

Chapter 3

Migrants' Access to Social Protection in Belgium



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3.1 Overview of the Welfare System and Main Migration Features in Belgium

This chapter aims to examine the conditions and procedures for accessing social benefits in Belgium. The relevance of the bilateral social security agreements with the three main countries of origin of non-EU foreigners residing in Belgium (Morocco, Turkey, Algeria) and the three main non-EU countries of destination of Belgians abroad (USA, Canada and Australia) are also discussed. The chapter identifies potential differences between nationals and non-nationals in accessing Belgian social benefits. Furthermore, it critically discusses the potential impact that the decision to migrate might have for acquiring or retaining social benefits in and from Belgium. Before answering those questions, a short overview of the main characteristics of the Belgian social security system and the migration history are provided.

3.1.1 *Main Characteristics of the National Social Security System*

As many European countries, social security in Belgium developed in the nineteenth century with the Industrial Revolution. It is however in 1944 that the social security system was instituted in Belgium. With the law of 1944, the model of social assistance which was predominant during the Industrial Revolution became a subsidiary system compared to social security. The choice was then made to follow the Bismarkian model based on the principle of social insurance (Pochet and Reman

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2006). As a result, the Belgian social security system is made of a contributory system of work-based social insurance, with a residual non-contributory system of social assistance.

Between 1960 and 1970, the coverage of the Belgian social security system was extended, both in terms of beneficiaries and of benefits (Pochet and Reman 2006). The work-based social insurance system differentiates between three categories of potential beneficiaries (civil servants, employed, and self-employed workers) and comprises 7 branches of benefits (sickness and maternity benefits; accident at work and occupational diseases benefits; invalidity benefits; old-age and survivors' benefits; unemployment benefits; family benefits; and annual holidays). The non-contributory system of social assistance is based on solidarity and financed through general taxation. It aims to provide a minimum social protection to those who are involuntarily without income and cannot benefit from the work-based social insurance system. This non-contributory system includes the minimum guaranteed income (also called integration income¹), the guaranteed income for the elderly,² the minimum family benefits,³ and disabled persons' benefits.⁴

Social security is a federal competence managed by the Public Service on Social Security.⁵ Over the last 45 years, the main changes in the Belgian social security system concern a strong decentralisation of a previously centralized unitary social security system (Béland and Lecours 2018; Jorens 2006). As a result, some aspects of the Belgian social security system have been transferred either to the Regions or the Community (for a recent overview of the different transfers put in a historical perspective, see Dumont 2015). The most notable example is the transfer of family benefits from the federal level to the Community level (i.e. the Walloon Region, the Flemish Community, the German Community, and COCOM⁶ for the Brussels Region).⁷ Although this transfer took place on July 2014, the Communities and Regions had until December 2019 to organise the management of beneficiaries' files and payments.

Belgian social security is financed by social security contributions, State subsidies, and VATs. For employed persons, the social security contributions are paid by the employer and the employee to the National Office for Social Security (ONSS/RSZ),⁸ through a percentage of employee's gross salary. Each social security branch is managed by a different National Office. Sickness, maternity, paternity, and invalidity benefits are managed by the National Institute for Sickness and Invalidity

¹ *Revenu d'intégration sociale/leefloon.*

² *Garantie de revenus aux personnes âgées/gewaarborgd inkomen voor bejaarden.*

³ *Prestations familiales garanties/gewaarborgde gezinsbijslag.*

⁴ *Allocations pour des personnes handicapées/tegemoetkomingen voor personen met een handicap.*

⁵ *SPF Sécurité Sociale/FOD Sociale Zekerheid.*

⁶ *Commission Communautaire Commune.*

⁷ *Loi spéciale du 6 janvier 2014 relative à la sixième réforme de l'Etat, M.B.*, 31 janvier 2014.

