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Belgian National Contact Point

TEMPORARY AND CIRCULAR MIGRATION IN BELGIUM:

EMPIRICAL EVIDENCE, CURRENT POLICY PRACTICE AND FUTURE OPTIONS

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The views expressed in this study are solely those of the authors.
They do not necessarily reflect any institutional or government position.

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Executive Summary

In this study we shall examine the existence of, the policy on and the future options of temporary and circular migration in Belgium. Methodologically this raises the question of what is to be understood exactly under ‘temporary’ and ‘circular migration’. At national level there is no noticeable preference for one or several definitions of those concepts. Therefore, a broad definition, in accordance with the *EMN Glossary*, was used, thus not limiting the study to specific categories of persons like (highly skilled) workers or researchers.

At the moment, Belgium has no specific policy on circular migration. The current public discourse on migration is dominated by issues like the reception of asylum seekers, the integration policy and the regularization of irregular migrants. With regard to labour migration, the government decision of 1 August 1974 is still in force, setting stricter conditions on new labour migration to occur. However, facing an ageing population and shortages on the labour market, especially employer organisations have pleaded in recent years for a flexible approach on labour migration. As stated in the recent EMN study on “Satisfying labour demand through migration”, several political parties opened up their programs to limited forms of economic migration. Several political parties are denying the need to open up the labour market to new migrants, pleading alternatively for a more successful activation of the unemployed persons already present in Belgium. The political differences regarding the topic remain considerable. At the moment, new labour migration is possible only on limited scale, concerning mostly highly skilled persons (for instance managers, academics, artists, sportsmen) and several bottleneck jobs.

In this debate, the economic needs have been more central than the temporary nature or return component of temporary or circular migration. The adequate respect of the workers’ social rights have also received particular attention and concerns have been raised with regard to the existing social competition and the workers’ inclination to work against bottom legal conditions. The same concern has been expressed about posted workers within the EU, which constitute an important category of temporary workers in Belgium.

Besides the political context, also historical experiences might explain the reluctance of national authorities to initiate or promote new projects of temporary and circular migration. The so called ‘guest workers’ programs, which already started in the late 1940s, were intended by the Belgian government to be temporary. In the beginning of the 1990s, prominent migrant movements of mostly Eastern-European citizens to the country mainly occurred in an informal and often irregular manner. In both examples, considerable numbers of migrants remained in Belgium. However, forms of temporary and circular migration, managed by the authorities, are present. In early 2005, IOM in Belgium started the MIDA Great Lakes Project to provide experts from the Democratic Republic of Congo, Burundi and Rwanda with a more active role in the development of their country of origin through temporary assignments, including transfers of skills, knowledge and tools.

Moreover, the legislative and administrative tools to facilitate temporary and circular migration exist. In 2006, a law amendment declared the issuing of temporary residence permits for third-country nationals as standard, adjusting the law to the existing administrative procedure. The

current immigration legislation already allows some forms of temporary or circular migration for specific categories like students, workers and researchers who have a specific residence status. Other categories can obtain a residence permit upon application to the Minister or the Immigration Office which exercise discretionary powers to grant residence statuses. Furthermore migrants residing in Belgium can maintain their residence status in Belgium while returning from time to time, and even for longer periods, to their country of origin. The return and re-entry policy is rather flexible for absences up to one year.

In terms of data, it is difficult to obtain an accurate and complete overview of temporary and circular migration. This may be inherent to the object of the study. Initial temporary migration may, as a result of interaction in the country of residence, change into permanent immigration and eventually into the acquisition of Belgian citizenship. Temporary return migration may also occur as independent initiative and therefore remain out of sight. In 2008 and 2009, respectively around 30% and 20% of all residence permits issued (family reasons included) were permits with a temporary validity (less than 12 months). This mainly concern students, workers and their family members. However, it is not possible to deduce from the data that these migrants return or not.

The data on labour permits B show that the three most important categories are highly-skilled workers, managers and interns. Seasonal workers from the CEE new Member States of the EU occupy an important position in the context of intra-European mobility. With regard to seasonal workers in horticulture and agriculture, available data show that only a small percentage of these workers are non-nationals. Among them, third country nationals form a minority (below 10%). Posted workers constitute an important group of temporary workers in Belgium and are more numerous than workers holding a labour permit. The share of third country nationals is below 10%, although their absolute numbers are also higher than the number of third country nationals holding labour permits.

This study is a first attempt to gather data, information and evidence on the issue of temporary and circular migration in Belgium. In order to get further insight into policies on and practices of temporary and circular migration, a number of questions relating to the understanding, obstacles, incentives, characteristics and evaluation of these forms of migration should be answered, requiring further research on the social, economic, political and legal issues they raise.

I. INTRODUCTION: PURPOSE AND METHODOLOGY

The EMN Steering Board approved the selection of a study on *Temporary and circular migration: empirical evidence, current policy practice and future options in EU Member States* as part of the EMN Work Programme 2010. The study focuses on third-country nationals. The aim of the study is to understand the characteristics of temporary labour migration and of circular/repetitive migration patterns of third-country nationals, to review and analyse existing statistical data and empirical evidence and to analyse policy preferences, convictions and conceptualisations of political actors, the research community and other stakeholders on temporary/circular migration, and to discuss policy options both for the national and the EU level.¹

1.1. METHODOLOGY

This report will focus on the Belgian approach to circular and temporary migration. This study was conducted, undertaking desk research and carrying out a series of interviews with respondents from governmental and non-governmental organisations at the national and supranational level.

This method has shown that the available data and knowledge on temporary and circular migration is dispersed between many different actors. This follows from the federal structure of the Belgian state organisation. The federal government has jurisdiction over immigration: access to, residence in and removal from the country. It also regulates access to the labour market for migrant workers and social security. Elements of economic policy come under the jurisdiction of the three regional governments (Flanders, Brussels and Wallonia); the regional administrations also grant labour permits. Within each level of government, a further distribution of powers exists between government departments and agencies. Furthermore, in matters of return migration collaboration with external partners like IOM and private organisations exists.

1.2. DEFINITIONS

General definitional issues

Generally speaking, *temporary migration* refers to a single movement from a country of origin and then limited stay in a country of destination. *Circular migration* may be considered in the context of a *back-and-forth movement* of migrants between the country of destination and the country of origin, which is enabled by, for example, simplified admission/re-entry procedures for this type of migrants. Circular migration can be one-shot (i.e. an emigration followed by a return migration) or recursive (i.e. a serial form of human mobility, whereby a person leaves and returns to his country of origin several times in his life). Furthermore, it can be spontaneous or managed by public policy, primarily that of receiving states. Administrative and material incentives may enhance circular migration. But also sanctions (generally expulsions) can be imposed in case of abuse.²

¹ A. Wiesbrock and H. Schneider, *Circular Migration and Mobility Partnerships, Briefing paper prepared for the LIBE committee*, Brussels, EP DG Ipol, 2009, <http://www.ceps.eu/system/files/old/circular.pdf>, p. 1.

² F. Pastore, *Circular migration. Background note for the meeting of experts on Legal Migration (Rabat, 3-4 March 2008)*, 2008, http://www.dialogueuroafricanmd.net/documents/Circular_Migration_Dr_Ferrucio_Pastore.pdf, p. 4.

Circular and temporary migration is being discussed worldwide in terms of effective migration management, as well as potential contribution to development. These discussions come against the backdrop of changing patterns of migration around the world and the need to offer a credible alternative to illegal immigration. Circular migration may, if well managed, help to match the international supply of and demand for labour, thereby contributing to a more efficient allocation of available resources and to economic growth.³ However, circular migration also poses certain challenges: if not properly designed and managed, migration intended to be circular can easily become permanent and, thus, defeat its objective.⁴ Furthermore, case studies show that the consequences of badly managed circular migration can also be contra productive for the migrants themselves.⁵

Although it has appeared relatively recently in European policy documents, the concept of circular migration was first introduced in anthropological and demographic literature on urbanization, rural development and internal migration in developing countries in the 1960s to identify seasonal or periodic migration for work, survival or as life-cycle process. Labour economists and city planners took up the term in the 1980s and 1990s to describe the process of leaving and then returning to one's place of origin. Sociologists and anthropologists have shown that the phenomenon of circular migration in the sense of repeated movements is even more common than return or onward migration and constitutes a customary practice of contemporary migrants.⁶

Over the past decade policy makers have referred to circular migration not only as a spontaneously occurring phenomenon, but rather as a matter of policy intervention. This adds an aspirational element to the descriptive definition: circular migration is seen as mutually beneficial and voluntary.⁷

Conceptually, circular migration is based on a continuing, long-term, and fluid relationship among countries that occupy what is now increasingly recognized as a single economic space. The goal of policy initiatives is not to encourage circular migration, per se, but to foster a type of circular migration that is ultimately beneficial to the migrants, their families, and their countries of origin and destination.⁸ Opinions on the scope of this definition differ. Agunias and Newland include both permanent and temporary migrants returning either permanently or temporarily. This makes circular migration a more complex phenomenon than temporary migration; it includes a variety of

³ See amongst others: R. Skeldon, *Managing Migration for Development: Is Circular Migration the Answer?* In: The Whitehead Journal of Diplomacy and International Relations, Winter/Spring 2010, p. 21-33

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions on circular migration and mobility partnerships between the European Union and third countries, COM(2007) 248 final, p. 8.

⁵ For example: F.D. Bean and M. Tienda, *The Hispanic Population of the United States*, New York 1987 and F.D. Wilson and M. Tienda, *Migration, Work and Well-Being of Mexicans, Puerto Ricans and Cubans; Evidence from Recent Census Data*, (Madison 1988): Tienda argued that circular migration might have contributed to a deterioration of several socio-economic indicators in the case of Puerto Rican workers (receiving state: United States of America).

⁶ See the classical study of J. DaVanzo, *Repeat Migration in the United States: Who Moves Back and Who Moves on?*, in: The Review of Economics and Statistics, Cambridge Mass., Vol. 65, 1983, p. 552-559; K. Espinosa, D. Massey, *Undocumented Migration and the Quantity and Quality of Social Capital*, in: *Soziale Welt*, Vol. 12 (1997), p. 141-162; T.-C. Wong, J. Rigg (Ed.), *Asian Cities, Migrant Labor and Contested Space*, New York 2011

⁷ E. Petzl, *Circular migration schemes in the European Union Member States: Learning from the German and Austrian Guest Worker Programs of the 1960/70s*, Florence, EUI-CARIM, 2010, http://cadmus.eui.eu/bitstream/handle/1814/14050/CARIM_ASN_2010_45.pdf?sequence=1, p. 3.

⁸ D.R. Agunias and K. Newland, *Circular Migration and Development: Trends, Policy Routes, and Ways Forward*, Washington DC, MPI, 2007, http://www.migrationpolicy.org/pubs/MigDevPB_041807.pdf, p. 2.

migration forms and types of return.⁹ Fargues offers six criteria that make migration circular: it is renewable, circulatory (offers full freedom between host and source country during each specific stay), legal, respectful of the rights of migrants, managed in such a way as to match labour demand in one participating country with labour supply in another country. Additional criteria like the enhancement of migrants' skills, skill transfers to countries of origin and mitigation of the negative consequences of the brain drain, may apply.¹⁰

Newland concludes that overall there is no formal definition, either legal or administrative, of circular migration, yet. The term often means different things to different people and some states question the need for a common, formally agreed definition of what should be a flexible, adaptable policy instrument. However states negotiating agreements or implementing policies that incorporate circular migration need a common understanding of what is meant by the term. On a descriptive level, most contemporary working definitions of circular migration involve four dimensions: spatial (place of origin and place of destination), temporal (from short-term to life-cycle moves), iterative (repetition) and developmental. Many of the recent attempts to define circular migration build policy objectives into the definitions.¹¹ To Petzl, finding a common definition of circular migration depends on finding answers to a number of questions: How far does a migrant have to move to actually count as a circular migrant? For how long must he or she remain in a country? How many cycles are necessary for migration to count as circular migration?¹²

European Union

In its 2007 Communication on mobility partnerships between the European Union and third countries,¹³ the Commission indicated that mechanisms that facilitate circular migration can mitigate brain drain from the countries of origin. In addition incentive measures to support the return of temporary or seasonal migrants and to foster effective circularity of migration, may help countries of origin harness the skills and other forms of social capital of returnees or circular migrants and mitigate the impact of brain drain.¹⁴ Hence, circular migration may result in a 'triple win': for the migrant, for the country of destination and for the country of origin.

⁹ D.R. Agunias and K. Newland, *Circular Migration and Development: Trends, Policy Routes, and Ways Forward*, Washington DC, MPI, 2007, http://www.migrationpolicy.org/pubs/MigDevPB_041807.pdf; see also E. Petzl, *Circular migration schemes in the European Union Member States: Learning from the German and Austrian Guest Worker Programs of the 1960/70s*, Florence, EUI-CARIM, 2010, http://cadmus.eui.eu/bitstream/handle/1814/14050/CARIM_ASN_2010_45.pdf?sequence=1, p. 4.

¹⁰ P. Fargues, *Circular migration: Is it relevant for the South and East of the Mediterranean?*, Florence, EUI-CARIM, 2008, www.eui.eu/Personal/fargues/Documents/CARIM_AS%26N_2008_40.pdf, p. 2.

¹¹ K. Newland, *Circular Migration and Human Development*, UNDP Human Development, UNDP, 2009, http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_42.pdf, p. 8-10.

¹² E. Petzl, *Circular migration schemes in the European Union Member States: Learning from the German and Austrian Guest Worker Programs of the 1960/70s*, Florence, EUI-CARIM, 2010, http://cadmus.eui.eu/bitstream/handle/1814/14050/CARIM_ASN_2010_45.pdf?sequence=1, p. 9.

¹³ Mobility partnerships aim to provide the overall framework for managing various forms of legal movement between the EU and third countries. Such partnerships are entered into with third countries committed to fighting illegal immigration and that have effective mechanisms for readmission.

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions on circular migration and mobility partnerships between the European Union and third countries, COM(2007) 248 final, p. 7.

According to the *European Migration Network Glossary*¹⁵ temporary migration is defined as “migration for a specific motivation and/or purpose with the intention that afterwards there will be a return to country of origin or onward movement”.

The *Glossary* identifies two main forms of circular migration which could be most relevant in the EU context:

(1) *Circular migration of third-country nationals settled in the EU*

This category of circular migration gives people the opportunity to engage in an activity (business, professional, voluntary or other) in their country of origin while retaining their main residence in one of the Member States. This covers various groups, for instance:

- business persons working in the EU and wishing to start an activity in their country of origin (or in another third country); and
- doctors, professors or other professionals willing to support their country of origin by conducting part of their professional activity there.

(2) *Circular migration of persons residing in a third country*

Circular migration could create an opportunity for persons residing in a third country to come to the EU temporarily for work, study, training or a combination of these, on the condition that, at the end of the period for which they were granted entry, they must re-establish their main residence and their main activity in their country of origin. Circularity can be enhanced by giving migrants the possibility, once they have returned, to retain some form of privileged mobility to and from the Member States where they were formerly residing, for example in the form of simplified admission/re-entry procedures.

