Social Inclusion and Access to Basic Services of Third-Country Nationals (AccessIN)

Country report for Belgium

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1 Introduction

The main aim of this report is to provide an overview of the conditions under which third-country nationals (hereafter TCNs) can access basic services in Belgium. In doing so, the report will focus on access to services across 5 core policy areas, namely: employment, education, healthcare, social assistance, and housing.

Belgium is a complex federal country, with policies divided between the national state, regional states and local policies of municipalities and cities. Looking at the major policies of social inclusion, these policies are spread and/or organised through multilevel governance. Not only are different "levels" (or "scales", using the term proposed by critical geographers to stress the politics of scale) involved, but also horizontal actors such as unions, 'pillarized' Social Security agencies, and civil society organizations, involved in the everyday governance of the welfare state.

Over the last decades, especially since the crisis of the 1970s which turned into a labour market crisis in the 1980s, there was first a transformation in labour migration policies ('the migration stop') and after that, in policies of family reunification. In August 1974, the Belgian government announced a stop to migration; a ban in principle on new (labour) migration, despite a continuing number of exceptions for a restrictive form of labour migration (as well as for family migration, migration for higher education, etc.). During the 1980s and 1990s, however, the number of asylum applications increased and there was a sharp increase in the number of family reunifications and of 'family formations'. The legislator responded with a substantive tightening of the migration channels (for example, the exclusion of certain family members in the context of family reunification) and an expansion of the legal grounds for expelling foreign nationals from the Belgian territory – a tightening that would only increase in the decades that followed.

After the 1990's, when Belgium started receiving new refugee populations fleeing the Balkan wars, and after the 2000s when refugees – of the Iraq/Gulf war- were complemented by the arrivals of EU citizens after the EU enlargement of 2004 and 2007, asylum and migration policies became stricter. Wautelet (2017) mentioned in a MYRIA-report that there is a tendency to significantly weaken the legal position of foreigners. He cites several examples: recognised refugees no longer immediately receive a residence permit of unlimited duration, the maximum processing time for applications for family reunification has been extended, the possibilities for deporting people (even if they were born in our country) have been greatly expanded, etc.[i]

Over the last years, pleas for stricter policies -especially concerning asylum/international protection (constant debates about 'real deserving' refugees) and family reunification (i.e. more conditions in 2006

and 2011 concerning ‘age’ and ‘income’, recent proposals for shortening the exceptional year for refugees, heightening the income conditions, etc.) – continue to dominate the public debate. More exceptional are changes made in a more positive, less restrictive sense, in a part of labour migration policies with the “one stop shop”- the unified permit and protective policies concerning housing of foreign employees.

Still, we can observe a differentiated inclusion, as Könönen (2018) stated. He described how migration reinforces differential inclusion, because diverse residence statuses are linked to differential social rights, in a universalist welfare state.[ii] Differential inclusion is not new. As Papadopoulos and Tsianos put it in a 2013 article, "*When we talk about differential inclusion, it is not to emphasize its historical novelty or historical uniqueness, but rather to argue that the specificity of today's differential inclusion functions through citizenship*." [iii] Or, as migration scholars such as Morris, Kofman and Kraler have stated before, a practice of unequal citizenship or civic stratification started to emerge*: 'A differentiated system of rights – or civic stratification – which may be nationally variable.*"[iv].

In addition to the differential inclusion based on various residence statuses, policymakers are committed to proactive discouragement. As a result, social rights in the context of migration work as instruments of exclusion, according to Ataç and Rosenberger.[v] Social services and access to social rights have become tools for the objectives of migration control. Ataç and Rosenberg use the terms *migration control – social policy nexus* as an analytical framework for discussing the intersections of both areas, in particular of the policy interventions themselves. Restriction of social rights is used as an indirect means of immigration control.[vi]

In short, we see the increase in welfare state chauvinism in policy practice. In their research in Norway and Sweden, Persdotter, Lind & Righard refer to *bordering practices* within the welfare state, in social services and even in social work, in order to keep newcomers out and build in barriers.[vii] We see these policy ‘trends’ of ‘social policy as migration control’ in a range of examples, like using the primordial principle of “locale binding” (local attachment) in access to social housing. It is also seen in ‘clipping the wings’ of childcare cash transfers (groeipakket) and study loans for unaccompanied minors, and much more conditional and severe integration policies, all at the Flemish level. Other policies ran into the Constitutional Court of Belgium, like the Flemish Social Protection (Vlaamse Sociale Bescherming) that was deemed to be accessible only after a ten-year residency, wherein the last five years uninterrupted.

