

## Moving to Belgium as an EU citizen

### Registration formalities for EU workers, self-employed persons, jobseekers and their family members in Belgium, with a comparative outlook

**Note** that this study was conducted prior to the entering into force of the Royal Decree of 12 June 2020 modifying the Royal Decree on Immigration. As a consequence of this modification, some of the titles of the residence certificates for EU citizens as well as the residence cards for their non-EU family members have been modified from 10 May 2021 onwards. The registration certificate for EU citizens (Annex 8 or so-called 'E card') has been changed to the 'EU card' and the format of the residence card for non-EU family members (so-called 'F card') follows that of the uniform format for residence permits as laid down by Regulation 1030/2002. Furthermore, when it concerns the issuance of documents attesting to permanent residence, the title of residence certificate for EU citizens attesting to permanent residence (Annex 8bis or so-called 'E+ card') has changed to 'EU+ card'. The format of the residence card for non-EU family members attesting to permanent residence (so-called 'F+ card') has changed to follow that of the uniform format for residence permits laid down by Regulation 1030/2002.

#### Executive summary

EU citizens have the right to move to and reside freely in another EU Member State, subject to certain "limitations and conditions". This study examines the formalities involved when EU citizens want to take up residence in Belgium for a period longer than three months, namely the requirement of registration in order to obtain residence documentation. The study focuses on workers, self-employed persons, jobseekers and their family members. In addition, the formalities involved in obtaining EU permanent residence are examined, as well as the impact of residence formalities on access to employment, conditions of employment, social security and fiscal benefits. A comparative analysis with selected other EU Member States (Netherlands, Luxembourg, France, Germany and Italy) is undertaken as well, in order to develop grounded policy recommendations.

This research was commissioned by the Federal Migration Centre – Myria, in the framework of Directive 2014/54/EU of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

#### Chapter 1: Legal framework applicable to residence formalities in Belgium

The first chapter focuses on the transposition of the European Directive 2004/38 on the rights of entry and residence of EU citizens and their family members into Belgian immigration law – in particular, the provisions relating to municipal registration requirements and processes. In addition, we examine the compliance of the Belgian legal framework and administrative instructions with the case law of the European Court of Justice on the procedural aspects of the registration procedure.

The scope of the study is limited to workers (including posted and frontier workers), self-employed persons, jobseekers, family members (spouse, registered partner, direct descendants who are under the age of 21 or dependent and dependent ascendants) and other family members (other dependent family members of the household or with serious health issues or partners with a durable duly established relationship).

In Belgium, EU citizens and their family members residing for more than three months must register with the municipal authorities. Upon registration, they will receive a paper document<sup>1</sup> (“Annex 8” for EU citizens), or an electronic residence card (so-called “EU card” for EU citizens and “F card” for non-EU family members). This chapter assesses the Belgian legal framework and administrative instructions concerning the EU citizens’ registration procedure in light of the requirements of EU law. The following phases are discussed: the preparatory phase, the application phase, the verification of domicile, the registration phase, and the application for permanent residence. Moreover, the rules applicable to refusal, termination and withdrawal of residence rights are reviewed, as well as the procedural safeguards and appeal rights against negative decisions.

In spite of some data availability gaps, revealing statistical data on applications, refusal, termination and withdrawal and appeals are also provided.

Following numerous changes in its legislation, Belgium has transposed the large majority of the Citizens Rights Directive provisions. However, despite a substantial legislative work and some provisions being more favourable than requested by EU law, Belgian legislation remains complicated to read and understand as it does not follow the same structure as the Directive.

This study also revealed several compliance issues due to insufficient transposition. The first one concerns deadlines for issuing registration certificates for EU citizens and permanent residence documents. The second one emerges from Belgium not transposing some exemptions to the requirement of five years stay for obtaining the right to permanent residence and omitting the category benefiting frontier workers. The third one arises from not amending Belgian law to reflect EU law provisions prohibiting possession of a residence document as being a precondition for the exercise of a right or completion of an administrative formality. A fourth issue is that Belgian law does not foresee an automatic renewal, every ten years, of permanent residence cards issued to non-EU family members.

Belgium has created a further category of family members of an EU citizen, namely partners who have entered into a registered partnership (legal cohabitation) which is not considered to be equivalent to marriage in Belgium. For this category, additional conditions are imposed. It remains unclear whether this is in line with the Directive. In any case, the current list of registered partnerships (legal cohabitation) which are considered to be equivalent to marriage in Belgium needs to be brought up to date. Additional conditions are also applied when evaluating the five-year requirement for permanent residence. Under Belgian law this period must be calculated as from the date on which an EU citizen was initially registered or from the date on which a certificate of application was issued to their non-EU family member. This is contrary to EU law which highlights that the existence of residence rights cannot be made conditional on compliance with registration formalities.

