

FRAGOMEN



BRUSSELS COMMISSIONER FOR EUROPE FAMILY REUNIFICATION

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WITH YOU TODAY



WOUT VAN DOREN
Senior Associate
Fragomen Brussels



ANDRIIA GHIMIS
Manager
Fragomen Brussels

AGENDA

- Introduction
- M-Card holders : case study
- UK citizens not M-card holders: case study
- Belgian nationals
- Comparative overview
- Substantive requirements
- Procedure and documents
- Q&A



INTRODUCTION

FAMILY REUNIFICATION RULES PER SPONSOR

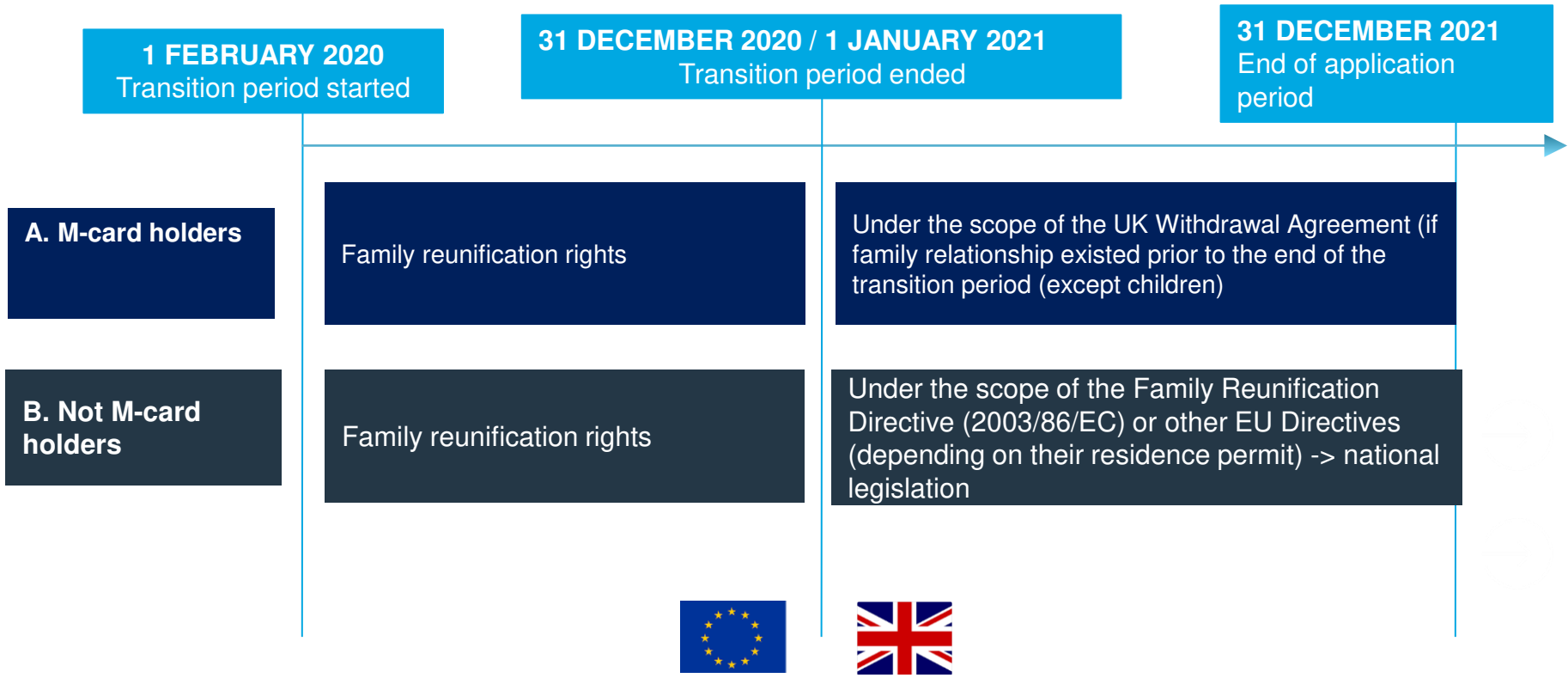
Most favourable



Least
favourable

- a. EU Citizens
- b. **M-card holders** (UK citizens who have residency in Belgium as a beneficiary of the UK Withdrawal Agreement)
- c. Belgian nationals
- d. UK citizens (**not M-card holders**)