⁸ *Office National de la Sécurité Sociale/Rijksdienst voor Sociale Zekerheid.*

Benefits (INAMI/RIZIV)⁹ which distributes financial resources to different insurers (*mutualités*) responsible for benefits' payment. Old-age pensions and the guaranteed minimum income for elderly are handled by the National Office for Pensions (ONP/RVP).¹⁰ Unemployment benefits are managed by the National Office for Employment (ONEM/RVA),¹¹ although the payment of these benefits is done either by trade unions or CAPAC.¹² The most relevant institution for the management and payment of family benefits is the Federal Agency for Family Benefits (FAMIFED/FAMIFED).¹³ Finally, the guaranteed minimum income scheme is managed and paid by the Local Centers for Social Assistance (CPAS/OCMW).¹⁴

For self-employed persons, the compulsory contributions have to be paid to private social insurance funds or to a National Auxiliary Fund, managed by the National Insurance Institute for the Self-Employed (INASTI/RSVZ).¹⁵ Self-employed persons are covered by 5 branches of social security (sickness, invalidity, family, maternity benefits, and pensions).

3.1.2 Migration History and Key Policy Developments

The migration history of Belgium resembles the one of its neighbouring countries such as Germany or the Netherlands. After the second World War, Belgium recruited foreign workers to compensate its lack of labour force. From 1948 until 1958, the great majority of the foreign workers were coming from Italy (Bousetta et al. 1999). From the 1960's, Belgium put in place a 'guest-worker' policy and attracted workers from Southern Europe as well as from Morocco and Turkey. In 1974, the decision was made to stop recruiting migrant workers (Martiniello 2003). In the 1980's, the stock of foreigners stabilized due to the recruitment stop policy and due to the increase in naturalisation rates (Jacobs et al. 2002; Bousetta and Bernès 2009). Since then, a large share of migration from third countries happens through the route of family reunification.¹⁶

In the last national census in 2011, the foreign population accounted for 10,49% of the total population. According to Eurostat, in 2017, foreigners accounted for

⁹ *Institut National d'Assurance Maladie-Invalidité/Rijksinstituut voor Ziekte-en Invaliditeitsverzekering.*

¹⁰ *Office National des Pensions/Rijksdienst Voor Pensioenen.*

¹¹ *Office National de l'Emploi/Rijksdienst voor arbeidsvoorziening.*

¹² *Caisse Auxiliaire de Paiement des Allocations de Chômage/Hulpkas voor Werkloosheidsuitkeringen.*

¹³ *Agence Fédérale pour les Allocations Familiales/Federaal Agentschap voor de Kinderbijslag.*

¹⁴ *Centre Public d'Action Sociale/Openbaar Centrum voor Maatschappelijk Welzijn.*

¹⁵ *Institut National d'Assurances Sociales pour Travailleurs Indépendants/ Rijksinstituut voor de Sociale Verzekeringen der Zelfstandigen.*

¹⁶ European Migration Network (EMN). *Family reunification with third country national sponsors in Belgium.* July 2017. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/02a_belgium_family_reunification_en_0.pdf. Accessed 20 March 2019.

14% of the total population in Belgium (Eurostat 2018). Out of these foreigners, the large majority (up to 66%) comes from EU Member States (Eurostat 2018). French (18%) and Dutch (17%) citizens are particularly represented. Italian (18%), Romanian (9%), Polish (8%), Spanish (7%) and Portuguese (5%) citizens also account for important stock of the foreign population (Eurostat 2018). Concerning non-EU Member States, the largest groups of the foreign population in Belgium come from Morocco (6%) and Turkey (3%). According to the Belgian Statistics Office, 384.657 foreigners were employed or self-employed, 50.815 were receiving unemployment benefits, and 716.489 were economically inactive (StatBel 2016). Finally, the proportion of EU citizens who are economically active is higher than the one of non-EU foreigners (Vintila et al. 2018).

Finally, it should be said that in 2017, emigration from Belgium represented 119.382 persons (StatBel 2018). Furthermore, numbers from the consular report that 471.401 Belgians were registered abroad in July 2018. The main countries where the Belgians are residing are all EU countries: France (132.557), the Netherlands (38.824), Spain (28.947), the United Kingdom (28.293) and Germany (28.008).