Administrative practices also lead to some compliance issues. These are mostly linked to demanding a minimum number of 12 hours for an EU citizen to qualify as worker and a strict interpretation of the concept of genuine chances of being engaged for jobseekers. From a procedural point of view, the application phase in Belgium is prolonged by the domicile check performed by the police and, although not enforced, the 200 EUR administrative fine for persons seeking to register without a valid identity card or passport is against EU rules. Appeal rights also raise some issues as the citizens are not sufficiently informed of the possibility of appealing a negative verification of domicile by the police.

There are some points on which Belgian Immigration Law proves to be more generous than the Directive. Failure to comply with deadlines for the issuance of residence documents by Belgian administration results in an obligation to issue the documents. Due to a CJUE case law this provision will nevertheless have to be amended. Belgium also grants “other family members” a right to reside instead of merely facilitating it as requested by EU law.

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<sup>1</sup> Issued until 10 May 2021.

## Chapter 2: Analysis of municipal practices regarding residence formalities for EU citizens and their family members

The second chapter examines municipal registration formalities for EU citizens and their family members, based on an analysis of municipal websites, an electronic survey and semi structured interviews with municipal officials and institutional stakeholders. These data are analysed per phase of the registration procedure.

During the preparatory phase, municipal websites offer little – and at times inaccurate or incomplete - online information regarding the registration procedure. Both online and in-person information is mostly only available in Dutch, French and, to a lesser extent, English.

The application phase raises issues with regard to the waiting times for an appointment during which the applicant will receive their certificate of application (Annex 19 for EU citizens and Annex 19ter for non-EU family members). Long waiting times for a first appointment may amount, in the case of EU citizens, to a violation of their right to immediately obtain a registration certificate as prescribed by Article 8(2) of Directive 2004/38. Whereas two municipalities already used some form of an online application system before, many municipalities partly moved their registration procedure online due to the COVID-19 pandemic. In these cases, the applicant can initiate the registration process online and receive their Annex 19/19ter by email.

There are divergences in how municipalities process applications for registration, especially regarding the registration of various categories of EU workers. This means that certain categories of EU workers are sometimes registered under different statuses, depending on the municipality or region.

Moreover, there are significant differences between municipalities regarding the documents required for the application for registration, particularly concerning EU workers with part-time or atypical work (e.g. interns) as well as family members. Whereas in certain instances, necessary documents are not demanded (which may result in a negative decision by the Immigration Office), in other cases, more proof is demanded than legally allowed.

The methods for verification of domicile vary greatly between municipalities, with the most prevalent one being indication of the applicant's name on the doorbell or mailbox. The time needed for the verification of domicile also differs (ranging from 1 to 8 weeks), and at times does not respect the legal deadlines. The use of an online platform to exchange information regarding the verification of domicile between the municipality and the local police has been evaluated positively, as it speeds up the process.

The registration phase reveals variations regarding the documentation required from the different categories of EU citizens and their family members. These differences can partly be explained by the observation that different municipalities seem to register certain categories of EU citizens under different statuses. Furthermore, the understanding about which (non-)EU family members of EU citizens are able to register as well as which documents they are required to provide, appears to be lacking at times. Especially when it concerns applications for registration from applicants who's application falls under the discretion of the Immigration Office, processing time of the application for registration will always reach the 6-month deadline that is legally imposed. Surpassing the 6-month deadline will imply an automatic positive decision, a practice which is arguably in contradiction with the *Diallo* judgement whenever it concerns an application for registration from non-EU family members of EU citizens.

Information on the possibility to obtain permanent residence, after having resided in Belgium for five consecutive years, is not pro-actively shared by municipalities. In most surveyed municipalities the average processing time will be exactly five months, the legal deadline under Belgian law. This does not appear to comply with the EU law requirement that a document certifying permanent residence should be granted “as soon as possible”.

All municipalities inform applicants about their right to appeal a negative decision. However, information on how to exercise this right to appeal is limited. Approximately half of the municipalities will inform the applicant about the possibility to receive legal advice from a lawyer. Some municipalities might direct the applicant towards (local) organisations that provide legal services, none of the municipalities indicated to be familiar with EU-wide initiatives such as SOLVIT, Your Europe Advice or the EU Rights Clinic.

