

Business immigration: new substantive rules in the Flemish Region as of 1 March 2021



The Decree of the Flemish Government amending the Decree of the Flemish Government of 7 December 2018 implementing the Act of 30 April 1999 on the employment of foreign workers was published on 8 February 2021. The new rules enter into force on 1 March 2021. This newsflash contains an overview of the most important amendments.

With the Decree of 8 January 2021, the Flemish Region introduces more flexibility into its migration policy so that employers have a wider range of options for employing third-country nationals in Flanders.

The most important amendments can be summarised as follows:

1. Modification to the conditions concerning legal residence

The general principle is that an employee must be abroad to obtain a work authorisation. There are some exceptions to this rule for, among others, highly qualified employees who can, under certain conditions, apply for a single permit from their legal residence in Belgium.

In its Decree of 8 January 2021, the Flemish Government adapted the definition of legal residence to the new conditions of the federal government.

As a result, third-country nationals can only file an application in case of a legal short stay or a long stay as a student or researcher. Other categories of third-country nationals in long stay (such as sponsors for family reunification) will no longer be able to file an application for a single permit in Belgium and will have to file their application in the country where they are legally residing.

2. Work permit for a period of maximum 90 days within a period of 180 days

Today, third-country nationals can only apply for a work permit for a continuous employment period in Belgium of maximum 90 days.

As of 1 March 2021, a continuous period of 90 days is no longer necessary. It may also be an employment requiring more than one visit amounting to maximum 90 days within a period of 180 days. This amendment will allow third-country nationals to travel to and from the Schengen area several times for work purposes.

3. Information obligation in case of termination of the employment contract and modification to the labour conditions

Today, the employer must inform the competent authority in the event of termination of the employment contract, and an application must be filed for a new work authorisation in the event of a significant change in working conditions that has consequences for the validity of the work authorisation.

As of 1 March 2021, during the period of validity of the fixed-term work authorisation, the employer must inform the competent authority if the employment contract is terminated or in the event of a significant change in working conditions that could have consequences for the validity of the authorisation. The competent authority will then indicate within 15 days whether a new work authorisation must be applied for.

4. Specification of the rules concerning renewal

As of 1 March 2021, an application for renewal will no longer be accepted automatically, but will be assessed against the applicable criteria for work authorisation.

An exception to this rule is provided for employees who have obtained a work authorisation based on a shortage profession or an individual labour market research. For these employees an assessment against the list with shortage professions or labour market research will no longer be necessary, when applying for renewal of the work permit or the single permit.

5. Clarification of the condition of Flemish user in case of secondment

In its Decree of 8 January 2021, the Flemish Government clarifies that a work authorisation may only be issued when the employer, or in case of secondment, the “user”, has a registered office or an establishment unit in the Flemish Region. By way of exception, an authorisation may still be issued when the employee is subject to Belgian social security.

Through this amendment, the Flemish Government wants to exclude that an employee is seconded to Flanders by his foreign employer without the presence of a Belgian “user”.

6. Update of the VanderElst exemption

As a result of the update of the VanderElst exemption, European temporary agency offices may

temporarily second foreign temporary agency workers to the Flemish region without work authorisation if a number of conditions are met (of course, provided that the Flemish legislation on temporary agency work is complied with).

Through this amendment, the Flemish Government adapts to the European case law on free provision of services and the use of temporary agency workers within Europe.

7. Update of the refusal grounds

The current refusal grounds are split into a part on mandatory refusal grounds and a part on optional refusal grounds.

8. Other changes

As of 1 March 2021:

- it will also be possible to apply for a work authorisation for a shortage profession from a legal residence in Belgium and not only when the employee is still abroad;
- the exemption or work authorisation to attend training at a Belgian office of a multinational group will be extended to delivering training.