This category covers a wide array of situations, spanning the whole spectrum of migrants, including:

- third-country nationals wishing to work temporarily in the EU, for example in seasonal employment;
- third-country nationals wishing to study or train in Europe before returning to their country;
- third-country nationals who, after having completed their studies, wish to be employed in the EU (for example as trainees) to acquire professional experience which is difficult to obtain at home, before returning;
- third-country researchers wishing to carry out a research project in the EU;
- third-country nationals, who wish to take part in intercultural people-to-people exchanges and other activities in the field of culture, active citizenship, education and youth (such as, for example, training courses, seminars, events, study visits);
- third-country nationals who wish to carry out an unremunerated voluntary service pursuing objectives of general interest in the EU.

¹⁵ European Migration Network, *Asylum and Migration Glossary. A Tool for Better Comparability*, 2010, <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=117>.

Belgium: legal framework and historical background

a) Legal framework

The terms “circular migration” and “temporary migration” are not explicitly used in the Belgian legislative framework on immigration. However, this does not mean that these forms of migration are unaccounted for. Under the provisions of the Act of 15 December 1980 on entry, stay, settlement and removal of aliens (hereafter: the Aliens Act)¹⁶ a certain degree of mobility back and forth between Belgium and a third country is possible.

Firstly, the Aliens Act contains general provisions on residence in Belgium which are defined in terms of length of the stay, regardless of the purpose for the temporary visit and stay. Under these provisions, temporary and circular migration is possible. The length differs between a short-term stay for up to three months, temporary residence up to five years and long-term and more permanent settlement to be acquired after five years. As a general rule, residence permits are granted for a limited period in time; the temporary nature – at least in theory - of migration is an underlying concept.

Secondly, the Aliens Act defines specific categories of migrants, like students, migrant workers and researchers, who are granted a right of temporary residence in Belgium, thus recognizing that such short-term circulation may have a beneficial impact on the economic and cultural development at both poles of such mobility.

The Aliens Act, thirdly, includes provisions allowing third country nationals to remain outside Belgium and thus allowing them to return to their country of origin for a certain period of time, without losing their Belgian residency states.

b) Historical background

Besides the legal framework, circular and temporary migration is in Belgium a reality characterizing migrant movements since many years and the historical experiences should be considered whilst discussing the concept or/and developing specific projects. The labour migration of mainly Italian,¹⁷ Turkish¹⁸ and Moroccan¹⁹ citizens, beginning already in the late 1940s with bilateral agreements between Belgium and the countries of origin was intended to be temporary. The commonly used term “guest workers” clearly signaled this intention. Also the migrants themselves perceived their

¹⁶ Act of 15 December 1980 on Entry, Stay, Settlement and Removal of Aliens, Belgian State Gazette 31 December 1980 (hereafter: Aliens Act).

¹⁷ See amongst others: A. Rea, *les immigrés italiens de Belgique des Européens socialement intégrés en quête de citoyenneté politique*, in: P. Magnette (Ed), *De l'étranger au citoyen. Construire la citoyenneté européenne*, Brussels 1997, p. 77-100

¹⁸ Between 1963 and 2003 a total of about 115.000 Turkish citizens migrated to Belgium in the framework of labour migration or family reunification. Until 2003, about 50.000 Turkish citizens applied for the Belgium citizenship. <http://www.politicsinfo.be/turken-vieren-veertig-jaar-turkse-gastarbeid-t12945.html>

¹⁹ See amongst others: H. Boussetta and M. Martinello: *L'immigration marocaine en Belgique: du travailleur immigré au citoyen transnational*, Louvain-la-Neuve 2004

movement as temporary – a common perception of migrants described in the literature by the concept of the ‘myth of return’.²⁰

In the retrospective view, the general public and the scientific world somewhat neglect the fact that many of these migrants indeed returned to their country of origin.²¹ This is also the fact in the case of the in several aspects atypical Congolese migration to Belgium, which started with the independency of the country in 1960 and the launch of programs to foster university studies among members of the national elite.²² In all these cases, a complex personal migrant story often developed including repeated or even constant back and forth movements.

However, the majority of these different groups of migrants did not leave Belgium like intended. For the development of future circular migrant projects this fact is essential and may induce certain reluctance of the authorities to organize or promote specific programs of circular migration in recent times.

Since the 1990s, new immigration movements have emerged as a result of the integration process of Europe. In the Belgian context the migration of Polish citizens and, more recently, of Bulgarian and Rumanian nationals is of considerable importance.²³ These new migrant movements are characterized by their high mobility, illegal stay and labour and the high number of migrants. Especially the Polish migration to Belgium is a prime example of circular migration although it was of illegal nature in the beginning: in 2003, only 2.120 Polish citizens officially lived in Brussels but it was estimated that the community size amounted to 30-35.000 individuals in the capital and about 60.000 persons throughout Belgium.²⁴ Group migration via informal local networks has been also in this case predominant: the vast majority of the Polish migrants arrived from the north-eastern provinces of Poland, especially from Podlaskie. In the case of the Polish, Rumanian and Bulgarian migration, circular movements are the rule and not the exception.

Case Study

The town of Siemiatycze, called by locals ‘Mała Belgia’ (Little Belgium), is a good example of group migration and eligible for the examination of long-term consequences of circular migration. Migration from this town to Belgium already started in the 1980s, when the local public transport enterprise (PKS) organized a regular bus service to Brussels. Before the accession of Poland to the European Union in May 2004, about 3.000 individuals of the town of around 15.000 inhabitants

²⁰ See amongst others: G. Leavey, S. Sembhi, G. Livingston (2004): *Older Irish Migrants Living in London: Identity, Loss and Return*, in: Journal of Ethnic and Migration Studies, 30:4, p. 763-779

²¹ See amongst others A. Constant, K.F. Zimmermann, *Circular Movements and Time Away from the Host Country*, IZA Discussion Paper No. 960 (2003); Available at: <http://ftp.iza.org/dp960.pdf>;

²² See: Q. Schoonvaere, *Etude de la migration Congolaise et de son Impact sur la présence Congolaise en Belgique: Analyse des principales données démographique*, a study of the Centrum voor Gelijikheid van Kansen en voor Racismebestrijding, and Groupe d'étude de Démographique Appliquée (UCL), June 2010; http://www.diversite.be/?action=artikel_detail&artikel=362

Concerning the migration of foreign students to Belgium see: F. Caestecker, A. Rea (Ed.); *Migreren voor een diploma, studenten van buiten de Europese unie aan het Belgisch Hoger Onderwijs*, Louvain 2009

²³ See: Centrum voor Gelijikheid van Kansen en Racismebestrijding (2006) *Analyserapport: Migratiestromingen uit de nieuwe lidstaten van de Europese Unie naar België. Trends en vooruitzichten*.

http://www.briobrussel.be/assets/andere%20publicaties/0602_migratie.pdf; see also: M. Martinello, A. Rea, Ch. Timmerman (Ed), *Nouvelles migrations et nouveaux migrants en Belgique: rapport final=Nieuwe Migraties en Nieuwe Migranten in België: eindrapport*, Gent 2009

²⁴ See. E. Kuzma, *Les immigrés Polonais à Bruxelles. Analyse et description du phénomène*, ULB 2003

lived and worked in Brussels, commuting back and forth by using daily bus services (public and private) or by own car. Due to the fact that restrictions on access to the Belgian labour market remained in force for citizens from 8 eastern EU MS until 1 May 2009, the migrants developed an informal and partly illegal circuit, including their own goods, transport and employment services. In the beginning, mostly single family members left for Brussels and often found illegal work mainly in the construction sector and in private cleaning services.²⁵ On the one hand the city of Siemiatycze considerably benefited from the migration movement via remittances, often invested in real estates and in recent years also in local businesses. On the other hand the social costs of this unregulated migration movement became quickly apparent, mainly resulting from the disconnections of family bonds. Like the director of the local secondary school No. 1 in Siemiatycze explained in an interview with the journal 'Polityka' in 2000, the percentage of pupils, left by their migrated parents in the custody of grand parents, other family members and in single cases even of neighbours amounted in her school to about 20%. Complaints about "*children who have money but no family*", showing behaviour considered as problematic and the import of drugs from Belgium via migrants and bus entrepreneurs were frequently expressed by the local police and by inhabitants.²⁶

Definitions used in the study

For the purpose of this study:

Temporary migration will be understood as migration for a specific motivation and/or purpose by third country nationals with the intention that afterwards there will be a return to the country of origin or onward movement²⁷.

Circular migration, which is viewed as an evolving concept, will broadly be understood as a back-and-forth movement of third country nationals between two countries, regardless if their residence status in the host country is a temporary or more permanent one, regardless whether there is one period abroad or successive periods of time abroad and in the country of origin and regardless whether the movement occurs spontaneously or is facilitated.²⁸

²⁵ The percentage of women migrants among the recent Polish migration to Belgium is considerably and forms a research field of its own. See: A. Gryzmala-Kaslowska (2001), A Challenge of Transition: Polish Migrant Women in Brussels, in: *Ethnographica* 1, p. 46-55; E. Kuzma (2005), Kobiety – nielegalne immigrantki z Polski w Brukseli. Zjawisko i problemy (Women – Illegal Polish Migrants in Brussels. Phenomenon and Problematic), in: *Migracje i społeczeństwo*, t. 10: Kobiety i młodzież w migracjach, Polish Academy of Science SPAN), p. 62-86

²⁶ Jeśli Siemiatycze, to jesteśmy w Belgii (If we go to Siemiatycze, we are in Belgium), *Polityka*, No. 50 (2275), 12.09.2000, p.96/97; <http://archiwum.polityka.pl/art/belzyk-podlaski,366908.html>; See also: Local newspaper 'Głos Siemiatycz' (Voice of Siemiatycze): *Brukselczycy z Siemiatycz* (Bruxellois from Siemiatycz), 23.04.2004, <http://www.wysokieobcasy.pl/wysokie-obcasy/1,96856,2030888.html>

²⁷ See "Asylum and Migration Glossary", European Migration Network, January 2010, p.104

²⁸ Belgium registers irregular migratory movements, which have led some to consider specific irregular migration patterns as forms of circular migration.

II. NATIONAL APPROACH TO CIRCULAR AND TEMPORARY MIGRATION

2.1. NATIONAL VISION, POLICY AND PROGRAMS

Circular migration and temporary migration have not been prominent themes in discussions on Belgian migration policy. Hence, a comprehensive and fully developed vision on their possible role in migration is lacking. In recent times, public debate, policy and legislative action have predominantly focused on other forms of migration like asylum, family reunification or regularization of irregular migrants.

2.1.1. Political Parties and Social Partners

The possibility of attracting (new forms of temporary) economic migration to Belgium has been the subject of some discussion among political parties, social partners and NGOs. The differences in approach between not only political parties but also between labour unions and employer organisations have hindered the development of a general policy in this field, especially when it comes to third country nationals.

As set out in another EMN study,²⁹ an analysis of the stances taken by the political parties in their election programmes for the last federal elections of 13 June 2010, shows that the Flemish-speaking political parties appear to have opened up to more economic migration, while the French-speaking political parties stress the importance of social, humanitarian, developmental and environmental aspects besides economic ones.

The Flemish Christian Democratic Party (CD&V) accepts labour migration from third countries outside the EU only after an activation of the available unemployed workforce and an exploration of the EU labour reserve. Economic migration from outside the EU is complementary to these two measures, as a way to solve shortages within the Belgian labour market. The Flemish Nationalist Party (N-VA) has a similar stance: activation, community preference and filling up bottleneck jobs; permanent residence permit should only be granted after five years of residence and work. For the Flemish Liberal Party (Open VLD) economic migration should gradually become the principal channel of migration. Labour migration should be available for all those who want to take up bottleneck jobs. Additionally, residence documents for foreign business people and investors should be made more easily available. The Flemish Green Party (Groen!) is more critical of immigration that is solely geared towards Belgium's economic use. The party proposes to establish a quota for migration based on economic, social and humanitarian criteria. The Flemish Socialists (SP.A.) did not include anything in their last election programme regarding labour migration, except for the proposal to renegotiate the bilateral agreements with Turkey, Algeria, Morocco and Tunisia within the framework of the fight against marriages of convenience.

²⁹ European Migration Network, Belgian Contact Point, *Satisfying Labour Demand through Migration in Belgium*, Brussels, 2010, <http://emn.sarenet.es/Downloads/download.do;jsessionid=47F84DF0CDDDB41A3FFB86913182C12FA?fileID=1116>, p. 16-19.

On the French-speaking side, the Socialist Party (PS) held that the phenomenon of migration cannot be reduced to managing migration flows on the basis of essentially economic criteria, without taking into account the development of countries in the developing world. The party prefers to address immigration by working towards a fairer global economic system. With the exception of a call to ratify the UN Convention on the Rights of Migrant Workers and their Families, the programme does not mention economic migration. The French-speaking Green Party (Ecolo) also considers current immigration politics as too utilitarian in favour of economic gain for the receiving countries. Ecolo's vision integrates immigration for social, economic, humanitarian and environmental reasons via a new immigration channel at EU level. Until such a new instrument is created, Ecolo favours the development of a Belgian legal framework that allows immigration on the basis of economic, social and humanitarian reasons, linked to the individual's situation in the country of origin. Meanwhile, citizens of all new Member States should have immediate access to the Belgian labour market, labour permits should be given to anyone with a residence permit in Belgium and the interests of the countries of origin, the migrants as well as the receiving country should be taken into account. The French-speaking Christian Democratic Party (CDH) focuses its migration proposals on increasing the humanitarian aspects of immigration: the regularization of undocumented migrants and improvement of the asylum procedure. The Liberal Party (MR) is the only French-speaking party that explicitly proposes opening up a new migration channel, namely, economic migration, to address the needs of the labour market and to combat illegal labour.

Although the employer organisations and labour unions agree that a labour migration policy should be on the political agenda,³⁰ their visions differ as well.

Employer organisations have advocated for increased labour migration and have especially pleaded for removing labour migration restrictions regarding the new EU Member States. The Federation of Enterprises in Belgium (VBO-FEB) supports flexible economic migration as a response to evident shortages in the labour market for highly skilled as well as lowly skilled workers. This is seen as a necessity in the light of the demographic evolution and the ageing Belgian population. At the same time, existing unemployment, discrimination and irregular work should be countered.³¹ For the Organisation for the Self-Employed and SMEs (UNIZO) a distinction must be made between a short term and long term approach. Existing labour market shortages can be dealt with by appealing to migrants already present in Belgium (and a more active hiring policy by the employers towards this category of workers), interregional mobility and irregular migrants. In the long term, new economic migration should be possible for both highly and lowly skilled workers. Explicit reference is made to temporary migration, with a possibility of taking financial gains back to the country of origin afterwards.³²

³⁰ Koning Boudewijnstichting and Centrum voor Gelijkheid van Kansen en voor Racismebestrijding, *Welk economisch migratiebeleid voor België? Verslag van drie debatten*, Brussels, 2009, http://www.diversiteit.be/diversiteit/files/File//migratie_migrations/PUB-1911-migratiebeleid.pdf, p. 17.

³¹ Koning Boudewijnstichting and Centrum voor Gelijkheid van Kansen en voor Racismebestrijding, *Welk economisch migratiebeleid voor België? Verslag van drie debatten*, Brussels, 2009, http://www.diversiteit.be/diversiteit/files/File//migratie_migrations/PUB-1911-migratiebeleid.pdf, p. 24.

³² Koning Boudewijnstichting and Centrum voor Gelijkheid van Kansen en voor Racismebestrijding, *Welk economisch migratiebeleid voor België? Verslag van drie debatten*, Brussels, 2009, http://www.diversiteit.be/diversiteit/files/File//migratie_migrations/PUB-1911-migratiebeleid.pdf, p. 24.

