

FRAGOMEN



BRUSSELS COMMISSIONER FOR EUROPE YOU'VE GOT YOUR M- CARD. WHAT NEXT?

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WITH YOU TODAY



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AGENDA

- ▶ Introduction & Background
- ▶ Residence and work rights
- ▶ Family reunification
- ▶ Social security coverage
- ▶ Right to absence and return
- ▶ Permanent residence
- ▶ Belgian citizenship
- ▶ What mobility rights do I have outside Belgium?
- ▶ Q&A

Introduction & Background

BREXIT: TWO GROUPS OF UK CITIZENS IN BELGIUM

1 FEBRUARY 2020

Transition period started

31 DECEMBER 2020 / 1 JANUARY 2021

Transition period ended

31 DECEMBER 2021

UK citizens residents/ cross border workers in Belgium pre-transition period

Free access to the EU labour market & registration as residents (or cross-border workers)

Secure Article 50 Permit (M card) (or Frontier Worker Permit (N card))

UK citizens NOT resident in Belgium pre-transition period

Free access to EU labour market

Immigration schemes for non-EU citizens



EU FREEDOM OF MOVEMENT VS WITHDRAWAL AGREEMENT PROTECTION

- ▶ Protection granted by Withdrawal Agreement (WA) – inspired by EU Freedom of Movement
- ▶ However, main differences:
 - ❖ **Scope:** Protected rights limited to the EU country of residence (Belgium)
 - Outside Belgium – non-EU citizen regime is applicable (Schengen rules/national immigration rules – with few exceptions)
 - ❖ **Family reunification:** only if family relationship existed before the end of the transition period on 31 December 2020 (exception children born/adopted after this date in or outside Belgium).
 - ❖ **Loss of status:** once lost, the Withdrawal Agreement status cannot be re-obtained

Example: Due to a long absence, a UK citizen loses his right of residence in Belgium. He cannot re-apply for an M card (will be subject to non-EU citizens regime).

BELGIAN M/N CARDS

BACKGROUND AND ORIGIN



- Article 50 of the Treaty on European Union (TEU) states that **"Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements"**.

- Belgium (Constitutive System):

- **Article 50 Residence Card = M Card**

- o **M card (5 years) eligibility:** UK citizens legally residing in Belgium less than 5 years before the end of the transition period (including those arriving during the transition period)

- o **M card (10 years) eligibility:** UK citizens legally residing in Belgium more than 5 years before the end of the transition period

- **Article 50 Frontier Worker Card = N Card**



NOTE: M/N-Cards specific to UK citizens and family members protected by the WA



M-CARD APPLICATION

- ▶ Deadline for application: December 31, 2021
- ▶ Late applications?
 - Demonstrate reasonable grounds for not meeting the deadline
 - Specific arrangements for certain family members
- ▶ Still awaiting decision?
 - Annex 56
 - Check with Town Hall
- ▶ Refusal?
 - Appeal Council for Alien Law Litigation (CALL) – 30 days
 - Annex 35 (temporary residence document)

Residence and work rights



RESIDENCE RIGHTS

- ▶ Unlimited right of residence, under certain conditions:
- ▶ Ensure you continue to fall into one of the following categories:
 - Employed, self-employed or a student; or
 - Can demonstrate sufficient means of subsistence and have health insurance; or
 - Family member of someone who meets these conditions.
- ▶ Can switch between categories – No need to inform authorities
 - E.g. if unemployed fall back on category adequate means + health insurance
 - **Red flag:** applying for social assistance



RIGHT TO WORK

- ▶ **Employment:** unlimited access to the Belgian labour market
- ▶ **Self-employment:** no authorisation needed

Family reunification

FAMILY REUNIFICATION

- ▶ Specific **more beneficial** rules for family members of M-card holders
- ▶ Can apply for M-card as a family member even after end of the application period on 31 December 2021, provided family tie existed pre-transition period:
 - spouse
 - registered partner
 - partner with whom the M-card holder has a **durable relationship**
 - descendants under **21 years of age or, if older, dependent** on the M-card holder
 - **ascendants** (parents, grandparents, etc.) dependent on the M-card holder
 - **parents of a minor child**, holder of an M-card

Social Security

SOCIAL SECURITY

- ▶ **Work in Belgium** = in principle subject to Belgian social security
- ▶ **Exception:** if temporarily posted to Belgium can remain subject to UK social security

SOCIAL SECURITY

Local employee or self-employed person

▶ Pensions

- Verify requirements for each country (UK and BE) separately
- Pension benefits calculated based upon the actual social insurance periods in each country + totalization
- Place where you settle for retirement no impact

▶ Health care

- Mandatory registration with Belgian health insurance fund (*mutuelle*)
- No waiting period