3.2 Migration and Social Protection in Belgium

Access to social benefits in Belgium is not conditional upon nationality. Moreover, very few benefits require a certain number of years of prior residence in the country. One example in this regard is the minimum guaranteed income for the elderly which is only accessible for Belgian nationals and citizens of some countries, and requires a 10-years residence in Belgium (out of which 5 years of effective and uninterrupted residence). This particularity is not surprising as it is also a non-contributory benefit financed through general taxation. For all other benefits described in this chapter, the relevant eligibility criterion is the contribution to the Belgian social security system. Stating that residence is not relevant would, however, be misleading. For most benefits, residence in Belgium is required in the sense that most benefits are not exportable. Alternatively, if they are exportable, stringent conditions are attached or it is completely up to the discretion of the administration to decide on the possibility of exporting the benefit.

3.2.1 Unemployment

Unemployment insurance benefits are only available for employed persons,¹⁷ as opposed to self-employed persons. The qualifying period of employment varies according to the age of the claimant.¹⁸ There is no specific condition regarding a

¹⁷There is no specific scheme of unemployment assistance benefits in Belgium.

¹⁸*Arrêté royal portant réglementation du chômage, M.B.*, 25 novembre 1991, art.30.

minimum period of prior residence, although claimants must have their main residence (and reside effectively) in Belgium. Hence, national citizens residing abroad are not generally entitled to claim unemployment benefits from Belgium. Yet, there are some instances where the beneficiary will receive unemployment benefits although he/she is not residing in Belgium: 1. for annual holidays for up to 4 weeks per year; 2. for maximum 2 weeks to actively search for a job abroad, upon authorization of the competent authority; 3. for frontier workers residing abroad, but temporarily unemployed in Belgium; 4. for beneficiaries who have already used the 4 weeks of annual holidays, the competent authority may grant 4 extra weeks for voluntary work in cultural events; 5. for voluntary work for a sport event; 6. for a period determined by a ministerial decision. In addition, the export of unemployment benefits for maximum 3 months is possible if the claimant has filled in a (U2) form asking to retain unemployment benefits while moving in an European Union (EU)/ European Economic Area (EEA) country for the purpose of finding a job.¹⁹

For EU foreigners who reside in Belgium between 3 months and 5 years, actively seeking for a job and receiving unemployment benefits should not have any negative consequences on their right to reside.²⁰ Similarly, for non-EU foreigners, their right to reside should not be, in principle, negatively affected by the take-up of unemployment benefits, unless they cannot prove that they do not have sufficient resources and become a burden on the State's social assistance. Income coming from unemployment benefits can be taken into account for the 'sufficient resources' test only if they actively look for a job.²¹ Moreover, those who apply for Belgian nationality must prove social and economic participation²² and reliance on unemployment benefits might be a hurdle in showing economic participation. Stable, regular and sufficient incomes must also be proven for family reunification. However, if coupled with positive feedback on active job search, unemployment benefits are considered as sufficient resources to bring relatives via family reunification.²³

Concerning the bilateral agreements concluded with third countries, it is worth mentioning that in order for the periods of contributions completed abroad to be considered by the Belgian authorities for the purpose of accessing unemployment benefits, the claimant must have worked for at least 3 months in Belgium upon return.²⁴ Furthermore, only periods of insurance completed in certain countries are taken into account, including EU Member States, Iceland, Liechtenstein, Norway,

¹⁹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, [2004] OJ L 166/1, art. 64.

²⁰ *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, M.B.*, 15 décembre 1980, art. 42 bis, para.1 and 2.

²¹ *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, M.B.*, 15 décembre 1980, art. 11, para.1, 1e; art. 10, para.2; art. 10, para. 5.

²² *Code de la nationalité belge, M.B.*, 28 juin 1984, art.12bis.

²³ *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, M.B.*, 15 décembre 1980, art.40ter, para.1, 1e.

²⁴ Prior to 2016, only 1 day of work in Belgium upon return was sufficient.

Switzerland, Bosnia-Herzegovina, the Republic of Macedonia, Montenegro,²⁵ Turkey, Algeria, Kosovo, and San Marino. For EU Member States, Bosnia, Macedonia and Montenegro, the beneficiary's nationality does not matter, while for other countries, the beneficiary must be an EU citizen or national of one of the countries listed above.²⁶

3.2.2 Health Care

Sickness in kind benefits are available to any salaried worker and assimilated categories legally residing in Belgium. This implies that unemployed persons, individuals on maternity leave or those registered in the national registry can also access in kind benefits in case of sickness.²⁷ The registration in the national registry would mainly concern non-nationals after 3 months of stay in Belgium. Partners, cohabitants, children of less than 25 years old and parents also have access, under certain conditions, to benefits in kind.