Labour unions are more cautious and point out the existing unemployment and the overrepresentation of vulnerable groups in the Belgian labour market (such as immigrants and their Belgian descendants). They favour a step-by-step approach: economic migration should go hand in hand with the introduction of measures to combat discrimination, to increase mobility across the regions, to address the issue of providing undocumented people with papers as well as withdrawing the transitory measures concerning the complete free movement of EU workers.³³

Social partners agree that labour migration is only part of the policies needed to address the labour market problems. Structural unemployment needs to be addressed first through policies that increase the participation of the unemployed labour reserve in Belgium and increase intra-regional mobility. In addition to these two goals, economic migration can contribute to solving structural shortages within the labour market. Labour migration from third countries should only be encouraged for needs that cannot be solved in any other way.³⁴

Some reservations exist towards circular migration. Both employers' organisations and labour unions have indicated that people move with more durable purposes and that the perspective of long term migration is essential to long-term integration. A higher mobility between Belgium and the country of origin must be an option, not an alternative. Permanent contact and exchanges with the countries of origin may, especially for highly skilled persons, moderate the negative effects of brain drain for those countries, although its practical feasibility has been put into question.³⁵

2.1.2. Policy

Notwithstanding the absence of a general vision on the use of temporary and circular migration, these forms of migration are not entirely unknown in Belgian migration policy.³⁶ Their development and implementation occur on an *ad hoc* basis and in a fragmented way. The most prominent policy areas concerned are: labour migration and return.

a. Labour Migration Policy

Several aspects of the Belgian labour migration practice may have an impact on temporary and circular migration patterns in Belgium.

Firstly the access to the labour market is facilitated under certain circumstances. As set out in a previous EMN study on "Satisfying labour demand through migration in Belgium", labour migration is currently used to satisfy labour demands from individual employers. In principle temporary labour permits are granted for vacancies that cannot be filled by candidates from Belgium or the European

³³ Koning Boudewijnstichting and Centrum voor Gelijkheid van Kansen en voor Racismebestrijding, *Welk economisch migratiebeleid voor België? Verslag van drie debatten*, Brussels, 2009, http://www.diversiteit.be/diversiteit/files/File//migratie_migrations/PUB-1911-migratiebeleid.pdf, p. 9.

³⁴ Koning Boudewijnstichting and Centrum voor Gelijkheid van Kansen en voor Racismebestrijding, *Welk economisch migratiebeleid voor België? Verslag van drie debatten*, Brussels, 2009, http://www.diversiteit.be/diversiteit/files/File//migratie_migrations/PUB-1911-migratiebeleid.pdf, p. 17.

³⁵ Koning Boudewijnstichting and Centrum voor Gelijkheid van Kansen en voor Racismebestrijding, *Welk economisch migratiebeleid voor België? Verslag van drie debatten*, Brussels, 2009, http://www.diversiteit.be/diversiteit/files/File//migratie_migrations/PUB-1911-migratiebeleid.pdf, p. 26.

³⁶ See chapter 2.2 for the legislative framework.

Economic Area (community preference) and this, under certain conditions. However the compulsory labour market test is not always used, given the existence of exemptions³⁷.

In practice, labour permits are granted to two main groups of labour migrants. Quantitatively, the largest group consisted of workers from new EU Member States who were hired based on specific regional lists of bottleneck jobs³⁸. The regional lists include lowly skilled jobs, but also highly skilled and technically-skilled jobs. Largely due to this so-called “bottleneck procedure” for citizens of new EU-Member States, the number of labour permits granted has increased fivefold since 2004. In May 2009, the transitory arrangement ceased for EU-10 Member States but has remained in force for the two newest Member States (Bulgaria and Romania) to which it will continue to apply until 31 December 2011³⁹.

The second group of labour migrants consists of workers undertaking specific jobs that are listed as exceptions to the labour market test. This list of exceptional jobs has grown historically, mainly aiming at easing international mobility for certain jobs as well as attracting investment in Belgium. Hence, this list of jobs has not been designed to address labour market shortages, but to promote the economic interest in general.

The Belgian labour migration practice does not explicitly distinguish between long-term or temporary labour shortages. Until now, there has also been no labour migration policy that addresses future labour market shortages, relating to demographic change and an ageing population.

At the Belgian policy level, the Government Coalition Agreement provided that three categories of foreign workers would be given access to the labour market: (1) those already present prior to 31 March 2007 with a job offer, (2) third country nationals applying for a bottleneck job and (3) citizens of new EU Member States (with an abolition of the limitations to their access). Additional forms of temporary migration have not been developed and facilitated due to the high unemployment rates among migrants and Belgian citizens of migrant origin. Migrants already working illegally in Belgium have however been carefully been targeted in regularization instructions⁴⁰.

Secondly economic migration is facilitated or encouraged in several ways. A new “Service for Economic Migration” has been created on 15 September 2008 within the Belgian Immigration Office to accelerate the handling of visa applications from economic migrants and to facilitate contacts and coordination between the stakeholders involved (foreign workers, Belgian enterprises, federal, regional and local administrations). Additional proposals were made to encourage the economic migration of third country nationals. In a policy note from the then Minister for Migration and Asylum Policy dated from November 2008, it was stated that “the government will continue to

³⁷ For a more details, see chapter and section 2.2.2.

³⁸ From May 2004 to May 2009, citizens from the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and the Slovak Republic remained subject to the work permit regulations. A simplified procedure was introduced to give them access to employment in “bottleneck jobs”, for which a labour shortage existed. This also applies to citizens from Bulgaria and Romania

³⁹ See article 38ter, §1, °1 and article 38sexies of the Foreign Workers Employment Decree. Royal decree of 18 December 2008 amending the Foreign Workers Employment Decree, following the extension of the transitional provisions introduced by the accession of Bulgaria and Romania to the European Union, *Belgian State Gazette* 30 December 2008.

⁴⁰ See Royal decree of 7 October 2009 on special provisions regarding certain categories of foreign workers, *Belgian State Gazette* 14 October 2009.

develop economic migration (...) therefore (it) is reviewing the possibility of accepting economic migrants from all countries according needs of workforce”⁴¹.

Thirdly Belgium contributes at EU level to developments related to the access of third country nationals to the labour market. In this regard, in a policy note from the Deputy Minister and Minister for Employment dated from 4 November 2008, it was stated that the government would vigilantly follow up on the following directives: (1) “highly skilled workers”: to establish more attractive entry and residence conditions for third-country nationals to take up highly qualified employment in EU Member States – “EU Blue Card”), (2) “sanctions”: to penalize employers of irregular immigrants and thereby discourage clandestine working and (3) “single permit”: to simplify procedures for residence and labour permits for legal immigrants.⁴²

b. Return Policy

Belgium participates in various assisted voluntary return programmes, including the Return and Emigration of Asylum-Seekers ex Belgium (REAB) which is financed by the Belgian government through the Federal Agency Fedasil and executed by the International Organisation for Migration (IOM).

Both in terms of target population as conditions of participation, the REAB programme is not intended to contribute to or facilitate temporary and/or circular migration. It is created to assist: (i) rejected asylum-seekers, (ii) asylum-seekers awaiting a definitive answer to their asylum request and (iii) irregular migrants. REAB is only intended for migrants who wish to return to their home country on a long term basis. Beneficiaries commit themselves to not coming back to the host country within 5 years following the return assistance.

However, in a report evaluating Brazilian migration trends and assisted voluntary return programmes from selected European Member States (including Belgium) to Brazil from September 2007 to February 2009, IOM took into account developments in migration policies, including labour migration, circular migration, migration for development and return migration schemes with a view to redefining and improving assisted voluntary return programmes targeting Brazilians in Europe. The report specified that assisted voluntary return programmes are, in certain cases, used by a “migration industry”, transforming these programs into alternative ways for potential return. The report recommends improving selection criteria for returnees and clarifying them to entities working with Brazilian migrants (NGOs, Diaspora associations, etc.). The report adds that, because of inadequate reintegration policies, the return simply means a temporary return to the country of origin, followed by a new departure or re-migration towards a third country⁴³.

⁴¹ Minister van Migratie- en Asielbeleid, *Algemene beleidsnota, Parl.St. Kamer 2008-09*, doc 52-1529/026, <http://www.dekamer.be/FLWB/PDF/52/1529/52K1529026.pdf>, p. 15-16. The policy note of the Secretary of State for Migration and Asylum Policy of 5 November 2009 did not refer to a specific Belgian policy with regard to economic migration any longer; see *Parl.St. Kamer 2009-10*, doc 52-2225/009.

⁴² Vice-premier en minister van Werk, *Algemene beleidsnota, Parl.St. Kamer 2008-09*, doc 52-1529/011, <http://www.dekamer.be/FLWB/PDF/52/1529/52K1529011.pdf>, p. 57. No new elements were added in the policy note of 25 November 2009, see *Parl. St. Kamer 2009-10*, doc 52-2225/025, p. 65-66.

⁴³ See “Evaluation of Brazilian migration trends and assisted voluntary return programme from selected European Member States to Brazil”, Report, September 2007, February 2009, pp. 80-83

The IOM research recommends creating legal migration mechanisms to offer an alternative to irregular migration. A circular migration program aimed at non seasonal low income migrants could be in the interest of those migrants; wanting to join the EU for a limited period with the intention to collect savings and send remittances to Brazil. Providing the opportunity to live and legally work in the country for periods up to three years and then to return to Brazil would prevent much of the current problems faced by the community (labour exploitation, non paid wages etc.), concludes the report⁴⁴.

Besides the REAB Programme, Belgium participates/participated in other return initiatives, including:

- The IRRICO-project (Information on Return and Reintegration in Countries of Origin): a web-based database providing information relevant to return in support of (voluntary) return of migrants to their countries of origin.
- The RANA-project (Return, Reception and Reintegration of Afghan Nationals to Afghanistan): reception assistance, post-arrival information, transit accommodation facilitates and reintegration support to create the best possible facilities for early return to Afghanistan.

In addition to this, between 2006 and 2010, two specialised NGO's (Flemish Refugee Action and CIRE) developed an alternative pilot-project to test their vision of an individual tailored assistance to returnees, including monitoring-, independent information- and local assistance-tools. The program, funded by the European Return Fund and carried out by the two NGO's together with several other European partner-NGO's, consisted of two pillars: the project "Individualised Assistance on Reintegration and Return"⁴⁵ (mid 2006-end 2008) and the project "Country of Return Information"⁴⁶ (mid 2006-end 2010). The NGO's built up a network of local partner organisations in several selected countries of return,⁴⁷ providing general and individual information and assistance to returnees. With the support of local partners and on the occasions of missions, individual returnees were monitored on a voluntary basis over longer periods.⁴⁸

The experience gained and partnerships established in this context could benefit to a reflection on and development of the return component of temporary and / or circular migration schemes.

c. Specific programmes & Pilot projects

Belgium participates in several programmes and pilot projects which establish a link between migration and development. The first two programmes demonstrate that Belgium has an interest in and explores means to mobilize its Diasporas as agents for developments. The last pilot project shows a certain willingness to undertake test circular migration pilot projects.

⁴⁴ See "Evaluation of Brazilian migration trends and assisted voluntary return programme from selected European Member States to Brazil", Report, September 2007, February 2009, pp. 83-84

⁴⁵ http://www.vluchtelingenwerk.be/archief/projecten-geindividualiseerde_hulp.php

⁴⁶ <http://www.vluchtelingenwerk.be/archief/projecten-cri.php>;

<http://www.vluchtelingenwerk.be/landeninfo/CRI-Belgie.php>

⁴⁷ Albania, Algeria, Argentina, Armenia, Bolivia, Bosnia, Cameroon, Congo DRC, Ecuador, Egypt, Georgia, Ghana, Guinea, Kosovo, Macedonia, Montenegro, Morocco, Russia, and Serbia.

⁴⁸ Flemish Refugee Action and CIRE published several individual experiences of returnees at: <http://www.vluchtelingenwerk.be/archief/terugkeerverhalen.php>

(1) MIDA Great Lakes Program

The concept of MIDA - Migration for Development in Africa – was developed by the International Organisation for Migration (IOM) at the end of the 1990s. MIDA is a capacity-building program to develop potential synergies between the profiles of African migrants and country needs. It supports the transfer of competencies and resources (intellectual and financial) of the African Diaspora to benefit countries of origin.

The MIDA Great Lakes Programme, which is funded by the Belgian Development Cooperation department, supports the mobility of qualified and skilled members of the Great Lakes Diaspora residing in Europe, thus enabling them to share their expertise and provide an innovative response to the brain drain affecting the continent.

The objectives of this programme are fourfold:

- To contribute to the broad development of Burundi, DR Congo and Rwanda by strengthening the institutional capacities.
- To develop synergies between the migrants' profiles and the needs of their countries of origin;
- To mobilise the Diasporas' intellectual and financial resources for the benefit of the countries of origin;
- To preserve for migrants the benefit of their status in the adoption or host country.⁴⁹

The activities of the programme are divided into three components:

- A physical transfer component: the implementation of field missions in the three priority sectors (education, rural development, and health) by experts coming from the Diaspora.
- A financial transfer component seeking to facilitate the transfer of migrants' funds and to orient them towards development.
- A component on the virtual transfer of knowledge: setting-up on-line courses, distance supervision and mentoring, etc.

The first phase of the Programme (2001-2003) allowed elaborating a "correlation system" between the needs of expertise, know-how and investment in the concerned home countries and the resources available, namely around 500 highly qualified Africans living in Belgium and willing to contribute to the initiative. Virtual transfers have been organized as well.

The second phase of the programme (February 2005-March 2006) allowed the identification of sectors with a resource gap: health, education and rural development were selected as the three priority sectors. Physical transfers included seven missions for rural development, six for education, two for health and one for joint sectors. In terms of virtual transfers, a panel was held with the aim of launching a Regional Plan of Action on distance learning. With regard to financial transfers, a survey was published, recommending to increase the positive effect of Diasporas fund transfers and investments on development.

⁴⁹ See "Independent Evaluation of the MIDA Great Lakes Programme – Phase III – Final Report", Société d'Etude et d'Evaluation sarl (see) for IOM, Luxembourg, August 2008, p6 (85p).

The third phase of the programme (April 2006-March 2008) developed the same mechanisms than the second phase but gave a certain priority to the private sector in the channelling of Diaspora's resources for the home country development⁵⁰.

According to an independent evaluation of the third phase of the MIDA Great Lakes Programme, achieved in 2008, more than 100 institutions in Burundi, DR Congo and Rwanda have been reinforced since 2001 through the organisation of more than 240 missions of Great Lakes professionals residing in Europe. The missions have principally been oriented towards the health and education sectors, respectively 35% and 54% of the missions. The main beneficiaries were the subscribing university institutions and other educational or professional institutions.⁵¹ These missions have been fully supported by the local governments in the three countries.⁵²

According to the above mentioned evaluation report, 95% of the beneficiary institutions and 98% of all direct beneficiaries (students) saw the MIDA-support as useful and vital for certain (university) courses. The representatives of the institutions in the three countries have recognized the value of the missions for their institutions too. For health institutions, non-profit organisations and other public institutions, positive aspects include the updating and contribution of knowledge in new fields, the introduction of new practices and an upgrading of the institutions' credibility with the arrival of experts resulting in a surge of patients.

Generally, the relevance and effectiveness of the "physical transfer" component were stressed, both in terms of activities and results. The effectiveness of the other two components (virtual and financial transfers) was regarded as more limited⁵³.