SOCIAL SECURITY

Local employee or self-employed person

▶ Unemployment

- Entitled to unemployment benefits in Belgium if legal residence in Belgium + fulfil certain conditions
- M-card = legal residence – Switch in category (*worker to sufficient resources*)

▶ Family allowances (child benefits)

- Mandatory registration with family benefits fund
- In principle entitled to family allowance for eligible children (dependent on their age and status at charge)
- If moved to Belgium on or before 31 December 2020 and dependent children live in the UK, may be entitled to family benefits as if they were living in Belgium

SOCIAL SECURITY

Posted worker

- ▶ UK citizens **posted to Belgium pre-transition period** (on or before 31 December 2020)
 - Possible to remain covered by UK social security for up to 5 years
 - UK employer should apply for an A1 Certificate (Certificate of Coverage) with HMRC

- ▶ **Pensions**
 - If subject to UK social security, you do not accumulate any pension entitlements in Belgium
 - Accumulate pension entitlements in the UK

- ▶ **Healthcare**
 - If subject to UK social security and residence in Belgium, entitled to health services in accordance with the Belgian health insurance system
 - Apply for S1 form with HMRC, and register with health insurance fund in Belgium

SOCIAL SECURITY

Posted worker

▶ Unemployment

- If subject to UK social security, no Belgian unemployment benefits

▶ Family allowances (child benefits)

- If subject to UK social security, not entitled to family allowances in Belgium (even if children live in Belgium)
- Unless partner or spouse is covered by Belgian social security and 'opens' autonomous right to family allowances

Absence and return

ABSENCE AND RETURN

- ▶ **Notification** to town hall?
 - For absences longer than 3 months
 - Notification of departure (annex 18)
 - Notification of return within 15 days of arrival

- ▶ **Allowed length of absence**
 - Standard M-card: 1 year
 - If exceeding one year: return authorisation – demonstrate main interests in Belgium – discretionary

 - M-card permanent residence: 5 years

- ▶ ! Stricter rules for eligibility permanent residence and nationality

Permanent Residence

M-CARD PERMANENT RESIDENCE

Eligibility

- ▶ 5 years continuous legal residence
- ▶ Periods before and after transition period
- ▶ Continuous legal residence not interrupted by:
 - absences not exceeding a total of 6 months a year
 - absences of a longer duration for compulsory military service
 - one absence of a maximum of 12 consecutive months for important reasons, such as pregnancy and childbirth; serious illness; study or vocational training; or a posting abroad.

Benefits

- ▶ M-card valid for 10 years
- ▶ Unconditional
- ▶ Absences of up to 5 years allowed

Belgian Nationality

OBTAINING BELGIAN NATIONALITY



Adults with certain period of legal residence: **Nationality declaration**



Minors: automatically at birth or after declaration by parents

BELGIAN NATIONALITY DECLARATION

Legal residence requirement

- ▶ Continuous legal residence preceding the submission of your nationality application
 - Valid residence card
 - In some instances proof of application for a residence card (e.g. annex 56 pending application for an M-card)
 - Continuous
 - Maximum 6 months absence at a time
 - In total Maximum one-fifth of the duration required to acquire Belgian nationality

- ▶ Right of unlimited residence at the time of submitting the nationality application
 - ▶ M card
 - ▶ M card with permanent right of residence

Duration of legal residence determines category and requirements

What mobility rights do I have outside Belgium?

SHORT-TERM TRAVEL TO OTHER EU COUNTRIES (SCHENGEN)

Type of travel	Restrictions	Considerations
Tourism, family visits, attending conferences, other leisure	Restriction on length of stay in EU countries outside BE	Max 90 days in any 6-month period
Business trips ; temporary remote work	Restriction on activities and length of stay in EU countries outside BE Remote work possible in few countries and limited circumstances	Allowable business activities/remote work per host country legislation and stay of max 90 days in any 6-month period
Cross-border work	Not possible with an M card, N card needed	Work in the host EU country remains possible (residence even outside EU is possible)

UK citizens - Exempted from Schengen C visa



MOVING PERMANENTLY TO ANOTHER EU COUNTRY

- ✓ Possible under the immigration requirements of the destination country

- ✓ Same immigration avenues applicable to other non-EU citizens (such as US, Canadian, Australian citizens)
 - Economic migration: Highly Skilled Permits
 - Family reunification
 - Students/traineeship
 - Digital Nomad, etc.

- ✓ Application can be submitted at the relevant consular authorities in Belgium
- ✓ Document requirements
- ✓ Eligibility criteria must be met
- ✓ Processing times : several weeks/months – depending on permit type and country



Questions?

Thank you

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