Relating to the general functioning of key actors in the registration procedure, municipalities flagged that communication with and support from the Immigration Office is currently often late or lacking – which seems to be attributable to a lack of human resources within the Immigration Office. Municipalities also indicated that a national online platform would greatly improve their communication with the Immigration Office and among themselves, for instance for the exchange of documents and information on legislation and policy developments – especially given that the current software packages at times contain inaccurate information. Finally, municipalities would like to be more involved in the development of legislative and policy changes based on their practical experience, thereby avoiding future implementation issues.

### **Chapter 3: The impact of registration formalities on access to employment, conditions of employment, social security and fiscal benefits**

The third chapter examines whether the completion of the registration procedure in Belgium can be construed as a precondition to the exercise of certain rights contrary to the Citizens Rights Directive.

To this end, the relationship between the Belgian registration process and access to employment, conditions of employment, healthcare as well as social welfare and fiscal benefits is analysed with regard to EU workers, posted workers, self-employed persons and jobseekers as well as their family members.

The completion of registration formalities is generally not a precondition for EU citizens to access employment in Belgium or benefit from conditions of employment. However, the opening of a local bank account by EU citizens whose residence is not registered in Belgium has been flagged as a difficulty which may impact their professional activities. Non-EU family members of EU citizens will have to have initiated the registration and at least hold a certificate of application (Annex 19ter) in order to prove their right to work to prospective employers or to be able to register as self-employed. Moreover, non-EU “other family members”, will not have the right to work until they have been issued with a residence document nor can they exercise a self-employed activity in Belgium unless a professional card has been applied for, which is a requirement that should arguably not be imposed on family members of EU citizens.

Three categories of social welfare are reviewed in depth: the contribution-based social security benefits, the non-contributory social assistance and the residual social assistance. The main issues exposed relate to the latter two categories.

When it comes to contribution-based social security benefits, the enrolment with a healthcare fund by workers and self-employed persons is not conditional upon completion of registration. Family members are however only entitled to healthcare in Belgium when they have completed the registration formalities and have been issued with a residence document (EU card or F card as the case may be). The dependent children and the dependent spouse will be able to initiate the enrolment

process with a healthcare fund once they have been issued with a certificate of application (Annex 19 or Annex 19ter as the case may be). Having been issued with a registration certificate in the form of an EU card or paper-based Annex 8<sup>2</sup> is on the other hand a precondition for former EU workers to claim unemployment benefits as claimants need to have lawful residence in Belgium. This requirement poses a particular problem for workers who become unemployed within a year of starting work in Belgium, given that they can only retain their status as a worker for up to six months.

The residence requirements for non-contributory social assistance, and more in particular in respect of social integration allowance, are contrary to EU legislation. Belgian law should formally recognise the right of EU workers and their family members to claim such allowance within the first three months of residence in Belgium. In addition, the practices related to the change of status during the registration procedure should be reviewed, as they create an extension of the time period during which EU workers and their family members are not entitled to claim social integration allowance.

Similarly, several issues are identified with regard to residual social assistance. In particular, the right to claim residual social assistance is affected by the emergence of divergent administrative practices by public social assistance centres and municipalities caused by the Immigration Office's instructions to municipalities to unregister EU citizens as soon as a decision to refuse or withdraw residence rights (Annex 20 or 21 respectively) has been taken and without waiting for the expiry of appeal deadlines, which is contrary to case law of the Belgian Council of State. Furthermore, the practices related to the change of status require a review in order to preserve the right to claim social assistance for EU workers and their family members.

When it comes to fiscal benefits, the completion of registration formalities is not a pre-condition for being subject to the Belgian personal income tax system. While resident taxpayers are entitled to claim all fiscal benefits for which they meet the eligibility conditions, the exclusion of personal allowances in respect of children residing outside Belgium does not appear in compliance with EU law. Non-resident taxpayers on the other hand are only entitled to claim fiscal benefits under the Belgian tax rules if they derive at least 75% of their worldwide professional income from Belgian sources.

In conclusion, while Belgian residence formalities do not have an overall negative impact on access to employment and conditions of employment for EU workers and the self-employed, their non-EU family members will be required to have initiated the registration process. In addition, several problems were noted as regards access to social welfare benefits and tax advantages.

## Chapter 4 – Comparative Overview of Registration Formalities in Belgium and Neighbouring Countries

The fourth chapter aims to provide a comparative overview of the implementation of residence formalities and practices in the Member States neighbouring Belgium, namely the Netherlands, Luxembourg, France and Germany, together with Italy. The latter Member State was included owing to the similarities it presented with Belgium and its neighbours in view of its decentralised application of EU residence formalities. This selection also has the relative advantage of representing a comparative overview of the six founding Member States of the European Economic Community.