BREXIT: TWO GROUPS OF UK CITIZENS IN BELGIUM





M-CARD HOLDERS

THE WITHDRAWAL AGREEMENT

SCOPE

- ▶ **Purpose** – establish the terms of the UK's withdrawal from the EU
- ▶ **Applicability** – from 1st February 2020
- ▶ **Scope** – UK nationals residing in one of the 27 EU member states at the end of the transition period* (before the end of 2020)



THE WITHDRAWAL AGREEMENT

ELIGIBLE FAMILY MEMBERS

- ▶ Can apply for M-card as a family member even **after** the end of the application period on 31 December 2021, provided family tie existed pre-transition period:
 - ▶ spouse
 - ▶ registered partner (registered partnership concluded abroad or legal cohabitation concluded in Belgium)
 - ▶ 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
- ▶ **Exception to the rule of the family relationship existing prior to the end of the transition period**: children **born after the end of the transition period** can benefit from the more favourable provisions of the Withdrawal Agreement



CASE STUDY

Situation: John is a UK citizen who resides in Belgium since March 2017. He obtained his M-card following the end of the Brexit transition period. In 2018 he was able to bring his step-father to Belgium, as he obtained a family member card for him. The step-father had no other family members he could rely on in the UK and was financially dependent on John.

His mother (UK citizen living in the US) has recently fallen sick and John would like to bring her to Belgium so he can ensure the best possible medical care. Can John sponsor his mother?

▶ Answer: **Yes, potentially**

What if he wasn't an M-card holder?

▶ Answer: **No**



UK CITIZENS NOT M-CARD HOLDERS

EU GENERAL AND SPECIFIC FAMILY REUNIFICATION RULES

BLUE CARD, ICTs, RESEARCHERS

	General framework (2003/86/EC)	Blue Card (2009/50/EC)	ICTs (2014/66/EU)	Researchers (2016/801/EU)
Sponsor	Residence permit (1 year) + reasonable prospect of LTR + MS may ask a minimum period of residence 2 years	No minimum period of residence + no LTR prospects	No minimum period of residence + no LTR prospects	No minimum period of residence + no LTR prospects
Processing times	9 months	90 days	90 days	90 days
Integration measures	MS may require the TCNs to comply with integration measures	Only after family reunification has been granted	Only after family reunification has been granted	Only after family reunification has been granted
Validity of residence permit	At least one year (renewable)	Same validity as sponsor	Same validity as sponsor	Same validity as sponsor
Access to labour market	Restriction possible for maximum 12 months	No time limit can be imposed with respect to access to labour market	Family members shall be entitled to have access to employment and self-employed activity in the territory of the MS which issued the permit	No time limit can be imposed with respect to access to labour market Labour market tests only in exceptional circumstances
Autonomous permit	After 5 years of residence	After 5 years (accumulation of periods in different MS possible)	Not possible (max stay 3 years)	No derogation

GENERAL FAMILY REUNIFICATION RULES

THIRD-COUNTRY NATIONALS

Eligible family members

EU RULES

- ▶ Spouse
- ▶ Minor children of the sponsor and/or of his/her spouse (including adopted children)

OPTIONAL

- ▶ **first-degree ascendants in the direct line** of sponsor or spouse (father and mother of the foreign national): if dependent and do not enjoy proper support in their country of origin
- ▶ **unmarried children above the age of majority**: when they are in poor health and therefore objectively unable to provide for their own needs.
- ▶ **registered partners**

BELGIAN RULES

- ▶ Spouse
- ▶ Registered partner
- ▶ Minor children of the sponsor and/or of his/her spouse (under the age of 18)