These policies seem contradictory with the application of ‘Temporary Protection’ with Ukrainian refugees wherein the specific protection status is obtained through ‘simple’ registration, and this specific residency status gives direct access to social benefits (Leefloon) and social services. Still, there

is no real contradiction within the (historical) framework of "deserving" and "non-deserving" refugees. [viii]

2 Social Inclusion and Access to Basic Services of Third-Country Nationals in Belgium

This section describes some key aspects regarding the access of third-country nationals to basic services across the five core policy areas previously mentioned.

2.1 Employment

When it comes to the 'employment' of TCNs, Belgium has a differentiated system as next to the federal government, regions are also involved. As such, the combinated permit makes the access easier for employees and employers. Notwithstanding the new system (or policy flow chart) in action, still a range of signals were sent to the governments concerning potential abuse and fraud. Cases of bad or inadequate housing, but also false companies (P.O Boxes) that are involved in the permit acquisition.

In any case, this is just but one system of labour migration. Next to the EU citizens who receive residence through work (or not being dependent on social benefits), many TCNs work through "secondment" (detachering)[ix] in a precarious situation. "There is no longer any question of a Fortress Europe. In 2019, there were 275,000 seconded workers, 35,000 of whom were from a non-EU country. Here, too, Belgium is at the top of Europe." was stated in the newspaper 'De Standaard'. [x]

It 'proves' how (more 'classical') labour migration has another 'status', not only in public debate but also in everyday migration policy practice, although a labyrinth of regulations concerning labor migration exists. Also, rules and/or regulations to protect TCN-employees are quite 'weak' in practice. We see cases of fraud with the permits, but also a range of problems concerning wage exploitation and obligatory housing conditions. Two elements are worth being highlighted: (1) the time to go from one employer to another one is short, -what is necessary to keep the labour visa- which makes people vulnerable and dependent on the employer, (2) the actual places that are there for shelter in the procedure 'victims of human trafficking' (procedure 'slachtoffer mensenhandel') are scarce. The shelter is under the federal government, and psychological support is under the regional government, so a difficult multi-level governance exists in practice.

If we talk about access to social assistance and services, we observe to a large extent that the rules for TCNs are the same as Belgian nationals, based on the days people have worked. Quite different is the access to employment for those who are under international protection: *refugees, subsidiary protected and Ukrainian people with 'temporary protection'*. The first two groups mostly start at the local welfare

center (OCMW/CPAS), where they follow an activation trajectory. Also, they follow integration courses at the Department of Integration and Civilisation (Agentschap Integratie en Inburgering), where they get a "trajectory guide' (trajectbegeleider), aiming to orient towards free time-activities, but also education and work. And also, there is the local employment department of the Flemish Employment office (VDAB), of FOREM (Wallonie), or ACTIRIS (Brussels).

One of the issues is a lack of coherent and integrated policies. A recent report of the OESO shows the consequences of a lack of coherent and integrated policies: the sustainability of 'output' -getting people to employment or labour market(s) and remaining there in a sustainable way lacks.[xi] This was also already clear for those TCNs going from social benefits in the OCMW/CPAS to an activation trajectory (also towards employment).[xii] This lack of coherent and integrated policies towards integration, wherein work/employment plays an important role, not only influences refugees and subsidiary protected people, but of course -in another sense, because of the different trajectory- Ukrainian Temporary Protected refugees.

To fill some of the protection gaps in these employment and integration policies, a range of civil society actors set up practices where support is given to TCNs, like buddies or 'mentors' (for TCNs that are 'mentees') for example by Duo for a Job, but also alternative practices of 'employment' like Refu Interim that supports newcomers with voluntary work to build up a CV. Also, some unions do outreach to protect TCNs at working sites like factories or building sites. Also, there are some scarce civil society actors that use the "springplank statuut" (Springboard statute) to strengthen trajectories towards entrepreneurship, like "microstart". But adequate policies lack.