This comparison examines how the Citizens Rights Directive has been implemented both in law and practice in each of the Member States with the aim of identifying commonalities and differences between the Belgian residence formalities and those operating in the five other Member States as well as identifying best practices.

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<sup>2</sup> Issued until 10 May 2021.

A comparison of the procedures relating to registration formalities for both EU citizens and their family members reveals that there are significant variations in the way in which the process of registration has been set up in Member States when transposing the Citizens Rights Directive.

The Member State which has instituted registration formalities in a most similar fashion to Belgium is Italy, given that both Member States share a decentralised system where the registration of EU citizens and their family members is made at municipal level with decision-making split between different authorities. While both countries have endowed specialised courts with competence to hear judicial appeals in residence cases, the choice of giving competence to the civil courts rather than the administrative courts in Italy means that these courts have the power to remake administrative decisions, unlike the situation with the Belgian Council for Alien Law Litigation.

As is the case in Belgium, Italy and Luxembourg have instituted a compulsory registration process, whereas registration is only optional in France and the Netherlands. Germany has abolished the obligation to register and does not offer the possibility of voluntary registration. The absence of a compulsory registration system is not without problems, given that EU citizens may find it difficult to prove their lawful residence when seeking to access private and public services or when claiming social security benefits or social assistance.

The single most notable difference in the way the registration process operates relates to the submission of supporting documents. In all other Member States, documents must be provided at the time of submission of the application by EU citizens and their family members, unlike in Belgium where applicants have three months to provide their supporting documentation.

The comparison also shows that there are several best practices from which Belgium could draw inspiration as a means to improve the ways in which the Citizens Rights Directive is applied in practice.

As regards access to information, the central government websites for France and Luxembourg, as well as the website of the Dutch immigration and nationality service (IND), were noted for providing concise and comprehensive information in a relatively user-friendly format. Other notable best practices are the signposting to sources of legal assistance on the website of the Dutch immigration and nationality service (IND) and the inclusion of direct links to the specific underlying provisions of national legislation on the websites for France and Luxembourg also. The information on residence formalities applicable to EU citizens and their family members is made available on-line in English as well as the official national language(s) in Germany, Italy Luxembourg and the Netherlands.

As regards the submission of residence applications by EU citizens and their family members, all Member States require applications to be made in person. However, in the Netherlands, non-EU family members may also initiate an application for a residence card by post. Consideration should also be given to ensuring that measures taken during the COVID-19 pandemic which enable the registration process to be initiated on-line or by post are instituted on a permanent basis. When it comes to permanent residence applications submitted by EU citizens and their family members, Luxembourg allows applications to be made by post, while the Netherlands allows applications to be submitted by post or online. In Luxembourg and the Netherlands, there is a relatively short waiting time of less than two weeks within which appointments can be secured for the purposes of submitting an application.

As regards information on the supporting documentation which is required, the national websites of France, Luxembourg and the Netherlands contain very detailed information on what documentation needs to be provided in the form of checklists. As is the case in Belgium, Luxembourg and the Netherlands accept supporting documents drawn up in English to be furnished without the need for an official translation.

As regards the issuance of residence documents, in the Netherlands and Luxembourg, EU citizens will be issued with a registration certificate on the same day that they apply in accordance with the system foreseen by the Citizens Rights Directive. Moreover, residence cards are on average issued to non-EU family members within three months of an application being submitted in the Netherlands.

As regards appeals, France, Italy, Luxembourg and the Netherlands all provide for administrative review processes in the event an application submitted by EU citizens and their family members for the registration of their residence results in a refusal, which also suspend deadlines for lodging judicial appeal proceedings (except in Italy). Where a judicial appeal is lodged, the ability of the national courts in France, Italy and the Netherlands to order specific remedial action should provide safeguards against further significant delay in decision-making following successful appeals thereby reinforcing the right to an effective remedy.