To access benefits in kind, individuals must be affiliated with a sickness insurer (*caisse de maladie*) and pay a minimum contribution during 6 months. There are numerous derogations²⁸ to this 6-months period and, in most cases, nationals do benefit from one of these derogations. EU foreigners can also benefit from these derogations if they were insured in another EU country. Hence, this 6-months period mainly applies for non-EU foreigners. The sickness in kind benefits work as a reimbursement system where the patient is reimbursed 75% of the conventional honorary. There is a flat-rate payment by the patient for any day spent in the hospital for which 75% of the doctor costs are then reimbursed by the sickness insurers and a lump-sum is granted for the costs of medicines.

Cash benefits in case of sickness (also called incapacity benefits) are granted based on three conditions: having ceased all activities because of injury or functional disorder resulting in a reduction of earning capacity of at least 66%; having paid the minimum amount of contributions, and having prior insurance for at least 180 working days out of 12 months preceding the incapacity.²⁹ While there is no

²⁵ It should be noted that for Macedonia, Bosnia and Montenegro the period of 3 months is extended to 6 months over the last 12 months prior asking the unemployment benefits. This information has been retrieved through the ONEM website: http://www.onem.be/fr/documentation/feuille-info/t31#h2_1, accessed 20 March 2019.

²⁶ ONEM website: http://www.onem.be/fr/documentation/feuille-info/t31#h2_1, accessed 20 March 2019.

²⁷ *Loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994, M.B., 14 juillet 1994, art.32.*

²⁸ *Arrêté royal du 3 juillet 1996 portant exécution de la loi relative à l'assurance obligatoire soins de santé et indemnités, M.B., 3 juillet 1996, art.130.*

²⁹ *Arrêté royal du 3 juillet 1996 portant exécution de la loi relative à l'assurance obligatoire soins de santé et indemnités, M.B., 3 juillet 1996, art.203.*

difference between nationals and foreigners in accessing cash benefits, there is with regard to the export. For temporary stay in an EU/EEA country, the person receiving sickness benefits from Belgium should inform the sickness insurer. Whereas for temporary stay in a non-EU/EEA country, an authorisation from the doctor would be needed. There is no possibility to retain sickness benefits when moving abroad permanently.

Sickness cash benefits can be granted for 12 months after which invalidity benefits can be claimed if the beneficiary is still unable to work. Invalidity benefits are calculated based on previous earnings and the family situation of the invalid person.³⁰ They are available for all persons bound by a work contract as long as there is a reduction of capacity for work of at least 66% and the person has contributed for at least 180 working days during the last 12 months prior to the incapacity. Whereas individuals receiving invalidity benefits must simply inform their *mutualité* in case of temporary stays in an EU/EEA country, they must receive an authorisation from the doctor for short stays outside the EU/EEA. If an individual decides to transfer his/her residence to an EU/EEA country, the authorisation of the doctor is not required although the person should communicate the change of residence to the competent authority. The control of the invalidity status will then take place in the country of residence. Invalidity benefits are lost if the person moves to a non-EU/EEA country, unless the new country of residence has concluded a bilateral agreement with Belgium including invalidity benefits.³¹

As for the coverage of health-related benefits in bilateral social security agreements, it is worth mentioning that the agreements with the USA, Canada and Australia are worded very similarly and only concern invalidity benefits. The agreements with Morocco, Turkey, and Algeria cover sickness benefits in kind, in cash and invalidity benefits. For invalidity benefits, all agreements provide for aggregation of periods of insurance. Furthermore, the agreements with USA, Canada and Australia contain a provision stating that residence conditions should not be attached to the grant and payment of the benefits; and that invalidity benefits should be granted under the same conditions by Belgium for American, Canadian and Australian nationals residing in third countries as it would for Belgian nationals, and vice versa by USA, Canada and Australia for Belgian nationals residing in third countries. That being said, those two elements (i.e. export to one of the Contracting State and export to a third country) do not apply to American nationals who have not been subject to the Belgian social security system for at least 18 months prior to the incapacity. The agreement with Turkey specifically mentions that beneficiaries can receive invalidity benefits when residing in the other Contracting State only if such transfer of residence has been authorised by the competent institution in the Contracting State. For sickness in kind benefits, the agreements with Algeria, Morocco and Turkey ensure that workers and family members are granted access to