2.2 Education

Education policies unfold within the boundaries of a (obligatory) constitutional right to education. Also TCNs, minors and adults, have access to schools and other institutions where they can 'learn' and have a right to learn. Not only does Belgium have the OKAN/DASPA-system for refugees in secondary schools, but also "follow-up coaches" (vervolgschoolcoaches) were installed in the Flemish region. Also, access to extra-curricular education or (non-formal) education for adults is guaranteed (Volwassenenonderwijs).

The main challenges arise, also clear from PISA statistics, in the major inequality between people with and without a migratory background. Not only due to a lack of weaving together of education and well-being (or welfare) policies, but also because of the gap between schooling culture and "home culture"; notwithstanding high expectations in migrant families that exist. Bridging those two worlds remains a major challenge, where especially municipal policies play a role with extra investments in 'bridging

workers' ('brugfiguren'). But also, local civil society actors that invest in 'homework-classes' and similar educational support practices in extra-curricular time; especially but not only done by ethnic-cultural organizations.

Changes have come forth the last decade, when undocumented people could not access education anymore when reaching adult age (+18 years). Because organizations like "LIGO" (Basic Education) or 'Volwassenenonderwijs' (adult education) only give access to TCNs with documents/residence permits. In a more positive sense, and also for TCNs, an extra year is added for people with temporary study permits/study residence, after they succeed for their studies, to find work.

2.3 Healthcare

In general, everyone in Belgium has a fundamental right to healthcare provided for in Article 23 of the Constitution. The main agreement is that an insurance is obligatory. [xiii] This is based on the Law of 14 July 1994 (Wet betreffende de verplichte verzekering voor geneeskundige verzorging en uitkeringen gecoördineerd op 14 juli 1994).[xiv] The compulsory health insurance reimburses all or part of the medical costs. This includes the costs of consultations with the general practitioner or specialist, dentist, physiotherapist, ophthalmologist, childbirth, hospital admissions, etc., as well as the cost of several medicines.

Regarding access to healthcare at the federal level: if we interpret healthcare as medical care access and thus financial insurance, this is specifically attached to and determined by residence permits.[xv] If we interpret healthcare as "medical care access" and thus financial insurance, this is specifically attached and thus different "per legal status".[xvi] If individuals have a low income, they can ask the OCMW to intervene financially.[xvii]

People without legal residence are also entitled to medical care. A specific system has been developed for them according to the regulation of emergency medical assistance. Urgent medical care, contrary to what the name suggests, is not limited to acute emergency care, but includes all preventive, curative and aftercare deemed necessary that is provided both on an outpatient basis and by hospitalization.

There is also the Flemish social protection (Vlaamse sociale bescherming), consisting of three pillars: the care budget for people with severe care needs; the care budget for persons with disabilities; the care budget for elderly people in need of care. Since 1 January 2019, mobility aids have also been part of the VSB. Care in residential facilities for the elderly and rehabilitation hospitals is also financed through the VSB. [xviii] Certain categories of foreign nationals are explicitly excluded from the scope of the VSB and therefore cannot join.[xix]

A problem is not so much ‘access’, in the sense that policy regulations consciously limit the access to basis health care for TCNs, but ‘non-take up’ of healthcare rights. There is a gap between the health institutions and users (especially TCNs). In this gap, a range of civil society actors are active, like Doctors without Borders (Dokters van de Wereld), but also Community Health Workers and other agencies that try to fight the thresholds that exist. But also ‘medical recovery centres’ for homeless people, including TCNs. Also, they play a role in the language barriers that exist, because of a lack of interpreters (and translators) and the rising costs (on the Flemish side) for interpreters for TCNs outside of the formal “integration trajectory”.

Most problems ‘arise’ with those healthcare services that are not under basic healthcare, wherefore an extra private insurance payment is needed (Hospitalization Insurance)- not really for undocumented people, as they are (mostly) covered with a document ‘medical card’, but for TCNs who do not have added private insurance.