## Chapter 5: Policy recommendations for the current registration procedure

	Secretary of State for Asylum and Migration		Immigration Office	Municipalities
	Transposition issues	Implementation issues		
1.Preparatory phase		Align the Circular of 16 June 2016 with actual practice.		
		Include in the <b>new website on migration</b> , envisaged in the 2020 General Policy Note on Asylum and Migration, up-to-date and accurate <b>information on the registration formalities</b> .	Re-organize the website information of the Immigration Office in a logically structured and comprehensive manner.	Refer to the updated website of the Immigration Office for general information and documentary requirements about the registration procedure for EU citizens and their family members.
			Provide signposts on the website of the Immigration Office to other relevant organisations and services.	Provide signposts on the municipal websites to other relevant organisations and services.
				Specify on municipal websites the local particularities regarding the registration procedure of EU citizens and their family members.
2.Application phase		<b>Amend the Royal Decree on Immigration to allow the issuance of certificates of application (Annex 19/19ter) in electronic format.</b>	Amend the GemCom guidelines ("Syllabus") to provide guidance to municipalities on issuing certificates of application (Annex 19/19ter) in electronic format.	Invest in the <b>digitalisation of the first step</b> of the registration procedure, with attention to user-friendliness and effectiveness.  Keep submission in person possible for applicants who do not have access to the online system or are digitally illiterate.
			Amend the GemCom guidelines ("Syllabus") to ensure that the <b>instructions given to municipalities are fully compliant with the current legislation and case law</b> .	Align the registration process of the EU citizens and their family members to the current legislation and case law with respect to the correct category under which applicants are registered and other documentary requirements.
				Municipalities should not charge fees for the issuance of a certificate of application (Annex 19 or Annex 19ter), as this is contrary to the Citizenship Rights Directive.

	Secretary of State for Asylum and Migration		Immigration Office	Municipalities
	Transposition issues	Implementation issues		
3.Verification of domicile			Provide a <b>practical checklist</b> on how the verification of domicile has to take place, to make sure that this verification is undertaken in a uniform manner.	
				Ensure that the verification of domicile takes place <b>within 15 working days</b> , to avoid excessive delays in the registration procedure.
				Invest (further) in the <b>digitalisation</b> of the communication between the police and the municipality on the verification of domicile, with attention to user-friendliness and effectiveness.
				Guarantee the <b>right to be heard of applicants before a negative decision</b> on the verification of domicile is taken.
				Provide clear <b>information on the possibility to appeal a negative decision</b> on the verification of domicile.
4.Registration phase	Amend the Royal Decree on Immigration <b>to allow the issuance of a temporary registration certificate</b> (Annex 8ter) <b>in electronic format</b> .			
	Transpose Article 25(1) of the Citizens' Rights Directive.			
	Amend article 42 §1 of the Immigration law.			
	Revise the list of registered partnerships (legal cohabitation) <b>which are considered to be equivalent to marriage</b> in Belgium to ensure that the list is <b>up-to-date and based on transparent and objectively justified criteria</b> .			

	Secretary of State for Asylum and Migration		Immigration Office	Municipalities
	Transposition issues	Implementation issues		
4.Registration phase	Amend the Belgian rules to bring them into line with the CJEU case law by removing the provision on the automatic issuance of a residence card upon expiry of the six-month deadline for issuing residence documentation to non-EU family members.			
	Amend the Belgian rules to bring them into line with the CJEU case law on the residence right of primary carers of EU minors who remain in education and who are the children of former EU workers.			
			Amend the guidance from the Immigration Office, so that EU citizens and their family members are not removed from the population register, during the additional month which they are allowed to submit the necessary documents and during the entire time that an appeal may be pending.	
			Amend the guidance from the Immigration Office, to request municipalities to <b>inform EU citizens about the impact of a change of status</b> . Amend the guidance from the Immigration Office, to <b>allow a change of status beyond the first three months</b> , without requiring a full new application.	<b>Inform applicants about the impact of a change of status on their rights</b> , and invest in an online notification system to notify such changes.

	Secretary of State for Asylum and Migration		Immigration Office	Municipalities
	Transposition issues	Implementation issues		
4.Registration phase			Amend the guidance from the Immigration Office as to <b>include a distinction between civil status documents issued by the authorities of an EU country and those issued by the authorities of a non-EU country</b> as well as a clear indication that no legalisation or translation is required in respect of public documents issued in accordance with EU Regulation 2016/1191.	
			Ensure that the implementation of the Royal Decree of 12 June 2020 <b>does not increase the administrative burden placed on EU citizens and their family members</b> by requiring additional in-person visits by the applicant.	
				Invest in the digitalisation of the third step of the registration procedure, enabling the municipality to <b>issue a temporary registration certificate</b> (Annex 8ter) <b>in electronic format</b> , with attention to user-friendliness and effectiveness.
				Invest in <b>equipment</b> which enables the municipality to <b>check the authenticity of identity documents held by EU citizens</b> .
				Inform applicants that a change of status might impact their rights and refer them to a competent organisation for more information (e.g. Myria or another advisory body). Invest in an <b>online notification system</b> to notify such changes.