BELGIAN NATIONALS

FAMILY REUNIFICATION RULES

BELGIAN NATIONALS

Eligible Family members

- ▶ Spouse
- ▶ Registered partner
- ▶ Descendants under 21 years of age or if older dependent on the Belgian national
- ▶ Parents of a minor Belgian citizen



COMPARATIVE OVERVIEW

	EU citizen	M-card	Belgian citizen	UK citizen
Spouse	Yes	Yes	Yes	Yes
Registered partner	Yes	Yes	Yes	Yes
Partner durable relationship	Yes	Yes, if family tie already existed before the end of the transition period (31 December 2020).	No	No
Children	Yes, if under the age of 21 or dependent	Yes, if under the age of 21 or dependent	Yes, if under the age of 21 or dependent	Yes, if under the age of 18
Descendants (grandchildren, etc.)	Yes, if under the age of 21 or dependent	Yes, if under the age of 21 or dependent	Yes, if under the age of 21 or dependent	No
Parents	Yes, if dependent	Yes, if dependent	Yes, parents of minor	No (except parent of unaccompanied minor refugee)
Ascendants (grandparents, etc.)	Yes, if dependent	Yes, if dependent	No	No
Other family members, dependent or member of the household	Yes, if conditions met and rather exceptional	No longer possible after end of application period (31 December 2021)	No	No
Other family members, with serious health grounds that strictly require personal care	Yes, if conditions met and rather exceptional	No longer possible after end of application period (31 December 2021)	No	No

M-CARD HOLDERS WHO ACQUIRE BE NATIONALITY

Rely on the more favorable rules applicable
to (former) M-card holders?

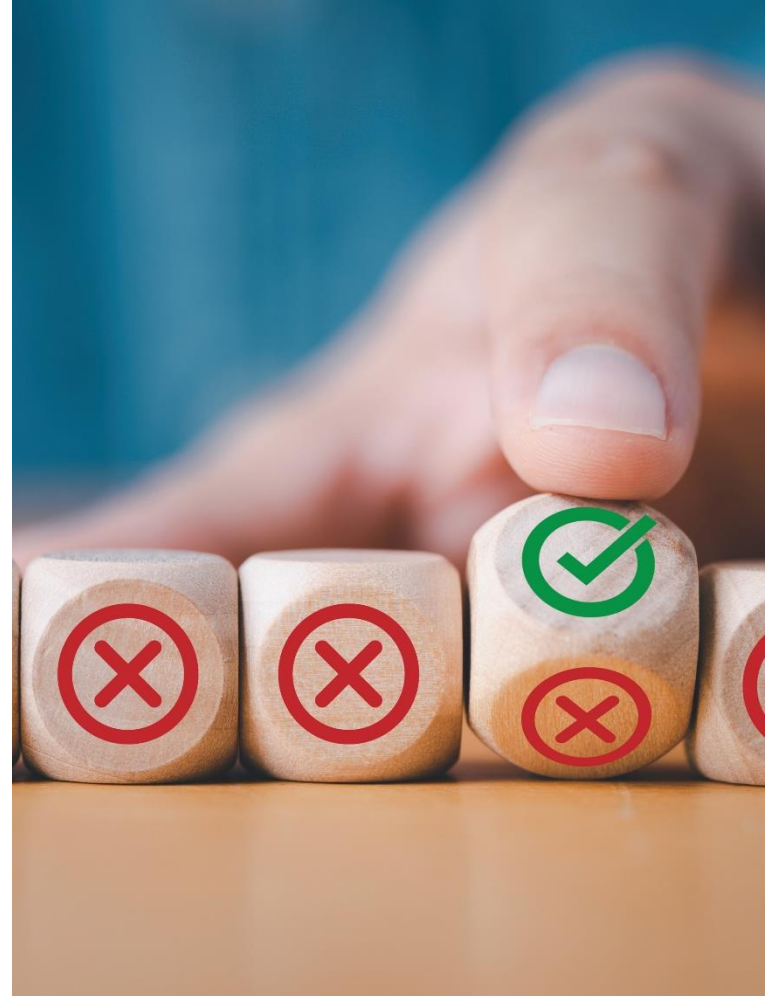
- ▶ **EU Commission Guidance note**
 - ▶ Yes
 - ▶ Analogy with European Court of Justice (ECJ) case Lounes
- ▶ **Belgian immigration office**
 - ▶ Yes



