d'études organisés par Themis, Série 'Themis', n° 46. Die Keure, Bruges, 2008, 96 p.

M. KAISER, "Le conseil d'état et la réforme du contentieux des étrangers : une 'théorie du contentieux détachable'?", *A.P.T.*, 2006, p. 249 (Annex n° 20).

Chapter VIII
EU Enlargement

SUMMARY

Acquis

Like some other ancient EU Member States, Belgium decided to impose a transitional period before allowing free movement of workers from new Member States.

2007

The Belgian authorities decided, in February 2006, to postpone the transitional arrangement decided in 2004 for 3 years. However, free movement of workers would be made easier in some activities. For workers from Bulgaria and Romania, a transitional period is also decided for Belgium. None of these provisions have been modified in 2007.

1. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2004

As the Belgian government decided to postpone the transitional period for 3 years, no change can be found in national law and practice in Belgium since the last report.

The circular dated 10 May 2006 about the non respect of the deadline to implement the 2004/38 Directive modifies the previous circular on enlargement, as it provides to extend the transitory period for 3 years for the citizens of the EU-8 Member States who entered on 1st May 2004. Consequently, the end of the new transitory period is set on 30 April 2009.

As the Belgian authorities have decided to postpone the end of the transitory period until 30 April 2009, mostly the same legal regime as that existing during the first period mentioned in the previous report, is applicable to the second phase.

Position of the Belgian Government

The Belgian government has decided to postpone the opening of borders to workers from EU-8 (all Members States that joined the EU on 1 May 2004 except Malta and Cyprus). Consequently, the provisional arrangements decided in 2004 will continue after 1st May 2006.

According to the Employment Minister, the decision to postpone the provisional measures was taken following the conclusion of the "High Council for Employment Opinion" issued on 24 February 2006 (Contents of the 105 pages is Annex n° 32 of the 2005 Report). The government alleges that complete free movement of workers cannot be achieved without taking complementary measures to fight exploitation of foreign workers. It is also alleged that the government is working on a registration system for all foreign workers. The registration of all cases of trans-border work as a precondition should allow the authorities to have a better view on work migration.

The government also notes that the Belgian market faces a lack of workforce and a large number of vacancies for jobs in a certain number of sectors. It is planned to reinforce train-

ing and education in these sectors, and the Belgian authorities accept that workers originating from the 8 new EU Member States could be recruited in exceptional circumstances. For these jobs, workers from new EU Member States will be accepted, exempting them from requiring the work permit model B, as no study of the work market would be made in these area of work. The list of jobs for which a work permit will be automatically delivered is divided into 4: one for the Flemish Region, one for the Walloon Region, one for the Brussels Region and the last for the German speaking Community.

The Walloon Region published on 11 May 2006 a notice in the *Moniteur belge* regarding the list of professions in which a lack of workforce is acknowledged. This list contains several professions for which a simplification of the type-B work permit will be granted. This list concerns specifically workers citizen of the EU-8 Member States (Annex n° 42 of the 2006 Report). The list includes for instance: engineer, teacher, nurse, technician in different fields.

The same list has been published for the Brussels-Capital Region on 16 May 2006 (Annex n° 43 of the 2006 Report) and for the Flemish Region (*M.B.*, 18 May 2006).

On 20 December 2006, a Royal Decree was adopted modifying the 1981 Royal Decree relating to access to the territory, residence, establishment and removal of aliens. The Belgian government decided to put into force a two-year transitional period provided by the Entry Treaty for Bulgarian and Romanian citizens. The transitional arrangements will be applicable until 1st January 2009 (Annex n° 36 of the 2006 Report).

On 20 December 2006 (published in *Moniteur belge* on 28 December 2006), the Home affairs Minister enacted a circular relating to the residence and establishment of Romanian and Bulgarian citizens and their family members from 1st January 2007, and specifically during the transitional period (Annex n° 37 of the 2006 Report).

In this circular sent to all the mayors of Belgium, the Home affairs Minister recalls that the Entry Treaty provides a two years transitional period for these countries, concerning the access to labour market, and that this period does not concern self-employed workers and service providers.

None of these provisions have been modified or amended in 2007.

Practical problems, individual cases and national case law pertaining to the transitional arrangements

Local centres in charge of social assistance (CPAS) in the area of Brussels are faced with social assistance requests from Bulgarian and Romanian citizen during their short term residence in Belgium. Several cases are reported in which pregnant women claimed for social assistance. The lack of provision in the EU Treaty and legislation regarding short term residence allows these centres to refuse to give any social assistance, considering their stay in Belgium as illegal. National legislation allows only urgent medical assistance to an alien in irregular stay. Consequently, only urgent medical care is provided for such EU citizens. This would not be really different after the transitional period. GOA has been questioned on that specific problematic but has still not answered at the time of this report.

2. INFORMATION ON TRANSITIONAL ARRANGEMENTS REGARDING MEMBER STATES WHO JOINED THE EU IN 2007

The circular adopted on 20 December 2006 also recalls that the transitional arrangements adopted when the EU-8 entered on 1st May 2004 will be automatically applicable to Bulgarian and Romanian citizens until 31 December 2008.