Moving from “access’ to “cash benefits” in case of sickness (also called incapacity benefits), these are granted based on three conditions Melin (2020: 54-55): having ceased all activities because of injury or functional disorder resulting in a reduction of earning capacity of at least 66%; having paid the minimum amount of contributions, and having prior insurance for at least 180 working days out of 12 months preceding the incapacity. While there is no difference between nationals and foreigners in accessing cash benefits, there is with regard to the export. For temporary stay in an EU/EEA country, the person receiving sickness benefits from Belgium should inform the sickness insurer. Whereas for temporary stay in a non-EU/EEA country, an authorization from the doctor would be needed. There is no possibility to retain sickness benefits when moving abroad permanently. Sickness cash benefits can be granted for 12 months after which invalidity benefits can be claimed if the beneficiary is still unable to work. Invalidity benefits are calculated based on previous earnings and the family situation of the invalid person.” [xx]

There is also coverage of health-related benefits in bilateral social security agreements with the USA, Canada and Australia concerning invalidity benefits. Also, the agreements with Morocco, Turkey, and Algeria cover sickness benefits in kind, in cash and invalidity benefits. For invalidity benefits, all agreements provide for aggregation of periods of insurance. Furthermore, the agreements with USA, Canada and Australia contain a provision stating that residence conditions should not be attached to the grant and payment of the benefits; and that invalidity benefits should be granted under the same conditions by Belgium for American, Canadian and Australian nationals residing in third countries as it would for Belgian nationals, and vice versa by USA, Canada and Australia for Belgian nationals residing in third countries. (Melin, 2020: 55)[xxi]

2.4 Social Assistance

All TCNs with a legal stay in Belgium can use/file a demand for societal integration (maatschappelijke integratie). This is based on several laws (Wet van 1965: wet van 2 april 1965 betreffende het ten laste nemen van de steun verleend door de openbare centra voor maatschappelijk welzijn; wet van 7 augustus 1974 tot instelling van het recht op een bestaansminimum RMI-wet: wet van 26 mei 2002 betreffende het recht op maatschappelijke integratie; Wet bestaansminimum;KB RMI: koninklijk besluit van 11 juli 2002 houdende het algemeen reglement betreffende het recht op maatschappelijke integratie). The amount of "leefloon/social benefits" depends on individuals' family situation: being alone, being part of a family and living together.

In addition to having access to social benefits in cash (Leefloon), TCNs with residence permits can also use the different social services of OCMW/CPAS (such as prevention of homelessness or elderly care centers, activation instruments like 'art. 60'-statuut). What is different for them is how they get access in relation to their residence procedure: for refugees and subsidiary protected this is only after getting international protection. Before they are going through an asylum procedure. For Ukrainians there is no asylum procedure: they get immediate access to social benefits in cash (Leefloon: or better "Equivalent leefloon"). For them, activation policies that are also embroiled between OCMW and VDAB, are 'different' than for refugees and subsidiary protected. The latter are also obliged to go through an integration trajectory, in contrast to Ukrainians with temporary protection who can do this 'specially targeted' integration trajectory voluntarily. Inscriptions at the local employment office (VDAB) are obligatory for all.

What is also different with TCN employees is that they only get access after years of work after they have permanent residence (only after five years).[xxii] "Since 2002, third-country nationals registered in the population register (i.e. permanent residence, possibly after 5 years) are entitled to the reformed integration income (regular social assistance). Since 2001, third-country nationals registered only in the register of foreign nationals, but who do not have permanent residence are not entitled to a integration income but to the aspect of activation (guidance to employment) and professional integration of the social integration. Since 2007/9, third-country nationals registered in the population register (i.e. permanent residence, possible after 5 years) are entitled to allowances for persons with disabilities.'[xxiii] There is also "the income guarantee for elder people". Individuals are entitled to an IGO if they meet certain conditions based on limited means of subsistence per month, being at least 65 years old (at least 66 years old from 2025 and at least 67 years old from 2030), and being Belgian or being in an equivalent situation: having a legal status (permanent verblijf), and having your main residence in Belgium**.**

2.5 Housing

According to Art 23 of the Belgian Constitution: *'Everyone has the right to live a dignified life. This right shall include the right to adequate housing*.' However, in contrast to the promise that lays in this constitutional right, that is based not on 'results obligation' but on 'best efforts obligation', everyday practice shows a shadowy side of 'housing'. Not only concerning access, but also the quality and affordability of housing which remains an important challenge for TCNs.