FAMILY MEMBERS NOT ELEGIBLE FOR FAMILY REUNIFICATION

OTHER SOLUTIONS?

- ▶ Other immigration pathways
 - ▶ Student permit
 - ▶ Employment of self-employment-based permit
- ▶ Application based on discretionary competence
 - ▶ In practice typically accepted for:
 - ▶ Children between 18 and 25 (approx.) part of their parents' household
 - ▶ Parents fully dependent on their descendant and isolated in country of origin
 - ▶ No guaranteed outcome
 - ▶ Long processing times





SUBSTANTIVE REQUIREMENTS

SUBSTANTIVE REQUIREMENTS

Applicable Belgians and TCN sponsors

- ▶ Sufficient resources
 - ▶ Minimum 120% of living wage: currently 1.969 euro
 - ▶ Sufficiently stable and sure
 - ▶ Difficult to prove for other income than work as employee (e.g. self-employed, investment/real estate income)
- ▶ Sufficient housing
 - ▶ Rental agreement (+ proof or registration)
 - ▶ Notarial property deed
- ▶ Health insurance
 - ▶ Standard certificate confirming Belgian health care coverage for entire family



CASE STUDY

Situation: Jenny is a UK citizen residing in Belgium with a Single Permit. She is currently single, but she would like to know, if one day she is to get married, whether she can have her future spouse join her in Belgium.

Answer:

Yes, however, Jenny's future spouse will not be able to join her in Belgium under the WA; but, this will likely be possible as family member of TCN

What is she had an M-card, instead of a Single Permit?

Answer: same rules would apply (family tie established after transition period)

What about their future children, if born outside Belgium?

Answer: covered by WA

DEPENDENCY

For 21+ children and ascendants of M-card holder

- ▶ Factual evaluation by the Immigration Office and strictly scrutinized
- ▶ Applicant
 - ▶ No or very limited own income
 - ▶ In school?
 - ▶ Medical condition or other vulnerabilities?
 - ▶ Absence of support network / isolated in home country
- ▶ Sponsor
 - ▶ Stable financial situation
 - ▶ Financially and practically supporting applicant
 - ▶ Engagement to house applicant



PROCEDURE

WHERE?

Place of application

- ▶ Family member of Belgian and M-card holder:
 - ▶ At town hall in Belgium
 - ▶ Or at consular post abroad (only option for non-Schengen visa exempt national still abroad)

- ▶ Family member of TCN
 - ▶ At consular post abroad
 - ▶ Or at town hall in Belgium but only if:
 - ▶ Holder of Belgian residence permit
 - ▶ Schengen Visa exempt national

WHAT HAPPENS NEXT?

PROCESSING

- ▶ Application sent to Immigration Office for decision
- ▶ Processing times
 - ▶ Family member of Belgian: maximum 6 months
 - ▶ Family member of TCN: maximum 9 months (can be extended)
 - ▶ Exception: application submitted at consular post together with main applicant who applied for single permit or professional card – fast track processing
 - ▶ Family member of M-card holder: no maximum foreseen in legislation and practice unknown
- ▶ If application submitted at town hall:
 - ▶ Temporary residence document (“Orange card”)
 - ▶ Red flag: travel restrictions
- ▶ Decision notified by town hall or consular post



QUESTIONS? COMMENTS?

Andreia Ghimis

aghimis@fragomen.com

Wout Van Doren

wout.vandoren@fragomen.com

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www.fragomen.com

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