For those who were already on the Belgian territory before 1st January 2007, the measures provided by the 30 April 2004 circular, adopted when EU-8 entered, will be extended. According to this last circular, workers of the 8 new Member States (Malta and Cyprus are excluded) are still subordinated to the national regulation relating to access to the Belgian territory. They still have to produce a residence permit delivered at the Belgian Embassy or consulate in their country of origin. According to the current regulation, they must have a work permit to obtain a professional visa from the Embassy. This work permit is delivered by the competent Regional authorities based on the seat of the employer (Walloon, Flemish, or Brussels Capital Region). The work permit is delivered to an alien only if, in the relevant labour market, no Belgian citizen can be found to do the job.

The Royal Decree dated 25 April 2004 includes a facility for those workers who, on 1st May 2004, are already legally employed for a non interruptive period of at least 12 months and are holder of an unlimited authorisation of stay in Belgium at the same date. Such workers are entitled to stay on the Belgian territory without being obliged to go back to their country to request a residence permit through the Embassy. The Royal Decree adopted on 20 December 2006 extends the same facility to Bulgarian and Romanian citizens.

Consequently, a facility has been given to all Bulgarian and Romanian citizens authorised to stay at the date of 1st January 2007 or authorised to an unlimited stay at the same date. The provisions of the 2004 Royal Decree are extended to Bulgarian and Romanian citizens. This Decree provided that in granting of a work permit, the national labour market is not taken into consideration for those workers who, on 1st May 2004, were already legally working in Belgium and were already admitted on the national labour market for a period of 12 months or for those workers who, after 1st May 2004, are admitted on the national labour market for a period of 12 months. The same regime is applicable to the family members of the above mentioned workers considering the spouse, descendants aged less than 21 years and dependants provided they come to live with this worker.

On 19 December 2006, a new Royal Decree was adopted modifying the Royal Decree dated 9 June 1999 executing the 30 April 1999 Act relating to occupation of Alien workers. Consequently to the adoption of a transitional period of 2 years regarding Bulgarian and Romanian citizens, the Employment Minister decided, in emergency, to limit access to the work market for workers originating from these 2 new EU Member States. The Employment Minister argues he cannot take position without seeing the Commission follow-up report concerning the preparation level of these 2 new EU Member States, entry raised public in September 2006, without consulting the other EU Member States, in particular during the experts committee and the free movement of workers consulting committee held on 27 and 28 October 2006 (Annex n° 40 of the 2006 Report).

Chapter IX
Statistics

SUMMARY

Acquis

As was the case last year, there are no specific statistics available.

Only general statistics relating to the 2006 number of aliens on the Belgian territory classified by nationality exist on the GAO website (annex n° 35). For other figures, it is not possible to compare the different populations since statistics are partial, not recent enough and thus, difficult to cross. They come from different governmental bodies at different levels (federal, regional, local). Once again, an effort could be asked of the Belgian authorities in this matter.

2007

Indeed, a huge and very interesting report has been published by the Federal Administration Employment and Work Market in 2007 called "Immigration in Belgium: figures, movements and work market" (Annex n° 38). Unfortunately, the figures refer to 2005 (see p. 11) and do not take into consideration Bulgaria and Romania as EU Member States… (see p.19).

Since the Centre for Equal Opportunities and Combating Racism (CEOCR) published its report on Migratory flows coming from the new Member States of the European Union (Annex n° 36) in 2006, no accurate and current statistics are available

From the official Belgian Institute for Statistics, one can have access to the previous situation as the last official figures concern the situation of the population on 01/01/2005 (Annex n° 37 specifically p. 12-14 relating to number of EU25 citizens in Belgium).

No specific statistics regarding repartition by sex/branch/skills-qualifications are available. From the website of the GOA, statistics concerning foreigners living in Belgium are up to date as they are dated on 02/01/2008
(link: http://www.dofi.fgov.be/fr/statistieken/statistiques_etrangers/Stat_ETRANGERS.htm.)

The figures given can be synthesised as follows:

	2006	**2007**
(Czechoslovakia)	207	207
A	2602	2514
BG	7443	4870
CY	237	175
CZ	2342	1990
D	39289	37838
DK	3309	3358
E	43366	43254
EST	597	468
F	132421	123076
FIN	3120	3143
GB	26106	26249
GR	15524	16368

H	2893	2265
I	170807	175912
IRL	3522	3485
L	4468	4358
LT	1022	790
LV	713	571
M	257	205
NL	124993	113320
P	30216	28506
PL	30611	19642
RO	16367	10115
S	4633	4530
SK	566	455
SLO	4174	3874
Total EU	671805	631538

The figures are classified and thus can be sorted out by province, arrondissement, and municipality.

A 2007 analysis of the issue of long term visas by the Belgian authority is to be found on Annex n° 45. The content of this annex is too long to be reproduced integrally here but it shows that in 2007, 23138 long term visas were issued (visa D). The study classifies by reason for issuing visa and by country of origin as the top 15 nationalities (age, gender are also taken into consideration).

Chapter X
Miscellaneous

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