



## Comparative study Immigration

# Contents

---

<b>3</b>	<b>Introduction</b>
<b>4</b>	<b>Country overview</b>
5	U.K.
5	Germany
5	The Netherlands
5	France
5	Spain
5	Italy
5	Belgium
<b>11</b>	<b>Comparative sheet: work permits</b>

---

# Introduction

---

In the absence of an elaborate immigration policy on a larger European level, and further to the shortage of highly skilled people on the European labour market, EU Member States have entered into a battle for brainpower and are trying to attract as many third country professionals as possible by facilitating their immigration rules for this category of employees over the past few years.

This study, which is published by our office on a bi-annual basis, is the result of co-operation between Laga and our foreign member firms. It aims to provide an objective overview of the immigration processes to be complied with following the employment of third-country highly-skilled workers in:

- Belgium
- The UK
- Germany
- Italy
- France
- The Netherlands
- Spain.

In the first part of the study we provide a brief overview of the immigration processes in the different countries, then we compare the necessary requirements in the second part. The comparison shows that the Belgian migration (work permit) process is by far the fastest and easiest to comply with. Indeed, if we look at the time it takes to process a work permit application in Belgium (about 2 weeks) and what the conditions are in order to obtain a work permit for a highly skilled employee (earning at least 35.638 EUR gross on a yearly basis in 2009), we can only conclude that it has become easier for third country nationals to be employed in Belgium compared to the past as well as compared to our surrounding countries.

# Country overview



## U.K.

Nationals who are not British or from the European Economic Area, usually require a working visa to seek employment in the UK. However, under strict conditions it will be possible for these nationals to make short business trips to the UK without being in possession of a formal working visa or work permit, on the basis of the national passport or with a business visa.

Regular work permits in the UK are issued to employees and not to owners or part owners of companies. A work permit needs to be applied for by a UK based entity (so-called “sponsor”) and is only issued when evidence shows that the job requires a UK equivalent degree level qualification or three years full time specialist experience.

An alternative to an entity sponsored work permit or business visa would be for the individual coming to work in the UK to obtain a visa under the Highly Skilled Migrant Programme. Such individuals are usually at the top of the global labour market. Permission is granted initially for 24 months and extensions can be granted for up to 3 years.

The HSMP is a points-based system. Applicants need to attain at least 75 points and meet the mandatory English Language requirement in order to qualify for the visa.

Points are scored in four main areas:

- Qualifications: 30-50 points (depending on the level of qualification achieved)
- Past Earnings: max. 45 points (depending on the level of income and where it was earned)
- Age: 5-20 points (27 years or under – 20 points, 28 or 29 years – 10 points, and 30 or 31 years – 5 points)
- UK Experience: 5 points (either UK study or previous UK employment).

Original documents should be provided to support each of the elements above on which the applicant is seeking to rely on.

Where evidence required to support any of the statements made in the application is not provided, or where evidence supplied is not as specified on the application form, the Home Office will make a decision on the basis of documentation supplied, and this may lead to the refusal of the application.

In practice, many applications are in fact rejected as not enough supporting information can be provided as evidence for the number of points claimed by the applicant.

Applications are currently taking 5 to 14 weeks to be processed from the submission of paperwork to the Home Office.



### Germany

The immigration process in Germany has changed significantly since 1 January 2005. We will hereafter highlight the most important changes.

Before the new law entered into force, a separate application for a work permit had to be sent to the labour office and another separate application for a residence permit had to be sent to the immigration office. This old two-tier system has been replaced by a one-tier system.

Highly qualified employees earning a yearly gross salary of more than 86.400 EUR will now be entitled to a permanent residence immediately. Even their dependants have the right to take up work in Germany.

The old requirement for EU-citizens to apply for a particular EU-residence permit does not exist anymore. Now EU-citizens only need to register at the local town hall of their place of residence in Germany.

Self-employed persons that invest at least 1 Million euro and create at least 10 jobs in Germany will always obtain a residence permit.

Students who have obtained a university degree in Germany can stay for one year in Germany in order to look for a job.

These residence permits allowing someone to work in Germany are generally issued for a particular job with a particular employer and not for employment in general. This means that if the job for which a residence permit issued to a person allowing them to work changes, then that person must apply for a new residence permit in order to allow them to carry on working. This residence permit is issued for one year and can be extended in case the employee is still working for the same company, performing the same job and still earns the same compensation. A permanent residence permit allowing a person to work does not have an expiry date and is issued for any employer in Germany. These permits are mostly issued to scientists, university professors and highly qualified employees earning a yearly gross salary of more than 86.000 EUR.

The process time of issuing such residence permits allowing a person to work is 6 to 8 weeks.

### The Netherlands

The immigration formalities are ruled by the Dutch Foreign Employment Act (“Wet arbeid vreemdelingen” or “Wav”). This Dutch Foreign Employment Act stipulates that an employer is obliged to apply for a work permit in the Netherlands for all nationals from outside the EU, the EEA and Switzerland. Citizens of EU Member States Bulgaria and Romania must still apply for work permits.