The MIDA Great Lakes Programme is currently in its fourth phase of implementation, which is allocated a budget of 3.822.120 Euros. Its capacity building activities for local institutions take place in the framework of a multi-annual project (2008-2012).⁵⁴

In this fourth phase, MIDA trained beneficiary institutions to write their own proposals and directly involved Diaspora's in developing the projects with such institutions⁵⁵. In March 2009, the IOM launched a call for proposal in two phases for Burundian, Congolese and Rwandan institutions working for the national development of their countries in the sectors of health, education and rural development. In order to ensure a high degree of efficiency of the projects, this call for proposal was developed in close coordination with local and international partners in the three countries. The final selection of the projects was made by the IOM in November 2009 on the basis of the evaluation of the local technical committee composed of national and international experts. The selected

⁵⁰ See "Migration and development Policies and Practices emphasising Diasporas and their potential", Irene Spagnol, IOM, February-March 2010, pp. 22-23 via http://itlab.ge/iom/pdf/Diasporas_Research_en.pdf

⁵¹ See "Independent Evaluation of the MIDA Great Lakes Programme – Phase III – Final Report", Société d'Etude et d'Evaluation sarl (see) for IOM, Luxembourg, August 2008, p. 14.

⁵² See "Independent Evaluation of the MIDA Great Lakes Programme – Phase III – Final Report", Société d'Etude et d'Evaluation sarl (see) for IOM, Luxembourg, August 2008, p. 40.

⁵³ For more information about the evaluation of the MIDA-project See "Independent Evaluation of the MIDA Great Lakes Programme – Phase III – Final Report", Société d'Etude et d'Evaluation sarl (see) for IOM, Luxembourg, August 2008, 85p.

⁵⁴ See Program Mida Grands Lacs via

http://mida.belgium.iom.int/index.php?option=com_content&task=view&id=14&Itemid=42 and

http://mida.belgium.iom.int/index.php?option=com_content&task=view&id=111&Itemid=115.

⁵⁵ See http://www.gfmdathens2009.org/fileadmin/material/docs/workp/working_paper_2_2.pdf

projects are supported by the MIDA Great Lakes during their implementation for the period 2010-2012⁵⁶.

Currently 24 projects are being implemented in the region (9 in the Democratic Republic of Congo, 7 in Rwanda and 8 in Burundi). The objectives are various, including (1) in the health sector: strengthening hospitals' management systems and technical capacities; creating an interdisciplinary centre of genetics; developing research in the field of medical statistics; training providers of mental health care and elaborating a bilingual thesaurus in this field, (2) in the education sector: creating a training and education centre to support teachers of sciences; strengthening research capacities and training in human rights and peaceful resolution of conflicts and organizing courses on project planning, monitoring and evaluation and (3) in the sector of rural development: fighting fruit crops' diseases and promoting crops' health; developing the processing and preserving of fruits and vegetables; identifying employment sectors and training civil society in rural areas. These objectives are primarily pursued through physical transfers (training by experts from the Diaspora) and to a lesser extent through virtual transfers (online courses).⁵⁷

(2) MEDMA (Mobilization for Morocco of Moroccans living abroad)

Next to the MIDA program, MEDMA is a project which seeks to mobilize the expertise and the resources of the Moroccan Diaspora living in Belgium. It involves a partnership between the IOM, the Ministry of Moroccans residing abroad (MRE), the Hassan II Foundation for Moroccans living abroad, chambers of commerce and regional investment centers (CRI).

Initially the project was structured around four initiatives, namely (i) the establishment of a support centre for small and medium companies, (ii) measures to promote the use of formal channels for transferring funds through more competitive sending fees for example, (iii) the investment of remittances into productive investments and (iv) the creation of a fund supporting investment projects from MRE in their country⁵⁸.

With a view to further reflect on the contribution that Moroccans living in Belgium can provide the economic development of regions in northern Morocco, the IOM completed a study in July 2007, funded by the Belgian Directorate General for Development Cooperation. The report collected several recommendations: (i) to facilitate business creation in Morocco by Moroccans living in Belgium, (ii) to promote social economy and joint investment and (iii) to prompt public and private stakeholders to make a better use of remittances from the Diasporas in development policies⁵⁹.

The project is currently still under development. Dialogue on the above mentioned recommendations continues with stakeholders whose goals and expectations are being updated and whose concrete involvement and participation is being examined. The diagnosis as to the conditions under which the contribution of Moroccans living in Belgium could produce developmental effects, better meeting the needs of the population and the country's economy, needs to be further refined.

⁵⁶ See: Irene Spagnul *Migration and development Policies and Practices emphasising Diasporas and their potential*, IOM, February-March 2010, pp.23-24 via http://itlab.ge/iom/pdf/Diasporas_Research_en.pdf

⁵⁷ For additional information on the MIDA Great Lakes Program, see www.midagrandslacs.org

⁵⁸ See <http://www.alwatan.ma/html/Chaines/Actualite/News66d5-3.html?Article=12181&Rubrique=Sport>

⁵⁹ See *MEDMA Marocains résident à l'Étranger pour le Développement du Maroc*, IOM, July 2007, pp.67-68/86

(3) Pilot project (Circular Migration between Belgium and Senegal)

A pilot project between Belgium and Senegal has been initiated by the private sector in 2010 with the aim of facilitating one year paid internships for 100 Senegalese university graduates in Belgian companies in 2011-12.⁶⁰

The project aims to ensure that, the 100 Senegalese, thanks to the twelve months training acquired in a competitive Belgian company, will then return to Senegal to develop innovative ideas, products, services and processes which will support a growing Senegalese economy.

The project has a clear triple win objective: (i) to promote the economic growth in the country of origin, (ii) to provide the migrant with an opportunity to establish contacts, acquire a unique professional experience as well as abilities and skills, exchange ideas and develop projects and (iii) to create purchasing power for Belgian companies.

The project identifies various challenges and responses. The first one is to ensure circularity by focusing in the selection procedure on the candidates' motivation and project upon return, by offering an individual monitoring to migrants during their stay in Belgium to further prepare their return, by implementing other incentives to return (part of wages paid upon return for example). The second one is to attract diverse candidates (engineers, agronomists, scientists, economists) who can reinvest their skills in Senegal. The third one is to persuade Belgian companies, in particular with regard to the African economic potential and competitiveness. Another challenge is to ensure that the conditions for innovation and internationalisation are developed in Senegal, organizing courses and conferences to encourage international partnerships for example.

The project is supported by the Belgian Directorate General for Development Cooperation, which finances travel expenses and the overall project management.

2.1.3. The Position of NGO's

Not all NGO's in Belgium active in the field of migration have expressed elaborated comments on the specific issue of circular and temporary migration. However most of these non-governmental organisations have their opinion on aspects linked to circular and temporary migration such as for example return and (temporary) labour migration.

Several NGO's are defending the rights of migrants and asylum seekers in Belgium. The two above mentioned NGO's, the Flemish Refugee Action and CIRE are umbrella organisations, defending the rights of asylum seekers and refugees. Although there is no direct link between asylum matters and circular and temporary migration as defined in this study, CIRE took up a stance concerning these forms of migration in a recent policy paper. CIRE welcomed the notion and work towards a comprehensive approach characterized by the willingness to examine the migration process as whole, to strengthen the links between migration and development and to seek partnerships with third countries. Although CIRE highlighted possible imbalances between the different actors, it pleaded for multilateral approaches to encourage open dialogue, paving the way for an effective

⁶⁰ See <http://www.migrationcirculaire.be>.

migration management.⁶¹ With regard to the return aspect CIRE and Flemish Refugee Action have criticized the basic REAB programme.⁶² More tailor-suited projects (e.g. micro-economic projects), including preparation and follow-up of the reintegration in the country of origin, are favoured. The voluntary return policy should be based on a long-term reintegration perspective, taking into account all aspects and all actors involved. Both NGO's stressed that the protection of returnees should be the main priority and therefore pleaded for an effective monitoring of returnees and the stop of voluntary return programs to crisis regions. Although the Flemish Refugee Action challenged the term "voluntary return" itself, giving the fact that also persons in detention centres sign REAB-contracts,⁶³ it pleaded together with CIRE for a structural integration of qualitative information on voluntary return already in reception centres.

The Organisation for Irregular Labour Migrants (Organisatie voor Clandestiene Arbeidsmigranten, ORCA) also expressed their opinion on temporary and circular migration. The organisation considered that these approaches may endanger the rights of migrants, particularly employees and social rights as well as family reunification rights. ORCA pleaded in favour of measures stimulating temporary and circular migration but without mandatory methods. The organisation also advocated in this context for the portability of social security rights.⁶⁴ Other NGO's, like the Association for the Aliens' Law (L'association pour le droit des étrangers, ADDE) shared the concerns of ORCA about the social rights of labour migrants.

The Flemish Minorities Centre (*Vlaams Minderhedencentrum -VMC*),⁶⁵ which advises the Flemish authorities on migration issues, proposed a simplification of the complex regulations on labour permits.⁶⁶ Regarding return the VMC has proposed to involve the communities (sub federal state entities) in the return programmes, given their jurisdiction over matters of assistance to persons and personal well being.⁶⁷

The organisation of NGO's, movements and solidarity groups in Flanders ("11.11.11")⁶⁸ along with other organisations such as Caritas International,⁶⁹ strongly supported the triple-win aspect of migration. However 11.11.11 has been critical of the concept of temporary and circular migration. The organisation indicated that these concepts are unbalanced and mainly inspired by the interest of

⁶¹ CIRE, *Éléments de critique des politiques migratoires européenne et belge*, Brussels, 2010, http://www.cire.be/ressources/rapports/politique_migratoire.pdf, p. 20-21.

⁶² CIRE, *Promouvoir une politique respectueuse et réaliste d'aide au retour volontaire*, <http://www.cire.be/actions/retour.html>. Flemish Refugee Action, *Vrijwillige terugkeer. Moeilijk onderwerp, mogelijke toekomstpiste*, December 2010, <http://www.vluchtelingenwerk.be/bestanden/publicaties/eindrapport-CRI.pdf>

⁶³ *Ibid.* p. 8

⁶⁴ ORCA, "Legale arbeidsmigratie: enkele bedenkingen van de Organisatie voor Clandestiene Arbeidsmigranten", 2007, <http://www.orcasite.be/userfiles/file/legale%20arbeidsmigratie%20standpunt.pdf>, p. 3.

⁶⁵ In January 2011, the VMC changed its name "Kruispunt Migratie-Integratie", website: <http://www.kruispuntmi.be/index.aspx>

⁶⁶ Vlaams Minderhedencentrum, *Memorandum en dossier 'migratie' voor de federale regering 2010-2014*, Brussels, 2010, http://www.kruispuntmi.be/uploadedFiles/VMC/Thema/Minderheden/Federaal_beleid/VMC%20hoofdpunten%20memorandum%2020100701.pdf

⁶⁷ Vlaams Minderhedencentrum, *Memorandum en dossier 'migratie' voor de federale regering 2010-2014*, Brussels, 2010, http://www.kruispuntmi.be/uploadedFiles/VMC/Thema/Minderheden/Federaal_beleid/VMC%20hoofdpunten%20memorandum%2020100701.pdf

⁶⁸ "11.11.11", website: www.11.be

⁶⁹ <http://www.caritas-int.be/nl/hulp-aan-migranten/themas/migratie-en-ontwikkeling.html>

the receiving countries in cheap labour. They also underlined the discrimination between the highly-skilled and the lower-skilled in terms of residence status and possibilities for family reunification. The organisation finally stated that the concepts of circular and temporary migration conflict with the integration prospect pursued by the countries of destination.⁷⁰

2.2. NATIONAL LEGISLATION, CONDITIONS, CRITERIA AND ENFORCEMENT

Notwithstanding the absence of an explicit conceptual definition of ‘temporary migration’ and ‘circular migration’, the legislative framework allows some forms of temporary and back and forth mobility.

Two legislative instruments are relevant in this regard.⁷¹ Firstly the Aliens Act⁷² governs the conditions for entry, residence and settlement in Belgium and determines to what extent third country nationals may obtain temporary residence and return from and to Belgium. The federal minister of migration affairs and the Immigration Office⁷³ are responsible for the management and administration of this Act. Secondly, given the fact that temporary and circular migration often includes the development of economic activities in a work-related context, the provisions of the Foreign Workers Employment Act⁷⁴ determine the conditions for access to such activities. Whilst this legislation is federal, its implementation has been transferred to the regional level: each of the three regions (Brussels, Flanders and Wallonia and additionally the German-speaking Community) decides on applications for employment authorizations and labour permits. Compliance with both the Aliens Act and the Foreign Workers Employment Act is required for residence in Belgium to be regular.

In addition to this, the Belgian nationality law may also have an impact on circular migration.

2.2.1. Temporary and Circular Migration under the Aliens Act: Access to Residence

The Aliens Act stipulates the conditions for entry, residence and settlement in Belgium. As set out above⁷⁵ this Act contains general provisions on residence defined in terms of length of the stay in Belgium; it refers to specific categories of migrants who might engage in temporary or circular migration and it allows for re-entry after a period of absence. The provisions that facilitate temporary and circular migration by third country nationals are discussed hereafter.

⁷⁰ Visienota 11.11.11: Migratie en Ontwikkeling (pdf - 31-03-2009)

⁷¹ On the organisation of migration policy in Belgium, see European Migration Network, Belgian Contact Point, *The organisation of Asylum and Migration Policies in Belgium*, Brussels, 2009, <https://dofi.ibz.be/nl/statistieken/belgian%20migration%20point/3.pdf>.

⁷² Aliens Act of 15 December 1980.

⁷³ Dienst Vreemdelingenzaken/Office des Etrangers.

⁷⁴ Act of 30 April 1999 on the employment of foreign workers, Belgian State Gazette 21 May 1999 (hereafter: Foreign Workers Employment Act).

⁷⁵ Supra p. 11.

a. General Provisions on Residence

(1) Entry and Short Term Residence for Maximum Three Months

Entry and short term residence for a period of up to three months require the possession of a passport or travel document and, when required, a visa C. Through its visa policy, Belgium can facilitate temporary or circular migration, by granting visa to those migrants who aim at short term circular migration.

European legislation should be taken into account, though. On 5 April 2010 the EU Visa Code has replaced the pre-existing Common Consular Instructions concerning visa.⁷⁶ Regulation 539/2001 lists the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. The new Visa Code aims at making the visa procedures more transparent and faster. It exempts certain categories of persons from paying visa fees.

In the context of circular migration, the possibility to issue multiple-entry visa may be an important tool for allowing third country nationals to travel to Belgium (and the Schengen area) on several occasions. The total of successive stays in the Schengen area during that period may not exceed 90 days per semester.

Issuing visa belongs to the so-called discretionary powers of the Belgian consulates and the immigration authorities (however of course in respect with the rules of the Visacode 810/2009) , allowing the minister responsible for immigration and the Immigration Office to develop their own policy.

In Belgium, short term visas are mainly granted for the following purposes: visits to family and friends, sports and cultural events, tourist visits, short traineeships, business visits and medical treatment. Next to a valid national passport, applicants must present proof of sufficient means of subsistence (covering the period of stay and the return journey), an outward and return ticket and a travel insurance. They also have to prove the purpose of the short term visit (e.g. with an invitation from a Belgian firm or enterprise).⁷⁷

(2) Residence for More Than Three Months

In 2006, a law amendment⁷⁸ declared the issuing of temporary residence permits for third-country nationals as standard, adjusting the law to the administrative procedure.