	Secretary of State for Asylum and Migration		Immigration Office	Municipalities
	Transposition issues	Implementation issues		
<b>5. Specific provisions on documentary requirements</b>	<b>Amend the Belgian legislation regarding the documentary requirements application to the registration formalities for jobseekers, to be in line with the interpretation of the CJEU on the registration of jobseekers and remove the obligation on jobseekers to have to prove the existence of “genuine chance of being engaged” when they first register.</b>			
			Clarify and specify on the website <b>obligations for EU citizens and their family members regarding the legalization and translation of their documents.</b>	
			Provide clear and detailed guidelines on <b>documentary requirements</b> (on the website and in the guidance to the municipalities) for family members of EU citizens as well as atypical workers.	Align the registration process of the EU citizens and their family members to the current legislation and case law, as to <b>documentary requirements</b> .
			<b>To the FPS Foreign Affairs:</b>  Further improve the webpages on the <b>legalization of public documents</b> , for instance regarding its reference to Regulation 2016/1991 on public documents.	

	Secretary of State for Asylum and Migration	Immigration Office	Municipalities
	Transposition issues	Implementation issues	
6.Permanent residence	Amend the Royal Decree on Immigration, to bring it in line with EU law requiring that a permanent residence document must be issued to EU citizens “as soon as possible”. A two month deadline would be more appropriate. To reduce processing times, transfer this competence to the communes.	Amend the Royal Decree, as to authorize municipalities to take decisions regarding applications for permanent residency within a shorter period of time, as this right is based on residency only.	
	Amend the Royal Decree on Immigration to allow the submission of an application for a permanent residence document to be made online and the issuance of certificates of application (Annex 22) in electronic format.		
	Amend the Royal Decree on Immigration to allow the issuance of a temporary permanent residence document (Annex 8quater) in electronic format.		
	Transpose the exemption to the general five-year requirement for acquiring permanent residence for the benefit of persons who become frontier workers or self-employed persons in another Member State and who retain their place of residence in Belgium.		

	Secretary of State for Asylum and Migration	Immigration Office	Municipalities
	Transposition issues	Implementation issues	
6.Permanent residence	Delete the Belgian rules providing that the five-year period is to be calculated from the date on which an EU citizen was registered on the register of pending applications, or from the date on which a certificate of application was issued to their non-EU family member.		
	Transpose Article 21 of the Citizens' Rights Directive.		
	Amend the Royal Decree on Immigration, as to authorise municipalities to take decisions regarding applications for permanent residency within a shorter period of time.		
		Ensure that the implementation of the Royal Decree of 12 June 2020 <b>does not increase the administrative burden</b> placed on EU citizens and their family members.	
			Invest in an online application system for the submission of applications for permanent residence.
			Allow applicants to submit their application for permanent residence two months before the expiration date of their EU/F card to ensure that applicants will be able to obtain their EU+/F+ card before their preceding EU/F card expires.

	Secretary of State for Asylum and Migration		Immigration Office	Municipalities
	Transposition issues	Implementation issues		
<b>7. Procedural safeguards and appeal rights</b>		<b>Re-institute the administrative review at the level of the Immigration Office.</b>		
			<b>Provide a first-line complaint system for applicants.</b>	
			<b>Provide signposts on the website of the Immigration Office to the websites of the legal aid services of the bar associations.</b>	<b>Provide signposts on the municipal website to websites of local bar association's legal aid services.</b>
				<b>Develop a protocol to ensure that procedural safeguards are aligned across Belgium.</b>
<b>8. General functioning of key actors in the registration phase</b>		<b>Provide additional human resources to the Immigration Office.</b>		
			<b>Make the guidance from the Immigration Office to the municipalities publicly available.</b>	
			<b>Digitalise the communication (in a GDPR-proof manner) between the municipalities and the Immigration Office as much as possible, with attention to user-friendliness and effectiveness.</b>	
			<b>Consult municipalities about the implications of law and policy changes at the municipal level.</b>	
			<b>Organize trainings for municipal caseworkers to further align practices.</b>	
				<b>Ensure the capacity of staff to deal with the complex nature and fast paced development of migration law and policies by requiring a grade B rank (administrative secretary).</b>