³⁰ *Loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994, M.B., 14 juillet 1994, art.93.*

³¹ Website of the *Mutualité chrétienne*: <https://www.mc.be/que-faire-en-cas-de/etranger/invalidite>, accessed 20 March 2019.

these benefits in case of stay or residence in the other country. For cash benefits, the agreements with Algeria, Morocco and Turkey provide that if a national of a Contracting State is insured in that State and transfers his/her residence to the other Contracting State, that person should be able to continue receiving sickness cash benefits from the first Contracting State if its institutions authorized the residence transfer.

3.2.3 Pensions

Old-age contributory pensions in Belgium are calculated based on the years of contributions, the previous earnings and the family status.³² There is no minimum period of contributions required, although a minimum amount per year of contribution is only granted after 15 years. A guaranteed minimum pension is available for at least 2/3 of a complete career, i.e. after 30 years of contributions. For every year of contribution, the person must have been working 156 days of full time work and will be entitled to a bigger amount if he/she achieves 208 full time working days per year. The standard retirement age is 65 years old.

There is no difference in terms of the conditions of access to old-age pensions between nationals, EU foreigners, and non-EU foreigners, although some differences can be identified in terms of pension exportability. Belgian and EU nationals must send a yearly life certificate to the competent authorities (except if they live in France, Germany or the Netherlands where there is an electronic data exchange between authorities). In principle, old-age pensions are not exportable for non-EU foreigners,³³ except if they are legally residing in an EU country³⁴ (except Denmark), are miner workers,³⁵ or are covered by bilateral agreements allowing export of pension.³⁶ The payment of the pension can be done to a Belgian/EEA bank account. The pension can also be transferred to a non-EEA bank account if the person is legally

³² *Arrêté royal portant exécution des articles 15, 16 et 17 de la loi du 26 juillet 1996 portant modernisation de la sécurité sociale et assurant la viabilité des régimes légaux des pensions, M.B.*, 23 décembre 1996, art.5.

³³ *Arrêté royal N50 relatif à la pension de retraite et de survie des travailleurs salariés, M.B.*, 24 octobre 1967, art. 27.

³⁴ Which means that the person falls under the scope Regulation 1231/2010. Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality, [2010] OJ L 344/1.

³⁵ But then the amount of the pension is up to 80% of the full amount the person would receive if he/she stayed in Belgium.

³⁶ Information retrieved from the website of SPF Pension: <http://www.onprvp.fgov.be/FR/futur/foreigner/paymentpension/Pages/default.aspx>, accessed 20 March 2019.

residing in that country. In any case, transfer to a non-Belgian bank account needs to be communicated to the competent authority 2 months before the payment.³⁷

The bilateral agreements with Morocco, Turkey, Algeria, USA, Canada, and Australia provide for the principle of aggregation of periods of insurance and stipulate that old-age benefits granted by one country cannot be suspended or withdrawn on grounds of the beneficiary staying or residing in the territory of the other country. The agreements with Turkey and USA further allow for the export of old-age benefits on the territory of third-countries in the same conditions as nationals of the country competent for granting those benefits. However, the agreement with USA clarifies that those two elements (i.e. export to one of the Contracting State and a third country) do not apply to American nationals who have been subject to the Belgian social security system for less than 18 months.

After 65 years old, individuals who have no or insufficient pensions are also eligible for a special scheme of minimum guaranteed income for the elderly.³⁸ This non-contributory pension is available only for Belgian/EU/EEA/European Free Trade Agreement (EFTA)/Swiss nationals and citizens of countries with whom Belgium has a bilateral agreement covering this specific scheme. In order to obtain this benefit, individuals must have resided in Belgium for at least 10 years including at least 5 years of effective and uninterrupted residence.³⁹ From time to time, SPF Pensions checks the residence in Belgium by sending a letter to the beneficiary which needs to be returned within 21 days. Despite this strict residence condition, there is the possibility to stay abroad for up to 30 days per year while continuing to receive the minimum guaranteed income from Belgium. Yet, this pension is lost if individuals reside abroad for stays of more than six consecutive months or when they are no longer registered in a Belgian municipality (*commune*).