An indeterminate residence permit has become the exception – at least in theory - for those categories mentioned in the Aliens Act.⁷⁹

⁷⁶ Regulation 810/2009 of 13 July 2009 of the European Parliament and the Council establishing a Community Code on Visas (Visa Code).

⁷⁷ For practical details on the documents to be submitted, see the information on http://diplomatie.belgium.be/en/services/travel_to_belgium/visa_for_belgium/short_stay.

⁷⁸ Article 13 Aliens Act.

⁷⁹ For instance and possibly after expiration of a waiting period: refugees and persons in need of subsidiary protection, family members, persons in serious medical need,...

Applications for residence for more than three months in Belgium must in principle be submitted from abroad, via a Belgian diplomatic and consular post,⁸⁰ and are subject to a decision by the minister or the Immigration Office. Applicants must apply for a visa type D. Unless otherwise stipulated, authorization for residence for more than three months is given for a limited period that is usually related to the purpose of the visit. These periods can be extended or renewed.⁸¹

Unless the applicant belongs to a category of persons for whom the immigration legislation recognizes a right of residence in Belgium,⁸² the immigration authorities can grant residence permits at their discretion. From a legal perspective, this allows immigration authorities to accommodate circulatory and temporary forms of migration, should they desire to.

In Belgium residence for more than three months is mainly granted to the following categories: family members (family formation or reunification), students, financially independent persons, workers (paid employment, self-employment, managers, researchers, journalists, investors and holiday workers), au pairs, interns and children under guardianship.⁸³

Residents who have been admitted to unlimited residence in Belgium can become settled migrants after five years.

b. Categorical provisions on residence

The Aliens Act defines a number of categories of migrants who have a right to reside in Belgium, provided that they fulfil the conditions set out in the act. In that case the Immigration Office is under the legal obligation to grant residence permits to these migrants. These categories include, among others, family members of migrants residing in Belgium, refugees and persons in need of subsidiary protection. In terms of temporary or circular migration, two categories of third country nationals with a right of residence for a period of more than three months can be identified: students and researchers.

(1) Students

The Aliens Act recognizes that third-country students in higher education programmes at university or university college level or in preparatory programmes to apply to such institutions have a right of residence in Belgium.⁸⁴

Applications for such residence permits must be submitted from abroad.⁸⁵ Applicants must present the following documents: (1) a certificate from the receiving university proving that the student is

⁸⁰ In-country applications are also possible for migrants already residing regularly in the country or in exceptional circumstances preventing the return to the country of origin; see Articles 9bis and 12bis Aliens Act.

⁸¹ Article 13 Aliens Act.

⁸² See *infra* 2.2.1.b, p. 27-ss.

⁸³ For practical details on the documents to be submitted, see the information on http://diplomatie.belgium.be/en/services/travel_to_belgium/visa_for_belgium/long_stay.

⁸⁴ See Articles 58 to 61 Aliens Act.

⁸⁵ When the student is already staying regularly in Belgium, he can make an in-country application for a residence permit for the purpose of studies.

registered in a full-time programme⁸⁶ or for the admission test or that he has asked for degree equivalency; (2) a medical certificate; (3) a certificate stating that the person has not been convicted of crimes and offenses; (4) a proof of sufficient means of subsistence.⁸⁷ The latter proof can be produced through a scholarship or student loan from an international organisation, a national government or a corporation, or under warranty of an individual person covering health, residence, study and repatriation costs during one academic year. As students are allowed to work, legal employment incomes will also be considered when evaluating the means of subsistence.

In order to prevent abuses of the, per definition, temporary nature of student migration, residence permits issued to students can be terminated when there is insufficient progress in the studies or when the student develops profitable business activities that hinder the normal continuation of the studies. Students who are overstaying can be ordered to leave the country.

(2) Researchers

Third country nationals wishing to engage in research in Belgium also have a right to reside for more than three months in Belgium. This follows the transposition of Directive 2005/71 into Belgian law in 2007.⁸⁸

The legislation applies to researchers as defined in Directive 2005/71: a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a recognized Belgian research organisation for carrying out a research project for which the above qualification is normally required. Researchers seconded by a research organisation from another EU Member State to a Belgian research organisation and researchers applying to reside as students in order to carry out research leading to a doctoral degree, are excluded from this status.

Researchers must apply for residence authorization from abroad.⁸⁹ They must submit hosting agreement from a recognized research organisation, a medical certificate and certification that they have not been convicted of crimes and offenses. They will be given a visa type D. The residence authorization is valid for the duration of the research project.

c. The right of absence and re-entry

The Belgian Aliens Act contains provisions on absence and re-entry under which migrants residing in Belgium are allowed to leave the country with the prospect of re-entry at a later stage without losing their residence status.⁹⁰

⁸⁶ Registration in a part-time programme is also possible if education is the main activity of the applicant and prepares for or complements a fulltime programme.

⁸⁷ See article 58 Aliens Act and European Migration Network, Belgian Contact Point, *Ad hoc query on residence permits for third country citizens for academic studies, requested by SE EMN NCP on 13 October 2009*, Brussels, 2009, p. 2.

⁸⁸ Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research. See Articles 61/10 to 61/13 Aliens Act and Royal Decree of 8 June 2007 on the conditions for recognition of research institutions, Belgian State Gazette 3 July 2007.

⁸⁹ When the person is already residing regularly in Belgium, the application can also be introduced in-country.

⁹⁰ See in general Article 19 Aliens Act and Articles 39 to 42 of the Royal Decree of 8 October 1981 on entry, stay, settlement and removal of aliens, Belgian State Gazette 27 October 1981 (hereafter: Aliens Decree).

(1) General Rules

Third country nationals already residing in Belgium can travel to another country, outside the Schengen Area, and then return to Belgium when they have valid Belgian residence documents that attest their residence status in Belgium as a settled migrant (the permanent residence status that can be obtained after five years legal stay in Belgium), an authorized stay for more than three months (regardless of whether this stay is definite or indefinite), long term residence (under the Long Term Residence Directive) or as family member of an EU-resident in Belgium. The possibilities of re-entry without loss of residence status depend on the length of absence.

- A stay of *three months* abroad is always possible, even if their Belgian residence document expires during their stay abroad. To avoid this expiration, third country nationals residing in Belgium can ask for a prolongation of the validity of the document prior to leaving the country.
- In case of absence for a period *between three months and one year*, they must notify the local immigration office of their intention to stay abroad, apply - when necessary - for a prolongation of their identity document if this document is to expire during their stay abroad, and report themselves to the local immigration office within 15 days after their return.
- The stay of *more than one year* abroad, without loss of the Belgian residence status, is possible if the migrant additionally proves, prior to departure, that he maintains his principal interests in Belgium and notifies the local immigration office of his intention to leave and to return. A prolonged stay abroad of more than one year is also possible for persons who have to fulfil their military service in their country of origin (after notification to the local immigration office). He must return within 60 days after completion of military service.

If instances of *force majeure* prevent the migrant to return within the aforementioned periods, the minister or Immigration Office may still grant the previous residence status.

Even in the event of loss of residence after a stay of more than one year abroad that does not meet the above mentioned conditions, some migrants can reacquire their residence status in Belgium and be authorized to return.⁹¹ This only applies to third country nationals who were authorized to an unlimited stay or were settled at the moment of their departure from Belgium. The maximum period of absence is five years. Additional requirements apply, depending on the category of persons. If the person is younger than 21, he should have stayed at the moment of his departure, for five years in Belgium and must have remained absent for reasons independent of his own will. Above the age of 21, the person must have stayed 15 years in Belgium and give proof of having sufficient means of subsistence. Persons born in Belgium and family members of foreign residents younger than 30, can return when they have had 10 years of legal stay in Belgium.

These persons can re-apply for an authorization to stay in Belgium. The minister or Immigration Office have discretionary power to grant this authorization or not.

⁹¹ Royal Decree of 7 August 1995 on the conditions of return for aliens who were absent for more than one year, Belgian State Gazette 2 September 1995.

These possibilities of absence and re-entry make circular migration possible for persons who have obtained residence status in Belgium; the stronger their ties to Belgium (in terms of previous uninterrupted stay), the more opportunities they have to return and regain their residence status in Belgium.

(2) Return Visa for Persons in a Family Reunification Procedure

Persons with another residence status than those mentioned above - usually a provisional one pending the assessment of their application for residence - , should remain in Belgium. If they leave, they will not be allowed back into Belgium, unless they have a passport and, when applicable, a valid visa.

Two exceptional measures exist in this regard. The first applies to persons who have demanded family reunification status with a family member in Belgium. Pending the assessment of their residence application in Belgium they can apply for a return visa that enables them to leave Belgium, reside outside the country for a limited period of some weeks and then return to Belgium, without loss of their status.

The second exceptional measure concerns citizens from Morocco, Tunisia and Turkey with a provisional residence status in Belgium who have an application for family reunification pending and who return to their country of origin during the summer.⁹² The minister for Immigration annually orders that they can apply for a return visa at the Belgian diplomatic post in their country of origin in order to regain access to Belgium.⁹³ These visas are automatically delivered or subject, for certain categories, to positive notification from the Immigration Office.⁹⁴

(3) Long-term Residents

Persons who have acquired long-term residence status under Directive 2003/119/EC⁹⁵ or who have been recognized as a refugee, have broader rights to return to Belgium.

A third country national who received long-term residence status in Belgium, loses his long-term residence status and right to return to Belgium when he leaves Belgium for at least six years or if he leaves the EU territory for a period of at least 12 months. From a legal perspective, back and forth movement between Belgium and the country of origin outside the European Union is possible during a period of 12 months.⁹⁶

⁹² Message of 6 July 2010 of the Immigration Office to the Mayors on the specific case of re-entry visa issued in the Summer of 2010 to third-country nationals who return to Belgium for their family reunification procedure, as specified by Articles 10, 10a, 40a or 40ter of the Act of 15 December 1980 on entry, stay, settlement and removal of aliens, to continue, Belgian State Gazette 13 July 2010.

⁹³ See for instance in 2010 the Ministerial Instruction of 6 July 2010, Belgian State Gazette 13 July 2013.

⁹⁴ Family members older than 21; ascendants of Turkish citizens; single handicapped children older than 18; family members of a foreign student.

⁹⁵ Royal decree of 22 July 2008 establishing certain implementation modalities on entry, stay, settlement and removal of aliens, Belgian State Gazette 29 August 2008.

⁹⁶ Circular migration within the European Union, without losing one's residence rights in Belgium, is possible during six years.

Even in the event of a stay for more than 12 months outside the EU, a long-term resident can maintain this status. The third-country national must notify the local immigration office of his decision to leave the country and to return afterwards and prove that he maintains his principal interests in Belgium. His EU-long term residence permit must remain valid and should, when necessary, be prolonged prior to his departure. Within 15 days upon his return to Belgium, he must report to the local immigration office.

A long-term resident will also retain his right to return to Belgium after an absence of more than 12 months due to the fulfilment of military service abroad, if he returns within 60 days after this fulfilment.

Finally – and here the return possibilities are broader than under the general immigration rules – returning to the country of origin for a period of more than 12 months to benefit from medical treatment or to study, does not lead to the loss of long term residence status, provided that the third country national has notified this to the local immigration office and that he returns within 60 days after the end of the treatment or studies.

If events constituting *force majeure* prevent the migrant from returning within the aforementioned periods, the minister or Immigration Office may still grant the previous residence status.

A long-term resident who has lost his status on the ground of an absence for more than 12 months from the Belgian territory can re-acquire his status if the absence has not lasted for more than five years and if he fulfils one of the following specific conditions, depending on his situation:

- he has stayed legally and permanently on the territory for a period of 15 years before his departure;
- if he is less than 21 years old and proves that he has been removed from the territory for reasons beyond his control;
- if he is born in Belgium and proves that he has resided legally and continuously on the territory for a period of 10 years.

A long term resident can also reacquire his lost status when he demonstrates:

- that he has stayed legally and continuously on the Belgian territory for a period of 15 years and that his absence was legitimated by reasons of studies in another EU Member State or if he was absent from the territory for reasons beyond his control;
- if he is less than 21 years old and born in Belgium, that he has resided in Belgium legally and continuously for a period of 10 years or that he was absent from the territory for reasons beyond his control.

(4) Refugees

Refugees can in principle not return to their countries of origin, since this could indicate that they do not risk persecution there. Such a return could lead to the withdrawal of refugee status. In practice, the Commissioner General for Refugees and Stateless Persons⁹⁷ can exceptionally authorize refugees

⁹⁷ Commissaris-generaal voor de vluchtelingen en de staatlozen/Commissaire général aux réfugiés et aux apatrides. The Commissioner General for Refugees and Stateless Persons is an independent administrative instance with sole jurisdiction to either grant or refuse the refugee status and to either grant or refuse subsidiary protection.

to temporarily return to their country of origin, for a period of maximum four weeks and always at their own risk, without losing refugee status in Belgium.

Regardless of the above situation, refugees may also move to other countries. As long as they have legal residence in Belgium, they can return upon presentation of their valid Belgian travel document.

Additionally, refugees who do not have legal residence in Belgium any longer but who still possess a valid Belgian travel document for refugees can be authorized by the minister or the Immigration Office to return. If their travel document has expired too, they can also be authorized to return upon the introduction of a motivated application at a Belgian diplomatic or consular post abroad. Once a refugee has been allowed to stay in another country, he cannot claim this specific right to return to Belgium anymore.⁹⁸

2.2.2. Circular and Temporary Migration under the Foreign Workers Employment Act: Access to the Labour Market

Economic short term migration is one of the forms of temporary and circular migration frequently referred to in international literature, with seasonal workers probably being the prime example. The degree to which the legislative framework related to the employment of foreign workers facilitates access to the labour market, will also determine the possibilities for this type of migration.

a. General Framework: Demand Driven Regulation of Access to the Labour Market for Foreign Workers

As mentioned in previous EMN reports, the federal legislation on labour migration is a complex set of principles and exceptions thereto.⁹⁹

The basic principle of the labour migration regulations targeted at third country workers in Belgium is uniquely geared towards satisfying specific labour demands: when a particular vacancy for an individual employer cannot be filled by a suitable Belgian or EEA candidate (community preference) within a reasonable term, an employment authorization to hire a foreign worker can be granted to the said employer.

The employer initiates the authorization procedure and delivers the required documents to the regional migration office. The employer is then granted an employment authorization and the foreign worker a temporary labour permit (labour permit B) that is valid for a maximum period of 12 months and only for employment by one employer. Several conditions apply: the applicant must be abroad; there must be an international agreement on the employment of foreign nationals between

⁹⁸ The refugee-worker who has been allowed to stay in the Netherlands or Luxemburg, Austria or Switzerland, has a right to return to Belgium during two years, starting from his departure. He will be admitted again without formalities on condition of holding a valid Belgian travel document.

⁹⁹ See European Migration Network, Belgian Contact Point, *Conditions of entry and residence of Third-country Highly Skilled Workers in Belgium*, Brussels, 2006, <http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=8C3C42A231F3FC17ED822BD90A8F3FD3?directoryID=103>; European Migration Network, Belgian Contact Point, *Satisfying Labour Demand through Migration in Belgium*, Brussels, 2010, <http://emn.sarenet.es/Downloads/download.do;jsessionid=47F84DF0CDDDB41A3FFB86913182C12FA?fileID=1116>.

the country of the future employee and Belgium;¹⁰⁰ a standard employment contract between the employer and employee must be concluded; and a recent medical certificate must be attached to the application.