	<b>Minister for the Middle classes, The self-employed, SME's, Agriculture, Institutional Reforms and Democratic renewal</b>	<b>Minister for Pensions and Social integration and the FPS for Social Integration</b>	<b>Immigration Office</b>
<b>9.Impact of residence formalities on access to employment, conditions of employment, social security and fiscal benefits</b>	<b>Amend the Belgian rules on access to self-employment</b> in order to ensure that other family members covered by Article 47/1 of the Belgian immigration law and who are in possession of a residence card (F card) or permanent residence card (F+ card) are included among the categories of foreigners who are exempted from the need to hold a professional card in Belgium.		
		<b>Amend Belgian law on the right to social integration, as well as the Ministerial Circular of 5 August 2014</b> , in order to ensure compliance with the Citizens Rights Directive and Regulation 492/2011 on the free movement of workers and ensure full alignment with the judgment of the Belgian Constitutional Court.	
		<b>Amend Belgian law on residual social assistance</b> as to ensure full compliance with the Citizens Rights Directive.	
		<b>Provide clear guidelines and training towards the municipalities and public social assistance centres</b> with regard to the impact of the residence status on the right to social assistance and social integration.	
			<b>Include clear information and related online links</b> on the Immigration Office's website concerning the <b>exact rights and obligations</b> of EU citizens and their family members <b>during and after the registration process</b> with regard to employment, social security and fiscal aspects.
			<b>Amend the guidance</b> from the Immigration Office, so that EU citizens and their family members are not removed from the population register when a decision to refuse or terminate their right of residence (Annex 20 or 21) during the entire time that an appeal may be pending.
			Ensure that the <b>public social assistance centres</b> are <b>made aware of any change of status</b> by the Immigration Office.

	<b>Monitoring</b>	<b>Areas for further research</b>
<b>10. Recommendations to Myria</b>	Provide regular <b>input and feedback</b> to the Immigration Office to ensure that legislative and policy changes are correctly reflected on the Immigration Office's website.	Consider a separate study on the <b>use of languages</b> by municipalities in their interactions with EU citizens and their family members in particular, and migrants in general.
	<b>Monitor the progress</b> made by the Belgian authorities in implementing the above recommendations.	Consider a separate study on the <b>visa requirements imposed on non-EU family members</b> of EU citizens.
		Consider a separate study on the <b>registration of posted workers</b> .
		Consider a separate study on the process involved in the <b>verification of domicile</b> , to assess the potential for a more efficient and standardised procedure as well as to evaluate its compliance with Belgian legislation.
		Consider a study on the <b>right to an effective remedy</b> in case of a decision to refuse or terminate residence rights by analysing the judicial review procedure of the Council for Alien Law Litigation (CALL).
		Consider a <b>study on the experiences and perceptions of EU citizens and their family members</b> themselves, with regard to the registration formalities in Belgium.

## Chapter 6 - Towards an Immediate Registration System

The final chapter aims to explore what reforms could be undertaken to the rules relating to the registration of EU citizens and their family members drawing upon the findings and recommendations contained in the previous chapters. The objective of this chapter is to explore options for reform which can aid the federal government's commission in its task to overhaul the Belgian legal framework governing migration and replace it with a Code on migration.

The chapter begins by identifying the rationale for reform of the legal framework that underpins the registration system applicable to EU citizens and their family members. A window of opportunity for reform has opened up following the federal government's stated intention to begin work on instituting a Code on migration to replace the existing legal framework, which is further supported by the need to comply with the rulings of the Court of Justice in the *Diallo* and *G.M.A.* cases.

Four options are discussed to determine their feasibility. The first option involves maintaining the current legal framework while ensuring compliance with the *Diallo* and *G.M.A.* rulings. The second option would endow municipalities with enhanced decision-making while keeping the current registration process unchanged. The third option would involve replacing the current compulsory system with an optional registration system. The final option would consist in adopting an immediate registration system.

After examining the possible reform options, the most feasible option was considered to be the institution of an immediate registration system.

This is similar to the system in operation in Luxembourg. This is also the system that some of the municipalities which were interviewed during the course of the research have indicated should be contemplated in view of the delay of the Immigration Office in processing cases. This system would retain post-registration verification by the Immigration Office and would therefore be fully aligned with the Immigration Office's current enforcement priorities. The institution of an immediate registration system therefore presents itself as the most suitable and appropriate option for reform that would allow to make more judicious use of existing resources both at federal and municipal level.

The detailed operation and implications of the proposed reformed registration system was then examined further by reference to the various phases of the reformed registration process.

