



Global Employer Services Immigration

Belgium referred to ECJ for failing to implement Single Permit Directive

On 13 July 2017, the European Commission decided to refer Belgium to the European Court of Justice in Luxembourg for failing to fully implement the Single Permit Directive. The Directive needed to be transposed into Belgian law by 25 December 2013. The Commission is also proposing a daily penalty of EUR 70,828.80.

This referral means that the Belgian immigration landscape will soon change significantly, and companies will consequently need to adapt their internal processes. Although not yet fully implemented into Belgian law, there is Belgian case law which obliges the authorities to issue work permits based on the Directive.

Single Permit Directive

Several Member States previously required separate applications for residence and work permits. The Single Permit Directive now enables non-EU workers to obtain work and residence permits through a single procedure.

The Directive also establishes that non-EU workers can benefit from rights similar to those of EU nationals, namely working conditions, pensions, social security and access to public services. However, it does not harmonise admission conditions for labour immigrants, as this will remain a Member State competency.

European Court of Justice

A European Commission's referral to the ECJ is the last resort measure used to ensure that a Member State ultimately takes action on a matter where it is seen to be lagging behind. It is likely that the case will be brought before the Court at the start of 2018 (during February) and that the daily EUR 70,828 penalty will run immediately after the judgment is rendered.

What can be expected?

This case is currently at a standstill because the Federal and Regional authorities cannot fully agree on the competent authority and how the single process will take shape. Inter-governmental negotiations are taking place and sources indicate that an agreement could soon be reached. The European Commission's referral means that Belgium will have to take swift action on implementing the Single Permit Directive to prevent significant penalties.

Why is this important?

This development means that the entire immigration landscape in Belgium is likely to change in the near future. The work permit admission criteria will not change, only the process. Nevertheless, this will greatly affect employers' and employees' immigration experiences because it requires important and complex internal changes in how the Federal, Regional and Consular authorities interact, and how work permit files are introduced. This is likely to lead to confusion, a need to adapt internal processes, an increase in processing times, etc.

Is the Single Permit already applicable?

In February 2017, a Belgian Court rendered a noteworthy judgment that was nearly overlooked. A Chinese man forgot to add his valid work permit to his residence permit renewal. He continued working with his valid work permit and, nearing its expiry, submitted a renewal application. The renewal was refused because his stay was deemed irregular.

In this exceptional judgment, the Court obliged the authorities to renew the work permit, stating that if Belgium would have had single permits (work and residence permits combined), the individual would have never faced these issues. This means that the Single Permit, although not yet implemented, has an important and active role.

Deloitte' view

Although it does not change the admission criteria for work permits, the Single Permit Directive has a profound impact on the immigration process. It will significantly redefine the way in which the Federal, Regional and Consular authorities work together. It will also change how the overall Belgian immigration process works, which in turn will require an organisational rethink of internal processes. Confusion and delays are inevitable during the early stages.

Deloitte will continue to monitor the Belgian Inter-governmental negotiations as well as developments at European level.

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