As a consequence of the official “halt to migration” that was declared in the 1970s, a long list of exceptions to the procedure has been introduced over the years. These relate to, among others, most of the temporary labour permits.

Two other labour permits exist. Labour permits A were given to persons who have worked already for a period of two to four years during their long-time stay in Belgium. Now they are of little relevance anymore. Labour permits C are also temporary permits for a period up to 12 months, open for all types of employment. They can be applied for by specific categories persons pending the determination of their application for residence (e.g. asylum, family reunification, victims of human trafficking) or who have a temporary residence status (for example interns, students). They are less relevant for the topic of this study.

b. Exceptions: Opening Up the Labour Market

In principle, third-country nationals need a labour permit and an employment permit to work in Belgium. However, for certain categories more flexible rules apply: either the labour permit requirement can be entirely waived, or the delivery of the labour permit is made possible without prior examination of the availability of Community workers on the labour market (labour market test), the existence of an international agreement or a standard labour contract. These exceptions, which open up the labour market may indicate types of temporary migration that are currently facilitated.

(1) Exemptions from Labour Permits

Various categories of migrants do not need a labour permit.¹⁰¹ In fact the vast majority of permanently residing migrants in Belgium are exempt from obtaining a labour permit: EU-EEA citizens and their families; spouses of Belgians and their dependants; migrants with an indefinite residence permit; recognized refugees.

Exempted migrants include the following categories:

- students (for employment during the holidays);
- interns with national and international governmental organisations;
- pupils and apprentices;
- post-doctoral researchers engaged in fundamental academic research with the aim of enhancing scientific knowledge;
- researchers under Directive 2005/71;
- employees of foreign firms participating in scientific conferences (five days per month maximum);

¹⁰⁰ Belgium has concluded such agreements with Algeria, Bosnia-Herzegovina, Kosovo, Croatia, Macedonia, Morocco, Montenegro, Serbia, Tunisia and Turkey. The accession agreements with the EU Member States Bulgaria and Romania, whose nationals do not yet benefit from free movement for work purposes, have also been considered as international agreements regarding employment.

¹⁰¹ Article 2 of the Foreign Workers Employment Decree. The list of exempted categories can be found at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1999060935&table_name=loi.

- employees of foreign firms attending trainings of maximum three months in the Belgian site of the multinational company that employs them;

Additionally, posted workers hired by employers in the EU or third countries that have entered into an agreement with Belgium, are exempt as well from labour permit when performing work in Belgium. This is mostly a form of intra-communitarian movement of workers.

(2) Exceptions to the Condition of a Labour Market Test, International Agreement, Standard Contract and Application from Abroad

Additionally, for certain jobs, which are mostly performed using temporary labour permits, no labour market test, international agreement and standard contract are needed. The obligation for the future employee to apply for the permit from abroad is also abandoned.¹⁰² All these exceptions were introduced to facilitate labour migration of these categories of migrants.

Some of these exceptions facilitate the labour migration of following categories of persons: interns (persons undertaking an internship of maximum 12 months as a continuation of their previous education);

- highly skilled employees (persons who have a university or equivalent degree and a minimum annual gross salary of EUR 36.355 for the year 2010; the permit is renewed annually for two periods of four years; no time limitations apply if the annual salary exceeds EUR 60.654);
- researchers and guest professors (employed by a university, institution of higher education, recognized scientific institution or private company's research department, for a maximum period of four years);
- employees of foreign customers of Belgian products who receive professional training (for a maximum period of six months);
- professional sportsmen and trainers (minimum annual gross salary of EUR 69.400 for the year 2010);
- au pairs (between the age of 18 and 29 and residing with a guest family with at least one child younger than 13 for a period of one year);
- employees of foreign firms attending trainings of more than three months in the Belgian site of the multinational company that employs them; and
- third-country nationals who have obtained the status of long-term resident in another EU Member State (in the first year only for the so-called 'bottleneck jobs' for which a labour shortage exists).

As mentioned in a previous EMN report, the procedure for obtaining a labour permit for highly skilled employees is in practice quite short.¹⁰³ The entry conditions are very easy and the time needed to complete the administrative procedures would be one of the shortest in Europe. The

¹⁰² Article 9 of the Foreign Workers Employment Decree. The list of exceptions can be found at http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1999060935&table_name=loi. See also Articles 5, 11 and 13 of the Foreign Workers Employment Decree.

¹⁰³ European Migration Network, Belgian Contact Point, *Satisfying Labour Demand through Migration in Belgium*, Brussels, 2010, <http://emn.sarenet.es/Downloads/download.do?sessionId=47F84DF0CDB41A3FFB86913182C12FA?fileID=1116>, p. 15. The report also refers to the creation of an Economic Migration Service within the Immigration Office in 2008. The aim of the service is to: 1) facilitate and accelerate procedures for foreigners whose intentions are of economic interest; and 2) prevent foreign workers from being hampered in the execution of their professional activities by an administrative slowdown for which they are not responsible.

minimum gross salary required for highly skilled immigrants is up to 50 % lower than in neighbouring countries.

Apart from the exceptions mentioned above, specific exceptions also exist with regard to seasonal work performed by Bulgarian and Romanian citizens. Until 31 December 2011 they still need a labour permit for employment in Belgium. They can however obtain a temporary labour permit without a labour market test, medical certificate or model-work contract in case of employment in a so-called ‘bottleneck job’, *i.e.* one of the listed jobs for which labour shortages exist.¹⁰⁴

2.2.3. Circular and Temporary under Nationality Law: Surpassing the Dichotomy between Nationals and Third Country Nationals

Dual nationality is possible under Belgian law. This may allow circular migrants to leave Belgium and return without legal impediments.

Under the Belgian Nationality Code of 28 June 1984, Belgian nationality can be acquired through a variety of means. Naturalization can be granted to a person who is at least 18 years old and who has held his main residence in Belgium for three years (two years for refugees and stateless persons). The decision is made by the Chamber of representatives, the lower house in federal Parliament, at its discretion.

Other forms of acquisition of Belgian citizenship require family ties with Belgian citizens, birth in Belgium from parents who were born in Belgium and/or who have had residence in Belgium for a long period and from long term stay in Belgium.

2.2.4. Social Security Rights

It is worthwhile to examine to what extent Belgium allows access to social security and the portability of social security benefits, which may encourage temporary and circular migration.

There is no separate national legislation regulating social security rights of migrants. Their social security rights are covered by the general Belgian social security regime, although they may be excluded from some social welfare rights if they are not permanently settled.

Belgium has concluded bilateral agreements relating to social security with third countries that entitle nationals of these countries to certain additional rights.¹⁰⁵ Such agreements have been

¹⁰⁴ Each region has published its own list. See for the Brussels region http://www.bruxelles.irisnet.be/cmsmedia/nl/lijst_van_de_knelpuntberoepen.pdf?uri=43742a960ace8f92010ad03777ad0010; for the Flemish region http://www.werk.be/wg/werknemers_buitenlandse_nationaliteit/documenten/migratie_lijstknelpuntberoepen.pdf; for the Walloon region: http://emploi.wallonie.be/THEMES/PERMIS_TRAVAIL/Docs2006/Liste%20Metiers%20.pdf; for the German Community: http://www.dglive.be/PortalData/2/Resources/downloads/arbeit_beruf/liste_berufe_arbeitskraeftemangel.pdf.

¹⁰⁵ Third country nationals from countries without a bilateral agreement, who have accumulated pensions rights through the payment of social security contributions on earnings received in Belgium will normally only receive a pension if they stay on in Belgium. See European Migration Network, Belgian Contact Point, *Conditions of Entry and Residence of Third Country Highly-skilled Workers in Belgium*, Brussels, 2006, <http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=ACEABBD4F8D3AC5480496CC5A5A78506?directoryID=103>, p. 20.

concluded with Algeria, Australia, Canada, Chile, DR Congo, India, Israel, Japan, Morocco, the Philippines, San Marino, South Korea, Switzerland, Tunisia, Turkey, Uruguay, the US and the independent states that used to form the former Yugoslavia.¹⁰⁶ The scope of the agreements differs: some include all social rights (health and invalidity insurance, pensions, professional diseases and accidents, unemployment, family allocations), while others are limited (e.g. only pensions and invalidity insurance in the agreements with the US and Canada).

The bilateral agreements cumulate the periods of social insurance in the country of origin and country of destination (for the access to and calculation of social security benefits) and restrict or cancel conditions of territoriality provided for in the national legislation. Furthermore, social security benefits accrued in Belgium can be exported by citizens of the aforementioned countries upon their return to their country of origin. This applies to professional accidents and diseases compensations, invalidity compensations and pensions, family allocations and pensions, but not for unemployment benefits.¹⁰⁷ Such social security benefits are calculated on a *pro rata* basis.

2.3. CO-OPERATION WITH THIRD COUNTRIES

In its communication on circular migration and mobility partnerships between the European Union and third countries from 16 May 2007, the Commission stressed that “Dialogue and cooperation with third countries – both in the area of migration and in related areas such as employment, social policy and education/training – is essential to ensure that circular migration is mutually beneficial”. In the same document, third countries are *inter alia* encouraged to “put in place legal and administrative arrangements to facilitate circular migration” and partner countries are called to “commit themselves to improving employment and labour matching services, as well as vocational and language training or the ability to foresee skill needs and supplies and provide information on labour needs abroad”.¹⁰⁸

Belgium participates in a mobility partnership with Georgia that was signed on 30 November 2009.¹⁰⁹ This partnership covers projects on mobility and legal migration, asylum, the fight against trafficking and smuggling, support for assisted voluntary return and reintegration of certain vulnerable groups of migrants. The Belgian Immigration Office and Fedasil are involved in the implementation of measures related to the return of Georgian migrants under the partnership.

Within this framework, Belgium will participate in two large projects for co-operation with the Georgian authorities: a return project and a capacity building project.

¹⁰⁶ European Migration Network, Belgian Contact Point, *Conditions of Entry and Residence of Third Country Highly-skilled Workers in Belgium*, Brussels, 2006, <http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=ACEABBD4F8D3AC5480496CC5A5A78506?directoryID=103>, p. 20.

¹⁰⁷ Under Belgian law these are only awarded upon the condition that the worker remains available on the Belgian labour market. However, the periods worked in Belgium will be taken into account in the calculation of the unemployment benefits in the country of origin.

¹⁰⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions on circular migration and mobility partnerships between the European Union and third countries, COM(2007) 248 final, p. 12-13, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0248:FIN:EN:PDF>.

¹⁰⁹ N.Reslow, *The new politics of EU migration policy: analysing the decision-making process of the Mobility Partnerships*, <https://www.appam.org/conferences/international/Maastricht2010/sessions/downloads/280.1.pdf>, p. 16.

The “Support Reintegration of Georgian Returning Migrants and the Implementation of EU-Georgia Readmission Agreement” foresees a follow up to the individual returns of Georgian migrants residing primarily in the European Union. The project also intends to provide information on legal migration opportunities and vocational training allowing unemployed Georgians to develop a profile that is suitable for the internal, Georgian market. The project aims to create win-win situations, accompanying people to a self-reliant, economic existence in their own environment and thus reducing the need for using illegal routes for coming back to the European Union. Fedasil and the Belgian Immigration Office will participate in this project, assisting the return of vulnerable persons.

The “Support for the Authorities of Georgia to Implement the Readmission Agreement with the European Union” will be started up by the Belgian Immigration Office together with the Netherlands, the Georgian authorities and the International Organisation for Migration. The project aims at enhancing the security of documents to prevent illegal movements of Georgians, and at improving the capacities of Georgian authorities in the field of identification and readmission of their nationals living in the EU.

Belgium also cooperates with several third countries (Algeria, the countries from former Yugoslavia, Morocco, Tunisia and Turkey) within the framework of international employment agreements. These agreements date back to the so-called “guest worker” era, when foreign labour was needed for vital sectors of the Belgian economy. The international agreements were meant to ease immigration towards Belgium. They contain stipulations about the procedures for communicating Belgium’s need for labour and about the selection and migration of workers. They also cover working and wage conditions, residence and housing, etc. In addition to new social security treaties with India, Japan, Uruguay and South Korea, which makes posting to and from the respective countries easier, no recent agreements have been concluded with any countries regarding labour migration per se, nor has there been any other form of cooperation in that specific field.¹¹⁰

2.4. OTHER ASPECTS

a) The relationship between circular/temporary migration and integration

The integration of temporary and circular migrants in Belgium is relatively unexplored. In this regard it is crucial to examine and deepen discussions among Belgian actors in this field as to whether the approach and integration measures developed for “permanent migrants” are desirable and appropriate for temporary and/or circular migrants.

Within the Flemish Region a civic integration programme exists that consists of an educational programme (orientation course, language course and professional orientation) and an individual support programme.¹¹¹ This programme is, in principle, compulsory for migrants who have been

¹¹⁰ European Migration Network, Belgian Contact Point, *Satisfying Labour Demand Through Migration In Belgium*, 2010, <http://emn.sarenet.es/Downloads/download.do;jsessionid=47F84DF0CDDDB41A3FFB86913182C12FA?fileID=11p>. 34.

¹¹¹ See Flemish Act of 28 February 2003 on the Flemish integration policy, Belgian State Gazette 8 May 2003. See also European Migration Network, Belgian Contact Point, *Conditions of Entry and Residence of Third Country Highly-skilled Workers in Belgium*, Brussels, 2006, <http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=ACEABBD4F8D3AC5480496CC5A5A78506?directoryID=103>, p. 22.

registered for the first time in a municipality in the Flemish Region. However, migrants residing for temporary (non-renewable) purposes are excluded from this programme. The latter category includes students, interns, apprentices, specialized technicians, au pairs, researchers and guest professors and employees employed by a foreign employer.¹¹² Labour migrants can follow the programme but are exempted from the obligation to follow it. In the two other regions there exist no compulsory integration programmes.