The first step in the application procedure is to prove that there are no qualified persons available on the local Dutch and European labour market. Hereto, the employer must report the vacancy to the Dutch Centre for Work and Income (“CWI”) for at least five weeks prior to applying for a work permit. Moreover, the employer must prove that an effort has been made to find suitable local Dutch candidates in a time period of at least three months (e.g. publishing advertisements, involving a head-hunter or an agency, etc.). The employer is only allowed to recruit other persons from outside the EU and to apply for a work permit if they were unsuccessful in recruiting a suitable person for the vacancy within these three months.

The procedure to obtain a work permit can take up to five weeks and can in practice, depending on the circumstances, take up to 10-12 weeks.

Please note that several exceptions apply to this general migration process depending on certain facts and circumstances such as salary, experience, kind of employment etc. Work permits can for example be obtained more easily and faster for intercompany transferees and students. This exception to the rule creates an advantage for the Dutch employer as they are not obliged to search for qualified employees within the Netherlands and Europe. After filing the completed work permit application, the CWI can also make a quick decision within two to three weeks.



## France

When a non-EU national wishes to work and reside in France, they must be in possession of a temporary authorisation to work and a residence permit. This temporary work authorisation may only be granted if a long-term visa has been obtained. In France, a distinction can be made between:

- An assignee who is transferred for a period of 1 to 3 years: they can obtain the status of "salarié en mission";
- An assignee who is transferred for a longer period: they can obtain the status "cadre de haut niveau", i.e. long term assignees – depending on the duration of the assignment in France, the remuneration, their mission and their seniority in the company).

The request for a French work permit and residence permit for the "salarié en mission" must be submitted by the French host company to the competent Department Labour Office ("Direction Départementale du Travail"). Once approved, the application is sent to the International Immigration Agency in Paris for processing (i.e. "Agence Nationale pour l'Accueil des Etrangers et des Migrations" or ANEAM). The work permit application file is forwarded to the appropriate French Consulate once the International Immigration Programme has obtained approval from the French Home Office. Afterwards a long term visa should be applied for by the assignee (and their family members) with the French Consulate of their place of residence abroad. Within two weeks after the arrival in France, the assignee should apply for a residence permit with the French police authorities. A French residence permit is normally issued for a period of three years and cannot be renewed. Note that upon arrival in France the assignee (and their family members) is obliged to undergo a medical examination by a doctor approved by the ANEAM.

The work/residence permit application-procedure for "cadres de haut niveau" is practically the same as what is mentioned above, except for a few differences, being:

- Long term assignees must earn more than EUR 5.000 per month;
- The residence permit is only valid for one year and can be renewed for an indefinite period;
- Long term assignees will be granted only one permit which serves both as a work and a residence permit;
- Long term assignees must sign a French employment contract with the host company in France.

The process time for a work permit takes approximately 6 to 8 weeks. Upon arrival in France, the ANEAM medical exam and the application for a residence permit takes up to approximate one month.





## Spain

When a non-EU citizen will be locally hired by a Spanish company, they will have to obtain a general work permit and a residence permit. Once these permits are obtained, the employee will be able to apply for a visa.

In order to apply for the abovementioned permits an appointment should be made by the employer with the Immigration Authorities (i.e. the Labour Ministry) in order to submit the application documents. The documents to be submitted include a certificate from the National Employment Institute – INEM- showing that no unemployed Spanish and EU-nationals who are legally residing in Spain are applying for the position, a certificate proving the qualifications of the applicant for the job, the employee's passport, etc. Note that the application for the work and residence permit must be on an official form completed by a member of the Board of Directors of the employer or by an employee empowered by a power of attorney, who has to appear in person to submit the documents. All documents should be duly legalised and translated into Spanish.

The process time for the work permit and residence permit takes approximately three months.

When an application for a highly qualified employee or an employee occupying a dependable position (i.e. a person with specific skills or qualification for the job) is filed, the work permit can be obtained more quickly because an appointment should not be made before submitting the documents to the Immigration Authorities.

A work permit in the framework of transnational provision of services is to be applied for in case a foreign company temporarily assigns an employee in order to render services on behalf of the company. The assignment must take place in (i) a company located or running its business in Spain with which the foreign company has an agreement, (ii) in a work centre of the foreign company in Spain or (iii) in another company placed in Spain belonging to the same group. Furthermore the employee needs a stable and regular place of residence in their country of origin and the employee should be working for at least one year in the company sending them abroad. The application process is the same as the one mentioned above, except that the Certificate from the National Employment Institute (i.e. INEM) is not required.

Once the work permit is obtained, the employee must apply for the visa with the Spanish Consulate of their place of residence within one month after the notification of the authorisation to work in Spain.



## Italy

A work permit model D for highly qualified personnel is to be applied for on behalf of personnel of companies with a registered office or branches in Italy or a representative office of foreign companies that have the principal location of its activity in the territory of a State that is a member of the World Trade Organization. The employee must fulfil specific conditions regarding skills and education and must hold at least a management position in order to obtain a work permit. The highly qualified employee must not meet a minimum threshold but their remuneration must guarantee a reasonable standard of living.