An immediate registration system would involve the issuance of residence documentation to EU citizens and their family members at the time of their registration. Such a system would incorporate the main aspects which are outlined below as part of an explanation of how it is foreseen that such a process would work in practice. The application process would allow for the digital submission of the application and supporting documentation but foresee a meeting in person at the time of retrieval of the residence card (EU card or F card).

EU citizens and their family members would need to register at their local municipality within three months of their arrival. This would involve an applicant having to present all supporting documentation at the time of submission of their application. The process would allow for an application to be submitted digitally or in person at the choice of the applicant.

In turn this presupposes that EU citizens and their family members have access to information and particularly access to a detailed listing of the documents which are needed to register. This information should be made available by the Immigration Office on its website, which will need to contain detailed step-by-step instructions on registration formalities. Ideally, this would take the form of an on-line assessment tool enabling EU citizens to identify under which category they should register and what documents are required for such registration. In addition, the website should provide a function

enabling an on-line registration application form to be generated which also allows for the required documentation to be uploaded.

Municipalities will need to ensure that their own websites provide clear practical information on how, when and where EU citizens may register and book appointments. The websites of the municipalities would then redirect to the Immigration Office's website as regards the substantive conditions to be met. EU citizens and their family members should moreover be able to contact municipalities in order to check what documents are required.

Based on detailed checklists developed by the Immigration Office, municipalities will then verify whether a person meets the conditions laid down in Article 7 of the Directive by reference to the detailed instructions provided by the Immigration Office. Complex cases could be referred back for an opinion which should be provided within two to three weeks.

Once municipalities have verified the documentation is in order, they would issue an electronic temporary registration certificate, pending the issuance of the electronic EU card or F card as the case may be, which should be issued within a month. An applicant would be issued with the temporary registration certificate at the time of their on-line application for registration. At this stage an applicant would be registered on the register of pending applications (*registre d'attente / wachtregister*) and issued with a personal identification number (*numéro de Registre national / Rijksregisternummer*). A copy of the documentation would be sent electronically to the Immigration Office together with a summary data sheet.

Municipalities would be given the power to refuse an application where an application is manifestly unfounded (for example, no documentation is provided demonstrating that an applicant is an EU citizen or the family member of an EU citizen) or in case of fraud or abuse. The Immigration Office would also have the ability to intervene and issue a refusal. However, prior to any refusal decision being taken, the person concerned must be afforded a right to be heard. Where an application is refused there should be the possibility of an administrative review by the Immigration Office. A subsequent right to judicial appeal would lie before the Council for Alien Law Litigation as is presently the case.

At the time of the issue of the temporary registration certificate, municipalities will then proceed to verify the domicile of an applicant within 15 days in line with current legislation. This should make full use of digitalisation (such as the WOCODO application) to ensure the verification of domicile is undertaken in a timely manner by the local police.

In case the verification of domicile results in a negative report, a municipality would have a right to refuse an application, subject to an applicant first being heard. There would be a right to a first-line administrative review before the municipality. In addition, in line with existing legislation, there would be a right of administrative review as regards the negative report by the Minister of the Interior and a subsequent right of judicial review before the Council of State.

In the event that the verification of domicile is positive, the applicant would then be invited to visit the municipality to obtain their electronic EU card or F card as the case may be. The person's details would then be entered into the register of foreigners.

After five years of continuous legal residence in Belgium, EU citizens and their family members would be able to apply for a permanent residence card by submitting an application online or by post. Contrary to the current system where an application for permanent residence needs to be forwarded to the Immigration Office for approval, the municipality would take a decision after having verified continuity of residence. A decision on the permanent residence application would need to be made within one month and can be introduced two months in advance. Where a positive decision is made, the applicant would be invited to visit the municipality to retrieve their electronic EU+ card or F+ card as the case may be.

The municipality would have the possibility of refusing applications which do not meet the legal requirements for permanent residence. However, prior to a refusal decision being taken, the person concerned must be afforded a right to be heard. Where an application is refused there should be the possibility of an administrative review by the Immigration Office. A subsequent right to judicial appeal would lie before the Council for Alien Law Litigation.

The chapter concludes by making some brief remarks to confirm that the institution of an immediate registration system would not alter the declaratory nature of residence documentation and is not anticipated to have any impact on connected areas including access to employment and access to social rights, aside from the ability of non-EU family members to be able to prove their right of residence more swiftly than is currently the case. Some final remarks are also made as regards the verification of residence rights by the Immigration Office.

The chapter closes by inviting further research into the system of appeals in residence cases instituted before the Council for Alien Law Litigation to determine if it provides an effective remedy and whether there is also a need for further reform.