Besides these integration programmes, it would be relevant to examine and evaluate spontaneous integration processes. In the case of the Polish migration to Belgium, indications of such spontaneous integration are noted. The establishing of private enterprises by Polish migrants, in particular in the construction sector, the founding of Polish-speaking catholic parishes,¹¹³ especially in Brussels and Antwerp, the rising numbers of Polish children enlisted in the Belgian educational system and the setting up of Polish weekend schools¹¹⁴ could be seen as such indicators. In this regard, one could assume that the nature of temporary or circular migration (for example, work or study) allows spontaneous integration dynamics. The question remains open as to whether specific and planned strategies and additional measures can or should be developed to facilitate and complement this.

b) The relationship between circular / temporary migration and the problem of “brain drain”

The Belgian government has taken steps to prevent brain drain. The MIDA Great Lakes-project is an example in this direction. For additional information on this project, please refer to pages 20-22.

c) The relationship between circular / temporary migration and posted workers

Although most of the temporary and circular migrants in this study are third country nationals moving to Belgium from outside the European Union, one group of temporary and circular migrants from within the EU should be mentioned: workers posted by employers in other EU Member States. These workers are exempt from obtaining a work card, even when they are third country nationals. Social inspection services have articulated concerns about the protection of the social rights of these workers. As a result of their continuing ties with their country of origin, where they maintain their main place of residence, chances for them to learn about their rights in Belgium are limited. They remain ‘visitors’ and information about their rights as employees does not easily reach them. As long as there is a wide gap between the standard of living in Belgium and that in their home country, they are likely to accept less profitable working conditions than local Belgian workers: the value of their (lower) wages remains high in the country of origin. Additionally, these situations make it easier for

¹¹² For a detailed description see: Kruispunt Migratie-Integratie, *Doelgroep inburgering 18+ in Vlaanderen en Brussel vanaf 2/3/2008*, Brussels, 2008, http://www.kruispuntmi.be/uploadedfiles/Vreemdelingenrecht/Wegwijs/Inburgering/brochure_doelgroep_inburgering_2%20juli%202008.pdf

¹¹³ According to the “Polish Catholic Mission” in Brussels (*Polska Misja Katolicka w Brukseli*), the Polish catholic community in Brussels counts about 20.000 persons, <http://www.pmkbruksela.be/kategorie/misja>

¹¹⁴ The schools, established especially in Brussels and Antwerp, are following the official Polish curriculum and are financed by the Polish authorities. The school leaving certification qualifies the graduates for the Polish higher educational system and therefore supports reintegration processes after possible return to the country of origin. One of the biggest Polish schools in Belgium, the “Joachim Lelewel-School” in Brussels has about 900 pupils.

employers and workers to evade fiscal contributions. This calls for a more thorough inspection by the social and fiscal inspection services in both home and work country.¹¹⁵

¹¹⁵ L. Beck, *Economische migratie en strijd tegen uitbuiting*, in Centrum voor Gelijkheid van Kansen en Racismebestrijding, *Migratie. Jaarverslag 2009*, Brussels, 2010, http://www.diversiteit.be/diversiteit/files/File//migratie_migrations/MIGRATIE2009-NL.pdf, p. 179.

III. AVAILABLE DATA ON CIRCULAR AND TEMPORARY MIGRATION

The presentation of data on temporary and circular migration is hampered by several difficulties relating to the statistical understanding of the concept as well as the data collection and availability.

Firstly we noted in the relevant section of the study that the concept of circular migration is understood differently and that it is difficult to reach a unanimous view on it. This also applies to the statistical definition: How can we statistically grasp this concept? In addition, for the purpose of the study, we have adopted a broad definition of circular migration, which includes managed and spontaneous as well as irregular movements which are difficult to capture statistically.

Secondly, data on migration and migrants are collected at various levels in Belgium. Given the country's federal state structure, data are dispersed between federal, regional and community levels. For example, immigration data are collected at the federal level, whereas data on labour and labour permits are to be found at the regional level and integration data at the community level. Furthermore, even within the same level, data may be dispersed between different departments (visa and development data at the Department of Foreign Affairs; residence permits at the Immigration Office...).

Data on temporary and circular migration cannot be captured under one single heading partly because temporary and circular migration occurs with a wide variety of immigration statuses (e.g. students, researchers, apprentices, short stay visa, temporary residence permits, etc.). The use of multiple data sources is inevitable to obtain a better picture of circular and temporary migration trends.

Thirdly, Belgium has no longitudinal data available on temporary and circular migration. The use of longitudinal data would help to estimate whether international migration is becoming increasingly temporary and / or circular. Such approach could better indicate the evolution of temporary and circular migration patterns at individual and group levels over time. Questions such as “How temporary is migration? How do migrant’ statuses evolve? How many circular moves does a specific cohort undertake? How many leave permanently?” etc. could be answered. In this regard, the conclusions from the EMN Conference on the “Long term Follow up of Migrants Trajectories” from September 2010, underline the need for longitudinal data and surveys as well as further research, especially as regards cohort analysis¹¹⁶.

Taking into account the above mentioned difficulties and challenges, we will present below data relating to aspects linked to temporary and circular migration. For this purpose, the following data were used:

- 1) Data on the numbers of visa (FPS Foreign Affairs) and residence permits (Immigration Office) that have been issued

¹¹⁶ Belgian Contact Point of the European Migration Network, *Long-term Follow up of Migrants’ Trajectories across the European Union*, Final Summary and Conclusions, via <http://emn.intrasoft-intl.com/Downloads/prepareShowFiles.do;?directoryID=128>

These data give an indication of the purpose and duration of the visit or stay and the number of incoming migrants. The data related to visas will only offer a partial picture as they do not include third country nationals benefiting from a visa exemption.

The data related to residence permits do not indicate whether or not these persons actually respect the temporary nature of their stay by effectively returning upon expiration of their residence status. Moreover, changes of temporary statuses into more permanent or indeterminate residence statuses (most commonly in cases of marriage) will also affect the total number of migrants who were originally “temporary migrants”.

- 2) Data collected by the federal and regional foreign workers employment agencies about the granting of labour permits

These data could give an indication of the economically related forms of temporary and circular migration for which a labour permit is needed. Caution is warranted here too. The number of labour permits delivered provides only a partial picture of the total number of foreign workers in Belgium.¹¹⁷ The majority of immigrants are not obliged to have a labour permit (EU citizens, foreign spouses and partners of Belgians, third-country nationals with a permanent residence permit, etc.). Recent changes in the exceptions to and exemptions from the Foreign Workers Employment Act (e.g. for doctoral students, researchers, etc.) may distort the comparability of data over the years. Furthermore, the annual quota of labour permits covers both first requests and renewals. The same employee can combine labour permits for several jobs with one or more employers. This means that the total number of permits does not equal the annual inflow of foreign workers. The data do not allow distinguishing temporal/circular workers who return from those who stay on with a second permit.

A clear and comprehensive picture of the in- and outflow of migrants can only be obtained by integrating all the relevant data sources concerning migration and employment (visas, residence permits, labour permits, registrations in the social security databases and the national registry, etc.).

3.1. IMMIGRATION DATA

Table 1: Total number of residence permits for third country nationals in Belgium

	From 3 to 6 months	From 6 to 11 months	12 months or over	Total
2008	14.218	49.856	286.318	350.392
2009	14.546	40.853	309.540	364.939

Source: Immigration Office

On a total population of 10.666.866 (2008), Belgium has 971.448 non-nationals residing on its territory. Two thirds of the non-nationals are EU citizens: 659.423 EU-citizens non-nationals. Among the third country nationals, approximately 80% hold a residence permit of 12 months or more.

¹¹⁷ Vlaams Subsidieagentschap voor werk en sociale economie. Dienst Migratie en arbeidsbemiddeling, *Jaarverslag 2009: arbeidsvergunningen en arbeidskaarten in Vlaanderen*, 2010, www.werk.be, p. 19.

Table 2: Visa applications (2004-2009)

	2004	2005	2006	2007	2008	2009
Visa A	2280	2435	1924	1393	1170	989
Visa B	3536	3408	3859	6518	7249	5931
Visa C	155639	165221	179869	212932	213145	195961
Visa D	26517	28473	30230	30958	33079	32252
Total	187972	199537	215882	251801	254643	235133

Source: FPS Foreign Affairs

Table 2 shows the number of visa-applications made. The visa C-applications relate to a temporary stay of maximum three months. This number has risen between 2004 and 2008 and dropped back in 2009.

Tables 3 and 4 will indicate the purposes of the visit for maximum three months and for more than three months respectively:

Table 3: Delivery of Visa C (2006-2009)

Purpose of the visit	2006	2007	2008	2009
Studies	851	1226	884	594
Research	221	285	341	496
Internship or Formation	3420	4405	4742	7305
Employment	12	2	10	11
Family reunification with temporary worker	0	0	2	0
Commercial (on invitation)	32820	44598	47027	34645
Professional	29844	28142	24034	19099
Journalism	12	0	0	4
Conferences/colloquia	4327	6066	5667	6331
Commercial event/Trade Fair	769	1328	1205	1533
Religious activity	537	548	2412	652
Medical	1589	1579	1452	1823
Return with appeal pending	142	105	74	79
Return with lost/expired residence documents < 3 months	9	123	302	386
Return with lost/expired residence documents > 3 months	1	2	6	27
Return non regularized stay	44	0	3	13
Humanitarian	604	452	183	383
Artistic and cultural event	4575	4228	4695	5269
Sports event	2743	3559	2878	2424
Transit	13	17	8186	6495
Boarding ships	123	443	563	729
Official-Political	7346	7559	6760	6836
Adoption	69	21	22	13
Family Reunification	126	87	87	54
Existing partnership	0	1	14	17
Partnership visa	0	0	51	155
Wedding visa	611	528	495	502
Tourism	25972	39808	37867	36048
Private invitation	8383	8016	8188	10700
Family Visit	21753	24050	24820	25013

Divers	2260	1738	1195	10
No reasons indicated	4	96	567	42
Total	151186	181019	186740	167688

Source: FPS Foreign Affairs

Although visas C are limited in time, they do not necessarily relate to persons returning back to their country of origin after the expiration of the visa. Family reunification and partnership visas, for example, will cover the entry and temporary stay awaiting the possible delivery of a residence permit as spouse or partner for a longer and eventually even indeterminate stay in Belgium.

Among the other purposes for a short time visit, some may be identified as possibly falling within the scope of circular migration: studies, research, internships, short time employment. The remaining categories may also relate to persons whom could – again, depending of the definition of course - be considered circular migrants, but the available data are too general to determine the exact purpose of their visit and its duration in the light of temporary and circular migration: commercial and professional visa, participation in conferences, fairs, cultural and sports events.

Finally, the return visa relate to persons who are readmitted to the country after the expiration of their original residence documents.

Table 4: Delivery of Visa D (2006-2009)

Purpose of the visit	2006	2007	2008	2009
Studies	5718	5572	6386	6517
Family reunification with student	176	198	243	246
Research	116	146	195	222
Internship or training	536	423	371	451
Employment	3029	3610	3955	2633
Family reunification with temporary foreign worker	406	644	1074	1010
Au pair	198	205	262	275
Work holiday	28	85	92	115
Independent worker	1087	120	111	133
Commercial (on invitation)	1	2	0	0
Professional reasons	3	3	0	5
Journalism	27	22	18	21
Religious activity	174	212	180	171
Return with appeal pending	12	1	2	9
Return with residence document lost/expired < 3 months	19	11	3	21
Return with residence document lost/expired > 3 months	37	73	104	73
Return non regularized stay	160	169	119	63
Humanitarian	13	18	25	54
Tourism	2	0	0	0
Artistic and cultural event	2	0	0	0
Sports event	1	0	0	0
Official	0	1	5	44
Private invitation	3	1	0	0
Rentiers	13	9	15	8

Family reunification	11840	9645	12975	12638
Existing partnership	357	320	131	
Partnership visa	0	7	3	5
Wedding visa	43	56	57	
Family visit	2	3	6	1
Adoption	402	335	296	364
Divers	192	194	180	0
Unknown	0	3	14	443
	26603	24095	28830	25522

Source: FPS Foreign Affairs

The purpose for issuing a long term visa D is also in many instances related to family reunification: between 42 and 46% of the visas D are given to family members (family reunification, partnerships and wedding).

The group of migrants engaged in schooling and training (students including their family members, researchers, interns and trainees) becomes more important here: around 25%.

Between 17 and 20% of the visas D are given for economic purposes (employees including their family members, au pairs, holiday workers, independent workers).

Here too, the data of these ‘temporary categories’ (schooling, training and economic purposes) do certainly not allow to conclude that all recipients are temporary migrants and will return to their country of origin upon the expiration of the initial visa: a change of status and prolongations of the stay (also irregular) may be possible.

Table 5: First residence permits (2008-2009)

	2008	2009
Family Reasons	20320	28523
Educational Reasons (6 to 12 months)	6743	7222
- Educational Reasons: study (6 to 12 months)	6383	6772
- Educational Reasons: others (6 to 12 months)	360	450
Remunerated Activities	7097	5391
- Highly skilled workers (3 to 6 months)	0	0
- Highly skilled workers (6 to 12 months)	3577	1202
- Highly skilled workers (12 months and over)	0	0
- Researchers (3 to 6 months)	0	0
- Researchers (6 to 12 months)	96	0
- Researchers (12 months and more)	0	0
- Seasonal workers	0	0
- Other remunerated activities (3 to 6 months)	0	0
- Other remunerated activities (6 to 12 months)	3424	3597
- Other remunerated activities (12 months and more)	0	592
Other reasons	12041	17803
- Refugee and subsidiary protection status (12 months and more)	3905	3175
- Humanitarian status (12 months and more)		14554
- Residence only (12 months and more)	17	74
- Other reasons (12 months and more)	8119	0

Total	46201	58939
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Source: Immigration Office

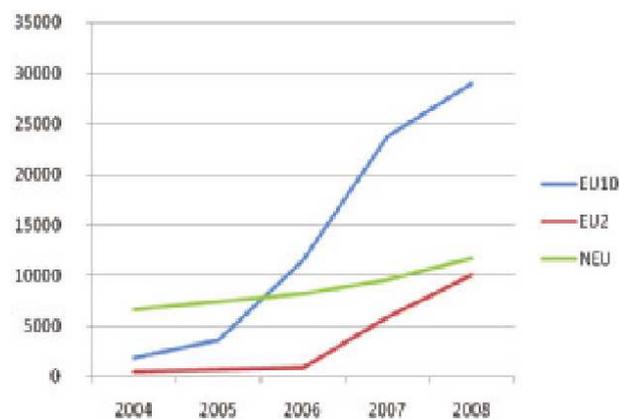
On the basis of data related to the delivery of first residence permits, it is also possible to distinguish among categories of migrants. These data are more complete than the visa data, because they cover all regularly residing third country nationals receiving a first residence permit (Table 5). These figures show that educational activities and remunerated activities are more or less situated in the same range (9 to 12 % each), but come after family and humanitarian residence reasons. In 2008 and 2009, respectively around 30% and 20% of all issued residence permits (family reasons included) were permits with a more temporary validity (less than 12 months).

As already mentioned, the figures above are certainly non-conclusive for the determination of temporary or circular migration statuses, not only because of problems of definition and conceptualisation, but also because there may be changes of status.

3.2. LABOUR PERMITS

A second data source which helps to detect economic forms of temporary or circular migration, includes the data related to the issuance of labour permits.

Figure 1: Absolute evolution of B-type labour permits (first permit and renewals) 2004-2008



Source: Federal Public Service Employment, Labour and Social Dialogue

Indications of trends in temporary or circular economic migration for employment purposes can be found in data on the number of labour permits B that have been delivered for the first time to foreign workers. From 2004 to 2008 the number of labour permits granted and employment permits has risen steeply. However, in 2009 the global number of labour permits fell strongly. This does not necessarily mean a real decline in temporary labour migration to Belgium because the sharp decline in the number of labour permits granted is largely due to the exemptions of the largest group of workers from the Central and Eastern European Member States who have been given access to the Belgian labour market. Only Bulgaria and Romania still provide for an influx of new EU citizens in the labour permits system. Also the number of labour permits granted to highly-skilled people and managers stagnated; here the worldwide economic crisis is probably to blame.