The work permit application process time can take from 6 months to 1 year depending on the region where the employment will take place.



## Belgium

While there is always the possibility in Belgium--as might occur anywhere else--that regulations regarding work permits for foreign employees will change, the current regulations (which have been in effect since July 1999), state that any employer wishing to employ a foreign employee (non EEA-citizen) in Belgium must first apply and obtain a work permit for that employee.

There exist different types of work permits in Belgium:

- A work permit A is issued (provided all the required conditions are complied with) for an indefinite period, is valid for all jobs performed into a link of subordination and with any employer;
- A work permit B is a temporary work permit (it is valid for maximum 12 months but is renewable) and is limited to one employer only.

The request to employ a foreign citizen and to obtain a work permit B for them must be made by the employer in Belgium. If the employer is not established in Belgium, they should appoint a person or company based in Belgium who will make the application on their behalf and carry out all steps and formalities.

Special provisions exist for Highly Skilled Workers. The Belgian immigration rules provide an easier immigration process for highly qualified employees, provided that their yearly gross salary exceeds EUR 35.638 (indexed salary amount for 2009) and that they are in possession of a bachelor degree at least. Work permits for highly qualified employees are issued for a period of 1 year and can be extended on a yearly basis.

The work permit processing time depends on the region of employment and is generally between 2 and 3 weeks.

# Comparative sheet: work permits

	Belgium	Netherlands	UK	France	Germany	Italy
<b>Specific work permit for highly qualified personnel</b>	Yes Work permit type B	Yes For inter-company transferees of multi-nationals	Yes Regular work permits or through the Highly Skilled Migrant Program	Yes	Yes Highly qualified personnel can obtain a permanent residence permit allowing work for each and any German employer	Yes Work permit model D for highly qualified personnel
<b>Specific conditions</b>	At least a bachelor degree	The employee should fulfill a key position and should have a diploma of a Higher Vocational or University level	Specific conditions with regard to education and previous work experience	Higher education or university diploma	Higher education or university diploma	Employee must fulfill specific conditions regarding skills and education and must hold a management position
<b>Minimum gross salary</b>	35.638 EUR per year	49.087 EUR per year raised annually	Must meet minimum wage and satisfy the comparative earnings test	<ul style="list-style-type: none"> <li>• 2.000 EUR per months in case of transfer in the same group</li> <li>• 5.000 EUR per month for executives</li> </ul>	86.400 EUR per year	Must not meet a minimum threshold but their remuneration must guarantee a reasonable standard of living
<b>Business trip without work permit</b>	Yes, persons attending client meetings or internal meetings in closed circles, for up to 5 working days per calendar month per meeting)	Yes, under strict certain conditions	Yes, under certain conditions	Yes, under certain condition	Yes, under certain conditions	Yes, when the non-EU national remains in Italy for a period not exceeding 3 months
<b>Work permit application processing time</b>	2 to 3 weeks (depends on region)	2 to 5 weeks	5 to 14 weeks depending on the category of work permits	<ul style="list-style-type: none"> <li>• 6 to 8 weeks for highly qualified personnel</li> <li>• 3 to 5 weeks for executives</li> </ul>	6 to 8 weeks	From 6 months to 1 year depending on the region
<b>Validity period work permit</b>	1 year, can be extended each year	2 years and 11 months, can be extended (under restricted conditions)	Depends upon type of work permit and possible restrictions  Maximum 5 years	3 years in case of transfer in the same group 1 year, can in principle be extended each year	1 year, can in principle be extended each year	Depends on the type of work: 6 months for seasonal work, 1 year studying, coursework or professional training and 2 years for self employment, permanent employment and for family reunification

# Contacts

**For more information, please contact:**

**Erwin Vandervelde**

Advocaat-vennoot / Avocat associé

Employment, social security & immigration law

Tel. + 32 2 800 70 76

Fax + 32 2 800 70 03

Mobile + 32 497 51 53 43

evandervelde@laga.be

**Matthias Lommers**

Advocaat / Avocat

Employment, social security & immigration law

Tel. + 32 2 800 70 69

Fax + 32 2 800 70 03

Mobile + 32 479 20 53 96

mlommers@laga.be

**For further information, visit our website at [www.laga.be](http://www.laga.be)**

A top legal practice in Belgium, Laga is a full service business law firm, highly recommended by the most authoritative legal guides. Laga comprises approximately 110 qualified lawyers, based in Diegem/Brussels, Antwerp and Kortrijk. Laga offers expert advice in the fields of banking & finance, commercial, corporate/M&A, employment, IT/IP, public/administrative, restructuring, real estate and tax law. Where appropriate to ensure a seamless and comprehensive high-quality service, Laga lawyers work closely with financial, assurance and advisory, tax and consulting specialists, and with select EU and US law firms.

Laga provides thorough and practical solutions tailored to the needs of clients ranging from multinational companies, national large and medium-sized enterprises, and high net worth individuals, to government bodies.