3.2.4 Family Benefits

There are two conditions to access maternity benefits in Belgium: having completed a waiting period of 6 months (from the start of the work until the person asks for maternity benefits) and having worked for at least 120 days during those 6 months.⁴⁰ Residence is not a requirement and foreign residents can access maternity benefits under the same conditions as their national counterparts. The benefits are granted for 15 weeks (with extensions in exceptional cases) and the amount is calculated based on the salary (or flat rate for self-employed or unemployed). Non-resident citizens who are not subject to Belgian social security cannot ask for maternity

³⁷ *Ibid.*

³⁸ *Loi instituant la garantie de revenus aux personnes âgées, M.B.*, 22 mars 2001, art.3.

³⁹ See also: *Arrêté royal portant règlement général en matière de garantie de revenus aux personnes âgées, M.B.*, 23 mai 2001, Art. 42, para.1.

⁴⁰ *Loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994, M.B.*, 14 juillet 1994, art.116/1.

benefits from Belgium. Paternity benefits can be granted to employees only, generally under the same conditions as maternity benefits, although their duration is of only 10 days.⁴¹

Parental benefits are individual benefits available only to national or foreign employees independently of the country of birth or residence of their child. Eligible claimants must have worked for at least 12 months out of the last 15 months before claiming parental benefits⁴² and the child should be less than 12 years old.⁴³ Parental benefits are flat-rate but depending on the region, the beneficiary might receive additional sums.⁴⁴ Parental benefits are granted for a maximum of 4 months when claimants stop completely to work,⁴⁵ 8 months if the person stops working part-time, and 20 months for those who reduce their working time by 1/5. Individuals who temporarily leave the country can continue to receive parental benefits. If the person leaves permanently Belgium, the benefits will only be received if the person lives in an EU/EEA country.

Child benefits are also available to individuals working in Belgium (although there is no minimum period of contributions required)⁴⁶ if the child resides and studies in Belgium (or the child resides and/or studies in an EU/EEA country or in a country with whom Belgium has concluded a bilateral agreement).⁴⁷ Individuals can receive family benefits until the child reaches 18 years old or 25 years old if he/she continues to study. The amount received depends on the number of children, household composition, and claimants' income. Child benefits can be exported temporarily provided that recipients continue to be affiliated to the Belgian social security system and the child continues to reside and study in Belgium. For permanent stays abroad, family benefits are only paid to the person who stays affiliated to the Belgian social security (generally posted workers).

The bilateral agreements with USA, Canada and Australia only cite family and maternity benefits for the purpose of the rules concerning the situations when a person is subject to a particular legislation. For example, according to the *lex loci laboris* rule, a person working in Belgium would be subject to the Belgian social security legislation (including the legislation on family benefits and maternity benefits). There is however no specific right arising from the agreements with USA,

⁴¹ *Loi relative aux contrats de travail*, M.B., 3 juillet 1978, art.30, para.2.

⁴² *Arrêté royal relatif à l'introduction d'un droit au congé parental dans le cadre d'une interruption de la carrière professionnelle*, M.B., 29 octobre 1997, art.3 and 4.

⁴³ Previously, in the beginning of 2000, the age of the child was of 4 years old. This was changed in 2005 for 6 years old and in 2009 for 12 years old (Kil et al. 2016).

⁴⁴ 160 euros more in Flanders for a full-time parental leave (Kil et al. 2016).

⁴⁵ Information retrieved from the ONEM website: <http://www.onem.be/fr/documentation/feuille-info/t19>, accessed 20 March 2019.

⁴⁶ *Loi générale relative aux allocations familiales* (LGAF), M.B., 19 décembre 1939, art. 51; *Loi portant modification des lois coordonnées du 19 décembre relatives aux allocations familiales pour travailleurs salariés*, M.B., 4 avril 2014.