Table 6: First work cards A and B issued in 2000-2008

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Europe	1,333	1,458	1,572	1,382	1,597	3,008	8,632	18,387	19,024
Czech Republic	78	126	104	154	61	99	159	234	179
Hungary	107	82	245	67	91	95	190	176	269
Poland	296	350	383	582	1,046	2,122	7,212	12,820	12,320
Slovak Republic	60	82	148	87	60	80	294	341	310
Bulgaria	100	120	93	99	68	98	105	1,525	1,744
Romania	165	248	183	169	105	210	339	2,863	3,716
Russia	191	168	164	89	71	111	126	146	158
Turkey	336	282	252	135	95	193	207	282	328
Africa	1,237	1,023	868	300	105	174	184	277	259
South-Africa	82	77	80	50	29	59	59	81	59
Congo (DR)	516	282	231	68	21	43	50	63	58
Morocco	639	664	557	182	55	72	75	133	142
America	1,065	1,086	828	609	725	796	826	827	1,023
Brazil	157	79	68	40	114	101	99	129	166
Canada	222	200	169	102	107	104	120	140	145
United States	686	807	591	467	504	591	607	558	712
Asia	1,029	1,173	1,371	770	1,202	1,482	1,781	2,226	2,816
China	266	266	268	193	131	220	298	302	363
India	413	512	686	194	666	795	1,084	1,429	1,961
Japan	350	395	417	383	405	467	399	495	492
Others	2,803	2,279	2,037	1,566	683	851	1,049	1,311	1,858
Total	7,467	7,019	6,676	4,627	4,312	6,311	12,472	23,028	24,980

Source: Federal Public Service Employment, Labour and Social Dialogue

The increase in the number of work cards was due to the gradual opening of the internal labour market to the CEE Member States for employment in so-called “bottleneck” employment positions as of 1 June 2006. Nationals of these Member States could obtain a labour card B for these positions through an accelerated procedure.¹¹⁸ The majority of these B cards were given to seasonal workers in horticulture.¹¹⁹

Table 7: Labour permits (category B) issued in the Flemish Region in 2000-2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<i>Au-pairs</i>	60	51	112	129	110	169	189	205	295	311
<i>Professional training</i>	27	7	68	35	40	26	52	11	16	19
<i>Professional sportsmen</i>	241	256	230	169	177	196	178	196	211	194
<i>Guest professors</i>	39	46	40	19	19	20	16	20	31	30
<i>Specialized technicians</i>	422	531	924	727	285	196	176	187	293	247
<i>Family reunification</i>				25	50	118	219	550	999	842
<i>Highly-skilled workers</i>	1751	1858	1861	1908	1904	2173	2513	2811	3265	2556
<i>Managers</i>	1041	1065	1308	1165	1173	1314	1327	1268	1334	1199
<i>Researchers</i>	400	371	387	167	94	77	97	151	60	57
<i>Training</i>									106	81
<i>Interns</i>	190	128	115	98	125	202	230	176	173	156
<i>Artists</i>	28	25	28	49	52	60	38	45	40	30
<i>Non-EU bottleneck</i>										136

¹¹⁸ In 2006: 9.051 work cards B for bottle-neck positions; in 2007: 26.734; in 2008: 34.285.

¹¹⁹ In Flanders 25.247 work cards B (first and renewed) were given for employment in bottleneck positions in 2007; 16.426 cards were obtained by seasonal workers in the horticultural sector.

<i>professions</i>										
<i>New EU States</i>					83	177	221	334	494	204
<i>New EU States Seasonal</i>					930	2639	1108	0	0	0
<i>Work</i>										
<i>Admitted to residence</i>	300	423	609	188						
<i>Humanitarian residence</i>	37	10	9	2						
<i>Victims of human trafficking</i>	3	36	50	16						
<i>Students</i>	275	320	437	169						
Total	5191	5421	6268	5402	5269	7546	15271	31404	40175	21485

Source: Flemish Agency for Work and Social Economy - Department Migration and Employment

On the basis of data on labour permits (first and renewed) issued by the Flemish region, it is possible to identify the categories for which a labour permit has been given more in detail. The most important three categories throughout have been highly-skilled workers, managers and interns. Seasonal workers from the CEE new Member States of the EU have occupied an important position shortly after joining the European Union, in the period of limited access to the Belgian labour market.

Table 8: Seasonal work in horticulture (2000-2008)

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Belgians	27286	22063	23322	27202	32965	30726	26607	21819	16756
Non-nationals	5503	5330	6493	11672	17397	19789	19618	16609	13423
Percentages									
- Belgium	83	81	78	70	65	61	56	57	56
- Africa	5	5	7	10	12	13	16	15	13
- Asia	2	3	3	6	7	8	8	7	6
- Europe Non EU	6	6	6	6	7	7	6	5	5
- Old EU MS	4	5	5	6	6	6	6	5	5
- New EU MS	0	0	0	1	2	4	6	10	15
- North-America	0	0	0	0	0	0	0	0	0
- South-America	0	0	0	0	0	0	0	0	0
- Oceania	0	0	0	0	0	0	0	0	0
- Unknown	0	0	0	1	1	1	1	0	0

Source: Maxime Loose and Miet Lamberts, *De tewerkstelling van allochtonen in de land- en tuinbouw, 2010*

Table 9: Seasonal work in agriculture (2000-2008)

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Belgians	164	280	350	335	444	366	278	328	303
Non-nationals	10	17	22	36	65	89	73	86	89
Percentages									
- Belgium	94	94	94	90	87	80	79	79	77
- Africa	1	0	2	3	5	5	5	6	4
- Asia	0	2	1	1	0	4	3	4	4
- Europe Non EU	3	0	2	2	3	5	8	7	11
- Old EU MS	2	3	1	3	4	4	3	1	3
- New EU MS	0	0	0	0	1	0	2	2	1
- North-America	0	0	0	0	0	0	0	0	0
- South-America	0	0	0	0	0	0	0	0	0
- Oceania	0	0	0	0	0	0	0	0	0
- Unknown	0	0	0	0	0	0	0	0	0

Source: Maxime Loose and Miet Lamberts, *De tewerkstelling van allochtonen in de land- en tuinbouw, 2010*

With regard to seasonal workers in horticulture and agriculture, the available data show that the majority of these workers are people with Belgian nationality. Among the foreigners, third country nationals form a minority (below 10%).

Table 10: Inflow of posted workers in Belgium (2007-2009)

	Nationals	EU-15	EU-10	EU-2	Third country	Unknown	Total
2007	2673	91282	25737	1904	11124	2561	135281
- Highly skilled	275	6535	684	114	3124	40	10772
- Skilled	2229	81563	24696	1776	7752	2406	120422
- Lowly skilled	169	3184	357	14	248	115	4087
2008	4784	130797	41713	7490	13806	3264	201993
- Highly skilled	455	8062	987	325	3577	71	13512
- Skilled	3998	117077	40192	7104	9836	3054	181364
- Lowly skilled	331	5658	534	61	393	139	7117
2009	5361	119930	39913	14134	11549	2376	193263
- Highly skilled	612	13908	945	610	3137	233	19445
- Skilled	4590	101025	38529	13306	8058	2011	167519
- Lowly skilled	159	4997	439	218	354	132	6299

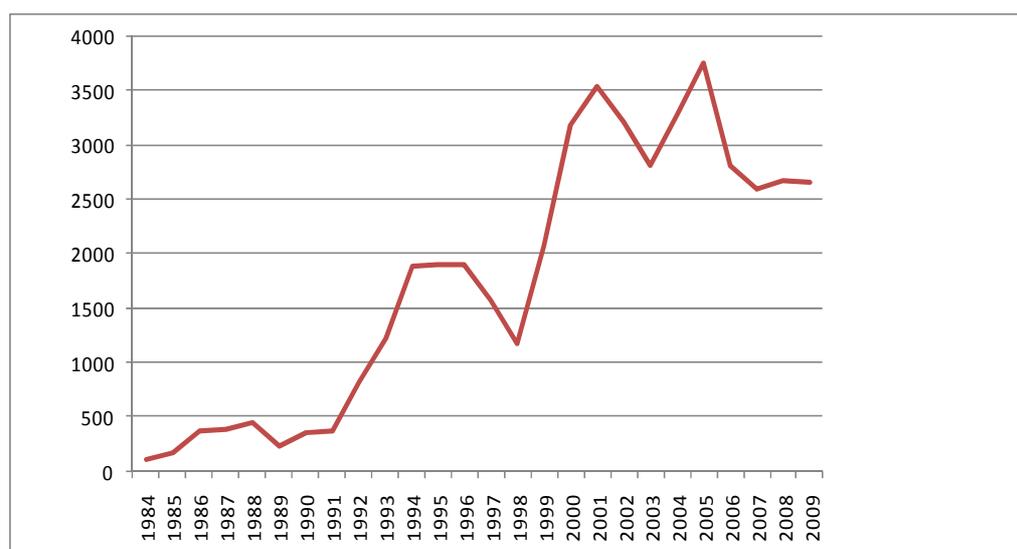
Source: LIMOSA and EMN Study (*Satisfying labour demand through migration in Belgium, 2010*)

As mentioned above, posted workers are exempt from a labour permit. They nevertheless constitute an important group of temporary workers in Belgium. Data can be retrieved from LIMOSA, which is the compulsory Belgian declaration system for posted foreign employees and self-employed foreigners.¹²⁰ The numbers show that posted workers are more numerous than workers holding a labour permit. In the period 2007-2009, EU-nationals (Belgians excluded), accounted for 88% to 90% of all posted workers in Belgium. The share of third country nationals ranges between 6% and 8,2 %, with the absolute numbers also being higher than the number of third country nationals holding labour permits in the same period.

3.3. DATA REGARDING AVR (ASSISTED VOLUNTARY RETURN)

Although programs and strategies in Belgium concerning assisted voluntary return and reintegration in the countries of origin are not developed to contribute to the circularity of migration, a short overview of the number of (assisted) voluntary returns is presented under this chapter. The number has remained relatively stable over the past decade, between 2500 and 3800.

¹²⁰ The system requires most foreigners who temporarily come to Belgium as posted employees to declare this online (www.limosabe.be). This registration system is meant to unmask fraud through undeclared employment in Belgium (it was one of the conditions for lifting the limitations to free movement of new EU citizens). In a later phase, the authorities intend to merge the databases for work permits, professional cards and residence permits with the LIMOSA database. For a detailed discussion of the data on posted workers, see European Migration Network, Belgian Contact Point, *Satisfying Labour Demand Through Migration In Belgium, 2010*, <http://emn.sarenet.es/Downloads/download.do;jsessionid=47F84DF0CDD41A3FFB86913182C12FA?fileID=1116>, Tables 23 to 26.

Figure 2: The number of assisted voluntary returns 1984-2009

Source: IOM

When looking at absolute figures per country, the main return destinations are European destinations for failed asylum seekers and Central and South America for other irregular migrants.

Table 11: Principal ten countries of return under REAB 2004-2008

		2004	2005	2006	2007	2008
(Failed) Asylum Seekers	Slovakia	163	666	123	126	376
	Russian Federation	161	153	109	97	212
	Kosovo	120	90	55	50	61
	Armenia	83	73	91	30	33
	Latvia	69				
	Iran	64	65	40	30	20
	FYROM	58				
	Ukraine	54	74	41	30	27
	Bulgaria	53	90		48	
	Kazakhstan	53		36		22
	Albania		49			
	Czech Republic		48			30
	Georgia		41			22
	Bosnia and Herzegovina				37	
	Iraq			34		
	Nepal					26
DR Congo					24	
Irregular Migrants	Brazil	636	710	706	785	696
	Ukraine	178	272	245	214	190
	Ecuador	151	91	41	36	37
	Armenia	105	120	93	97	102
	Moldova	95	72	54	31	39
	Mongolia	57	109	163	125	116
	Bulgaria	54	61	30		23
	Russian Federation	44	57	50	61	48
	Georgia	30	25	36	22	22
	Romania	30	30		27	
	Algeria			18		
	China				26	
	Kosovo					19

Source: IOM

To conclude, a number of data were outlined in chapter III which relate to aspects linked to temporary or circular migration. However, a further, more precise conceptualization and accordingly developed databases would be essential to give more exact trends or numbers.

IV. CONCLUSIONS

1. No specific debate on temporary and circular migration is ongoing in Belgium at present. Other issues related to the asylum procedure, the regularisation of irregular migrants, family reunification and integration, keep on dominating policy discussions. When circular or temporary migration is discussed, issues of attracting new workers to fill labour market shortages for specific job positions (especially bottleneck positions) and of adequately respecting their social rights are more central than temporary/circular/return aspects.

2. The current political context as well as historical experiences might explain the reluctance of national authorities to promote new projects of temporary and circular migration. The so called 'guest workers' programs, which already started in the late 1940s, were intended by the Belgian government to be temporary. In the beginning of the 1990s, prominent migrant movements of mostly Eastern-European citizens to the country mainly occurred in an informal and often irregular manner. In both examples, considerable numbers of migrants remained in Belgium.

3. Notwithstanding the absence of a specific policy on circular or temporary migration, these forms of migration exist in Belgium. Projects which establish a link between migration and development are examples thereof. Some programmes explore means to mobilize the Diasporas as agents for developments. A recent pilot project shows a certain willingness to undertake test circular migration pilot projects.

4. Moreover, certain legislative and administrative tools to facilitate temporary and circular migration are present. The existing immigration legislation already allows some forms of temporary or circular migration for specific categories like students and researchers. Maintaining one's residence status in Belgium while returning from time to time, and even for longer periods, to one's country of origin, is also made possible through specific absence and re-entry provisions. The issuance of multiple entry visas allowed migrants to come from time to time to Belgium, while maintaining their main point of interests in their country of origin.

5. In terms of data, it is difficult to obtain an accurate and complete overview on temporary and circular migration in Belgium. While figures on visa, work permits, residence permits, etc. are available within the administration, they cannot provide an accurate picture of these forms of migration. This may be inherent to the object of study. Initial temporary migration may, as a result of interaction in the country of residence, change into permanent immigration and eventually into the acquisition of Belgian citizenship. Temporary return migration may also occur as independent initiative and therefore remain out of sight. In order to obtain a more appropriate data collection, it would be required to (1) qualitatively collect data on migration aspirations to better understand these movements (surveys), (2) quantitatively enter data into a more specialized classification and registration of migration purposes, at all levels through the immigration process and compare data from sources that are now widespread at both the federal and the regional and community levels.

6. According to available data, in 2008 and 2009 respectively around 30% and 20% of all issued residence permits (family reasons included) were permits with a temporary validity (less than 12

months). This mainly concern students, workers and their family members. However, it is not possible to deduce from the data that these migrants return or not. According to the data as well, labour permits B are mainly granted to three categories, including highly-skilled workers, managers and interns. Seasonal workers from the CEE new Member States of the EU occupy an important position in the context of intra-European mobility. With regard to seasonal workers in horticulture and agriculture, available data show that only a small percentage of these workers are non-nationals.

Posted workers constitute an important group of temporary workers in Belgium and are more numerous than workers holding a work permit. The share of third country nationals is below 10%, although their absolute numbers are also higher than the number of third country nationals holding work permits.

7. This study has been a first attempt to gather data, information and evidence on the issue of temporary and circular migration in Belgium. In order to obtain a further insight into policies on and practices of temporary and circular migration, the following questions require further examination:

- How to improve the common understanding of “temporary” and “circular migration”?
- Are lessons learnt in the context of intra-communitarian mobility applicable to temporary and circular migration?
- How can circular migration lead to a “triple win” (win for home country, country of destination, migrant)?
- May an incentive-based circular mobility enhance the positive contributions of migrants to both their home and host communities?
- Should policies seek to avoid obstacles to circular migration?
- What could be the main characteristics of and conditions for effectively implementing, monitoring and evaluating a Belgian scheme for temporary and circular migration?
- What is the feasibility of imposing the temporary nature (sanctions in event of overstaying, permissibility of change of statuses...)?

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