Social housing-policies differ regionally. Especially in Flanders, social housing policies have become quite conditional: based on 'local attachment' (local binding) but also implanting conditions of language acquisition and inscription at the local employment office (VDAB). Also, conditions about income and especially 'having foreign property' were added and actively tracked down with private investigators that were subsidized by the Flemish government for social housing companies. Furthermore, the long waiting list has decreased only lightly, and waiting times have grown. In 2022, there were 176,026 prospective tenants on the waiting list for social housing in Flanders. That is 3.5% less than the 182,436 the year before. In Flanders, 142,981 social housing units were rented out in 2016 and 137,177 prospective tenants were registered on the waiting lists of social housing companies.

In the Brussels-Capital Region, the number of families on the waiting list for social housing has increased. In 2010, this involved about 31,140 families. On 30 September 2020, this was already 49,135, an increase of almost 58% in ten years. In total, this concerns some 128,270 people, more than a tenth of the Brussels population.[xxiv]

In Wallonia, there are currently 42,000 outstanding application forms for social housing. The Walloon Housing Association recently organised a day of reflection on the right to housing in Liège. There are around 102,000 public housing units in Wallonia. This represents less than 6% of the housing supply in Wallonia.[xxv] Dependent on the region, people on the waiting list get a (limited monthly) subsidy after some time (in Flanders 4 years, in Wallonia 18 months) to rent on the private market. Because, also dependent on the region and family number, it takes from 6 to 13, or 14 to 15 years[xxvi] for large families that need 4 bedrooms, to get access to social housing.

In all regions, the private housing market does not work in an "inclusive" manner for TCNs, with too high prices and low quality housing stock. The situation is further challenged by the fact that many TCNs do not really have any other choice than to seek alternatives on the private housing market. This even includes TCNs without documents who seek private housing, as they can officially register the rent contract because no official ID-number is needed: Flanders wants to change this. [xxvii]

In the case of undocumented TCNs, there are increasing small-scale alternatives to avoid that they become homeless and/or end homelessness. These still experimental practices in a range of cities go under the banner of "housing first", whereby people get access to a roof above their heads first and afterwards social support is organized around the housing situation that at least gives stability. Also, where policy makers and/or civil society organizations do not strictly follow the housing first principle, they create practices that are "housing led": based on giving (more sustainable 24h) shelter and a stable housing situation. Most of these projects have taken off in Flanders under the banner of OPT by Orbit VZW, wherein shelter (opvang) and orientation (oriëntatie) are molded together; whereby taking care of a stable residence permit and possible legal stay, is based on 24h shelter to give "rest, respect and space".[1]

3 Conclusions

When it comes to the access of TCNs to basic services in Belgium, there is a gap between rights on paper and rights in practice. Not only because TCNs do not easily find their way and stay 'underprotected' in situations of 'non-take up', but also because of the increasing policy tendencies to reduce the protection and rights practice of newcomers.

It is within that gap that inequality emerges and is strengthened. As stated, most of TCN minors and adults can access education, although the gap between them and non-migrants widens as they go through the educational system. It says something about 'the residential' perspective on social services and social rights. They are accessible in principle and in theory 'for all', but through their non-adaptiveness to increasing migration, they remain difficult to access by migrant minorities, or they fail to get through the processes of 'access'.

As I referred to, this has not only been given shape through a series of differential residence statuses, but also through its connection with access to social rights and the welfare state more broadly. Differential inclusion means differentiated legal statuses connected to a variety of conditions that play a role in the access of social rights and social services. In addition, several rights have been reshaped in ways that discourage people to seek "refuge" and/or futures in Belgium, or one of its regions. Certainly, in Flanders different policies like child allowances, scholarships and/or study-finance, social housing policies and integration policies are remoulded to serve that purpose.

If we want to ensure that the universality principle of the welfare state is maintained and protected as such, it is fundamental to reflect about the meaning and practices of social rights and services in the

[1] https://www.orbitvzw.be/opt-hoe-werkt-orbit-met-partners-aan-toekomstperspectieven-met-mensen-zonder-wettig-verblijf/

context of a migratory/superdiverse society. Further, we should also reflect on how and where practices of differential inclusion and 'social policies as migration control' actually work against this background of the universal welfare state.

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