⁴⁷ For some countries (Morocco, Tunisia, Turkey, Algeria and Kosovo) the number of children for whom the person can get the child benefits is 4 (Mussche et al. 2014).

Canada and Australia with regard to family-related benefits. Such specific rights are found in the agreements with Morocco, Turkey and Algeria which stipulate the principle of aggregation of periods for family benefits, and specify that persons covered by those agreements are entitled to receive family benefits for children residing in the other country. For Algerian workers in Belgium, Article 28 of the agreement provides that they should receive child benefits for children residing in Algeria based on Algerian law and not the Belgian law. The agreement with Algeria also states the possibility to retain maternity benefits when the residence is transferred back to Algeria, upon authorization from the competent authority.

3.2.5 *Guaranteed Minimum Resources*

There are several eligibility conditions for accessing the guaranteed minimum income⁴⁸ ('integration income'/*revenu d'intégration/leefloon*) in Belgium.⁴⁹ First, the person must be an adult or assimilated and have his/her effective residence in Belgium. Second, claimants must be either: Belgian nationals, EU citizens (or family members of an EU citizen) with a legal residence in Belgium for more than 3 months, foreigners registered in the population registry, stateless persons or individuals holding the refugee status or subsidiary protection in accordance with article 49 on the law from 1980 on foreigners. Third, the person is without sufficient resources and willing to work (with exceptions). Fourth, the person has asked for his/her social security benefits either in accordance with the Belgian legislation or with any other country's legislation. In addition, the administration might also require that the person exhausts his/her right to maintenance owed to him/her by other people.

The effective residence condition of a legal and permanent stay in Belgium⁵⁰ applies for everyone, either nationals or foreigners. There is no need to have a physical residence in Belgium but it is important to be present and allowed to stay in Belgium. In that sense, the law is meant to also include people who do not have a home but are allowed to stay in Belgium (homeless persons, for example). This condition of the legal and permanent stay in Belgium also implies that there is no possibility to export this benefit, except for temporary stays abroad of maximum 4 weeks per year. For stays longer than a week, the beneficiary must inform the competent administration and justify the need to go abroad. The minimum

⁴⁸ It should be noted that guaranteed minimum income refers here solely to *revenu d'intégration/leefloon* and not to *aide sociale*. *Aide sociale* has a broader scope than *revenue d'intégration*. It can be comprised of both material and immaterial help.

⁴⁹ Those conditions are contained in art.3 of the law on integration income. *Loi concernant le droit à l'intégration sociale, M.B.*, 26 mai 2002, art.3.

⁵⁰ *Arrêté royal portant règlement général en matière de droit à l'intégration sociale, M.B.*, 11 juillet 2002, art.2.

guaranteed income is not covered by the bilateral agreements that Belgium has concluded with third countries.

Besides the condition of effective residence, there is a *de facto* residence requirement for non-nationals. Unlike resident nationals, EU foreigners become entitled to claim the guaranteed minimum income only after having legally resided in Belgium for at least 3 months.⁵¹ Moreover, third-country nationals must be registered in the population registry, the latter being possible only after 5 years of legal residence in Belgium.⁵² In other words, non-EU foreigners residing in Belgium for less than 5 years are not considered entitled to claim the guaranteed minimum income.

Finally, it is also worth highlighting the potential negative consequences that the take-up of this specific benefit might have on foreigners' residence permits and their naturalization in Belgium. Firstly, EU foreigners with a residence permit of more than 3 months and less than 5 years who are not employed or self-employed must prove having sufficient resources and not being a burden for the Belgian social assistance system.⁵³ Reliance on minimum guaranteed income might be considered as being a burden on States' funds⁵⁴ and therefore negatively affect their right to reside or the renewal of their residence permits. Secondly, when non-EU foreigners apply for minimum guaranteed income to the Public Center for Social Aid, that center has to notify the Immigration Department who can then withdraw their residence permit. Furthermore, with regard to family reunification, nationals and non-nationals have to prove sufficient and stable income and the minimum guaranteed income is not taken into account for these purposes. An economic and social participation is also required for the acquisition of the Belgian nationality and foreigners' reliance on social benefits is an element taken into account for assessing their economic participation. The economic integration criterion is fulfilled if the person worked as an employee in the past 5 years for a minimum of 468 days or has paid contributions for at least 6 quarters as a self-employed person.⁵⁵ Hence, recourse to minimum guaranteed income is not a prove of economic integration (quite the contrary) so it would impact negatively on the naturalization process (Mussche et al. 2014).

⁵¹ *Loi concernant le droit à l'intégration sociale, M.B.*, 26 mai 2002, art.3.

⁵² This entails the holding a long-term residence permit. *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, M.B.*, 15 décembre 1980, art. 17.

⁵³ *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, M.B.*, 15 décembre 1980, art. 40, para 4., 2^e.

⁵⁴ Although this should not be an automatic conclusion but should be assessed on a case-by-case basis, weighting all the financial circumstances of the individual. *Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, M.B.*, 15 décembre 1980, art. 40, para4., second last sentence.

⁵⁵ *Code de la nationalité belge, M.B.*, 28 juin 1984, art.12bis.

3.3 Conclusions

Belgian social security system is mainly a work-based social insurance system complemented by a non-contributory social assistance system aimed to protect those at risk of poverty. Because it is a work-based social insurance system, the main criterion to access social security benefits is the number of years of contributions. Hence, access to social security benefits in Belgium does not depend on the nationality of the claimants.

Even though it is a contributory system, individuals may be required to prove residence in Belgium in order to obtain access to specific benefits and/or continue receiving them. This implies that most benefits are not accessible if the beneficiary moves abroad. For example, unemployment benefits require an effective residence in Belgium, although, as previously explained, there are several derogations from this general rule that do allow claimants to continue receiving the benefit after moving abroad. On the other hand, the minimum guaranteed income for the elderly requires 10 years of residence in Belgium with a minimum of least 5 years of effective and uninterrupted residence. Moreover, the minimum guaranteed income ('income integration') requires the person to be effectively residing in Belgium. Having an effective residence in Belgium implies legal and permanent stay in the country. Although this condition applies equally for both nationals and non-nationals, it has a different impact on foreigners. While nationals can be considered as effectively residing in Belgium since birth, EU foreigners will only be considered as such after 3 months of legal residence in Belgium, whereas non-EU foreigners must be registered as foreigners in the population registry which is practically possible only after 5 years of legal residence in Belgium. Consequently, EU nationals who have resided in the country for less than 3 months and non-EU foreigners residing in Belgium for less than 5 years cannot claim the guaranteed minimum income.

It is also interesting to note that bilateral social security agreements concluded with third countries often facilitate the export of benefits for nationals of the Contracting Parties. Without these agreements which stipulate the aggregation of periods of insurance, it can be doubted whether the authorities will take into account periods of contributions completed abroad in order to grant access to social benefits in Belgium. The new law on aggregation of periods for the purpose of unemployment benefits and the need to work for 3 months in Belgium upon return in order to become entitled to claim these benefits indicates that there is a tendency to restrict the access to social security benefits in Belgium.

Finally, the take-up of social benefits by foreigners might not have a direct consequence on their residence status in Belgium, but it can indirectly and negatively affect this status. In order to be resident in Belgium, EU foreigners and non-EU foreigners should have sufficient resources and should not become a burden on the State's social assistance. Income coming from unemployment benefits can be taken into account for the 'sufficient resources' test only if they actively look for a job. Furthermore, reliance on minimum guaranteed income might be considered as being a burden on States' funds and therefore impact negatively on the right to

reside or the renewal of residence permits. Even more, when non-EU foreigners apply for minimum guaranteed income to the Public Center for Social Aid, that center has to notify the Immigration Department who can then withdraw their residence permit. In addition, income coming from minimum guaranteed income are not taken into account for the ‘sufficient resources’ test that needs to be passed for family reunification. Concerning the acquisition of Belgian nationality, it is required to prove social and economic participation. The economic integration criterion is fulfilled if the person worked as an employee in the past 5 years for a minimum of 468 days or has paid social security contributions for at least 6 quarters as a self-employed person. Hence, recourse to minimum guaranteed income is not a prove of economic integration (quite the contrary) so it could impact negatively the acquisition of Belgian nationality. Similarly, reliance on unemployment benefits might be a hurdle in the process of proving the economic participation of the person.

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